

WASTEWATER SERVICE AND FEE AGREEMENT

This Wastewater Service and Fee Agreement (“Agreement”) is between the City of Dripping Springs, a Type A General Law City located in Hays County, Texas (the “City”), and Harrison Hills, LP (“Owner”), whose address is 310 US Hwy 290 W, Suite C, Dripping Springs, TX 78620, attn.: Burt Dement.

RECITALS:

- A. Owner is the owner of land described as Harrison Hills Business Park Lots 1,2,3,4 located within the corporate limits of the City (the “Land”).
- B. Owner intends to develop the Land with improvements and infrastructure pursuant to a site development permit from the City.
- C. Owner wishes to receive wastewater service for the Land through the City’s System and to connect to the System through the City’s wastewater collection line.
- D. The Parties wish to enter into this Agreement providing for, among other things, the timing and payment of wastewater Impact Fees for service to the Development.

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

ARTICLE I DEFINITIONS

1.1 Agreement. This contract between City and Owner, including all Exhibits, which are incorporated herein for all intents and purposes.

1.2 Chapter 395: Chapter 395 of the Texas Local Government Code, as such may be amended from time to time.

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

1.4 City Engineer: The person or firm designated by the City Council as the wastewater engineer for the City.

1.5 City Utility Standards. City standards for design, location, construction, installation and operation of water, wastewater and drainage utility infrastructure, as enacted and as they may be amended thereafter from time to time, and expressly including the following chapters of the City’s Code of Ordinances and all related regulations and permits:

- (a) Utilities (Chapter 20)
- (b) Development and Water Quality Protection (Chapter 22)

- (c) Building Regulations (Chapter 24)
- (d) Subdivision and Site Development (Chapter 28)

1.6 Contractor. A person or entity engaged by Owner to design, construct, install, alter or repair infrastructure required to serve the Land, whether located on or outside the Land.

1.7 Development. The development on the Land, consisting of improvements and infrastructure to be constructed in accordance with the Site Development Permit.

1.8 Impact Fees. Impact Fees adopted by the City pursuant to Chapter 395 of the Texas Local Government Code and City Ordinance, Sec. 20.02.005, Sewer Services of Chapter 20, Utilities of the Code of Ordinances of the City of Dripping Springs, Texas. The amount of the Impact Fee shall be in an amount that is equivalent to the impact fee amount for new wastewater service adopted and assessed by City pursuant to Chapter 395 of the Texas Local Government Code and City Ordinance at the time the Impact Fee becomes due.

1.9 Land. Harrison Hills Business Park Lots 1,2,3,4 in Dripping Springs, Hays County, Texas, as shown on Exhibit A and more particularly described in Exhibit B.

1.10 LUE. Living Unit Equivalent of sewer usage, as established from time to time by City Ordinance.

1.11 Notice. Notice as defined in § 7.2 of this Agreement.

1.12 Owner. Harrison Hills, LLC, a Texas limited liability company.

1.13 Onsite Facilities. All wastewater facilities, equipment or related improvements necessary to serve the Land as shown on Lots 1, 2, 3, and 4 as shown on the attached **Exhibit C**. As shown on **Exhibit C**, the Onsite Facilities must extend to the southern portion of Lot 3 and through Lot 3 to Lot 4.

1.14 Offsite Facilities. All wastewater facilities, equipment or related improvements necessary to serve the Land and located between the Onsite Facilities and the connection point at Osage Court as shown on the attached **Exhibit C**. The Offsite Facilities include the actual physical connection between the Onsite Facilities to the Offsite Facilities. Offsite Facilities will require a bore under RR 12.

1.15 Party. Individually, the City or the Owner and any successors and assigns, as permitted by this Agreement.

1.16 Site Development Permit. A site development permit under Article 28.04, Chapter 28 (Subdivisions and Site Development) of the City's Code of Ordinances, as it may be amended from time to time.

1.17 System. The City’s South Regional Wastewater Treatment System, including the City’s wastewater treatment plant and all of the City-owned collection facilities transporting wastewater to that plant.

ARTICLE II SERVICE TO THE DEVELOPMENT

2.1 City Wastewater Service. The City will become the exclusive provider of wastewater collection and treatment service to the Development through the City’s System in an amount up to 10 LUEs. The City will make this retail wastewater service available to the Land upon (a) Owner’s construction and connection of the Onsite and Offsite Facilities pursuant to this Agreement, and (b) the City’s delivery of a notice in writing that the City’s System has capacity to begin receiving wastewater pursuant to this Agreement. Additional LUEs will not be made available to the Land or to the Development except as may be agreed in writing by the City from time to time.

2.2 Commercial Application for Wastewater Service. Prior to service, the Owner, or each owner of the pad sites that are approved by the City shall execute and file with the City a completed copy of the City’s form of application for wastewater service to the Development.

2.3 Site Development Permit. Nothing in this Agreement approves the Owner’s application for the Site Development Permit for the Land, which remains subject to staff approval under City ordinances and regulations governing such permits.

2.4 Assignment to Pad Site Owners. Prior to service, the Owner shall assign all or part of the LUEs made available by this Agreement to pad site owners on the Land. The assignment of one or more LUEs to a pad site owner is subject to approval by the City, which approval shall not be unreasonably withheld.

ARTICLE III INFRASTRUCTURE CONSTRUCTION, CONNECTION AND DEDICATION

3.1 Construction Standards. Owner shall construct all Onsite and Offsite Facilities in compliance with (a) this **Article 3**; (b) the City Utility Standards; and (c) the rules and regulations of the Texas Commission on Environmental Quality, or its successor agencies.

3.2 Construction Warranty and Guarantee. Any facilities to be dedicated to the City shall have a contract warranty with a guarantee of at least 2 years, enforceable by the City as both Owner’s assignee and as a third-party beneficiary. In addition, Owner’s contract(s) with its Contractor for the construction of any facilities to be dedicated to the City (including the Offsite Facilities) shall: (i) state that the “OWNER” includes the Owner and its permitted assigns, including the City, and (ii) include the following provision:

“Immediately before the expiration of the 2-year guarantee period, the CONTRACTOR shall make an inspection of the Work in the company of the Engineer and the OWNER. The Engineer and the OWNER shall be given not less than 20 days notice prior to the anticipated date of Guarantee expiration and the inspection. Failure to comply with these requirements within the guarantee period shall extend the guarantee period until 20-days after the inspection is completed.

During the guarantee period, where any portion of the Work is found to be defective and requires replacement, repair or adjustment (whether as a result of the foregoing inspection or otherwise), the CONTRACTOR shall immediately provide materials and labor necessary to remedy such defective work and shall prosecute such work without delay until completed to the satisfaction of the Engineer and the OWNER, even though the date of completion of the corrective work may extend beyond the expiration date of the guarantee period.

The CONTRACTOR shall not be responsible for correction of work which has been damaged because of neglect or abuse.”

The Owner shall provide a copy of the contract to the City upon execution, assign the contract to the City as provided in § 3.10, and shall immediately advise the City of any notice it receives under this provision, and send the City a copy of the notice as provided in this Agreement.

3.3 Onsite Facilities. Owner is required to construct, install, operate and maintain all Onsite Facilities at its cost. Owner agrees to complete the Onsite Facilities within two-years of the City’s issuance of the Site Development Permit for the Land.

3.4 Offsite Facilities. Owner is required to construct and install all Offsite Facilities at its cost. Owner agrees to complete the Offsite Facilities within two-years of the City’s issuance of the Site Development Permit for the Land.

3.5 Construction in Phases. The Onsite and Offsite Facilities may be constructed in separate phases, in which case the requirements in this Agreement apply separately to each phase.

3.6 Construction Plan Review and Approval. The City has the right to review and approve all plans and specifications for the Offsite and Onsite Facilities, and to charge applicable City review and approval fees. Owner shall cause to be filed a copy of each set of approved plans and specifications and a copy of all inspection certificates for the Onsite and Offsite Facilities with the City for review and approval. Construction of the Onsite and Offsite Facilities shall not begin until the plans and specifications have been reviewed and accepted by the City for compliance with the construction standards required by this Agreement, a pre-construction conference has been held by the Owner’s contractor(s) and the City Engineer, and the applicable

City fees have been paid. The City agrees to provide comments to plans and specifications within twenty (20) days of receipt.

3.7 City Inspections. The City has the right, but not the obligation, to inspect and test at any time (including during construction and before beginning operation), and the right to participate in a final inspection of, all Offsite and Onsite Facilities, including any connections to onsite structures and to the City's System. In addition, the Owner or its Contractor shall notify the City when the Facilities are ready for final inspection and connection to the City's System. If the City concurs that construction of the Facilities is substantially complete, then the City will schedule a final inspection by the City within twenty (20) days. After such final inspection, the Owner shall timely correct any punch list items. Unless otherwise agreed by the City staff, the final inspection shall not be scheduled until after a visual inspection using video camera technology of the entire completed Offsite Facilities is performed at Owner's sole cost and expense and a copy of the resulting video is provided to the City. Owner notify the City in advance, and give the City an opportunity to witness the visual inspection.

3.8 Review and Inspection Fees. With respect to wastewater improvements to or for the Land, Owner shall pay City all of the City Engineer's fees (plus a 20% administrative fee mark-up) for City Engineer review of plans or specifications, and for City Engineer inspections and consultation during the construction phase(s) and final inspections. Such payment is due within 60 days of receipt from the City of its invoice.

3.9 City Acceptance of Offsite Facilities. After completion of the Onsite and Offsite Facilities in accordance with the construction standards of this Agreement, the City's final inspection, and the Owner's completion of any punch list items to the City's satisfaction, the Owner will dedicate and the City agrees to accept the Offsite Facilities for dedication to the City's System.

3.10 Conveyance of Offsite Facilities. Within sixty (60) days after the City's acceptance of the Offsite Facilities under § 3.9, the Owner shall convey them to the City as follows. Owner shall execute and deliver to the City properly executed bills of sale, assignments, or other instruments of transfer that are reasonably necessary to convey the Offsite Facilities as well as:

- (a) all warranties secured for their construction;
- (b) all bonds, warranties, guarantees, and other assurances of performance;
- (c) all record drawings, easements and project manuals and all other documentation related to the Offsite Facilities; and
- (d) all easements required by **Article 4**.

Owner is responsible for removing any lien or any other encumbrance from any real or personal property to be transferred to the City. Upon transfer, the Offsite Facilities shall become part of the City's System.

3.11 Connection to the System. After Owner has transferred the Offsite Facilities to the City as provided in § 3.10, the City will schedule connection to the City’s System; however, the City may require construction of the Offsite Facilities to include the physical connection to the City’s System. After connection to the City’s System, the Owner shall connect all wastewater flows up to 10 LUEs from the Land to the City’s System in compliance with the City’s Wastewater Ordinance.

3.12 Delivery of Drawings. The Owner shall cause to be delivered to the City any as-built drawings and electronic files for all Onsite and Offsite Facilities within thirty (30) days after final inspection.

ARTICLE IV EASEMENTS

4.1 Grant of Easements. Before starting to construct the Offsite Facilities, Owner must have acquired, at no cost to the City, all wastewater easements necessary for the Offsite Facilities. Owner shall grant the easements for the Offsite Facilities provided to the City as required in § 3.10 in the form attached as **Exhibit D**. The City shall record the easements in the deed records of Hays County, Texas. The City acknowledges that some or all of the Wastewater Infrastructure may be located in existing public rights-of-way that do not have to be acquired by Owner.

4.2 Facility Easements. Owner shall acquire and maintain all easements necessary for Onsite Facilities and Offsite Facilities at no cost to the City.

ARTICLE V FEES AND CHARGES

5.1 Impact Fees Within 90 days of the Effective Date, Owner shall pay Impact Fees (also referred to as “connection fees”) to the City in the amount specified by Chapter 20, Article 20.02.005(1)(B) of the City’s Code of Ordinances (as amended or replaced) for the 10 LUEs reserved to serve the Land. Connection of any structure on the Land to the System is prohibited until Owner pays the Impact Fees. This Agreement is an agreement providing for the time and method of payment of the Impact Fees and an owner’s voluntary request for reservation of capacity pursuant Chapter 395. If this Agreement expires before service begins, then the City will refund the Impact Fees paid, without interest, only upon recovering them through Impact Fee payments from other customers for additional connections.

5.2 Monthly Payments. Beginning on the first day of the month after the City provides notice to owner that that the City’s System has capacity to begin receiving wastewater pursuant to this Agreement, Owner shall begin making monthly payments to the City in the amount of \$50.00 per month per LUE for each of the 10 LUEs reserved to serve the Land (the “LUE Fee”). The LUE Fee is in lieu of a monthly wastewater bill for such LUEs and, among other things, for the City’s costs of operating and maintaining sewer mains or lines to serve the Land. The LUE

Fees shall be due before the 15th day of each month. Owner shall continue to pay the City the monthly LUE Fees for each reserved LUE unless and until the LUE is connected to the System or released pursuant to this Agreement.

5.3 Release of LUEs.

- (a) If Owner does not pay the City its monthly LUE Fees pursuant to § 5.2, then the City may send a notice to Owner of such default and, if the default is not cured within thirty (30) days, then the City may either (a) enforce the Owner's continuing monthly payment obligations for unpaid LUE Fees or (b) release reserved LUEs for which fees have not been paid. If the City chooses to release the LUEs in this manner, then the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs, and may enforce the Owner's monthly payment obligations through the date of this § 5.3(a) notice.
- (b) If Owner is not in default on its monthly payment obligations, it may voluntarily release and terminate its monthly LUE Fee payment obligations for any or all of the unused LUEs by sending ninety (90) days prior notice to the City specifically identifying the number and service area of the LUEs being released; ninety (90) days after such notice, the Owner will have no further monthly LUE Fee payment obligation for, and City shall have no further service obligation for, such released LUEs.
- (c) At any time after two years after service to the Development begins, the City may release any or all of the unconnected reserved LUEs and terminate its § 2.1 wastewater service commitment with respect to those unconnected LUEs by sending Notice to the Owner. Such termination shall be effective immediately.
- (d) If LUEs are released under §§ 5.3(b) or (c) above, then the City will refund the Impact Fees paid for the released LUEs, without interest, but only upon recovering them through Impact Fee payments from other customers for additional connections.

5.4 Reserved.

5.5 Other Fees and Charges. Payment of Impact Fees and Line Extension Charge as provided above will satisfy the Owner's Impact Fee and Extension Line Charge obligations for the requested capacity of 10 LUEs. After any part of the Onsite Infrastructure is connected to the System, wastewater service to the Land remains subject to all other charges and regulations as provided in the City's Code of Ordinances, Chapter 20, including additional impact fees for expanded or new development. Owner agrees to remain in compliance with Article 20 at all times, including monthly payment obligations and other wastewater regulations.

5.6 Landlord Guarantee. As authorized by City Ordinance, the City’s bill for wastewater service is based on average winter water use for each water meter. By law and regulation, including orders of the Texas Commission on Environmental Quality, the City is authorized to suspend or terminate water service to a customer’s water meter for non-payment of the customer’s wastewater bill. The owner intends to separately meter and sell individual units of the Development; however, if Owner leases any of the pad sites, Owner agrees to be responsible for, and to guarantee payment of, deposits and monthly service bills for all tenants.

ARTICLE VI TERM AND TERMINATION

6.1 Term. This Agreement remains in effect so long as the City is providing wastewater service to the Development, unless otherwise expired or terminated under this Article VI.

6.2 Termination for Non-Use. This Agreement expires on January 15, 2025 unless the Onsite and Offsite facilities have been constructed and connected to the System as provided in this Agreement.

6.3 Termination for Breach. In the event Owner breaches this Agreement, City may send a notice of default to Owner. The notice must include a reasonable description of the breach. If the Owner fails to cure the breach within 60 days of that notice, then the City may send a second notice describing the breach and the Owner’s failure to cure. Owner’s failure to cure the breach within 30 days after the second notice gives the City the right to terminate this Agreement by sending a termination notice.

ARTICLE VII MISCELLANEOUS

7.1 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.

7.2 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 and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; or (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the

first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To the City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620

To the Owner:

Burt Dement
Harrison Hills, LLC
310 US Hwy 290 W
Suite C
Dripping Springs, TX 78620

7.3 Assignment. Owner may not assign this Agreement without the written consent of the City, in its sole discretion. This Agreement is binding on Owners' successors and assigns, including future owners of any land or structures within the Development.

7.4 Amendment. This Agreement may be amended only with the written consent of the Owner and approval of the governing body of the City.

7.5 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.

7.6 Severability. The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the

application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.

7.7 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the agreement.

7.8 Interpretation. The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “include” or “including” means to include “without limitation.” Any provision of this Agreement that provides for the agreement or approval of the City staff or City Council, such agreement or approval may be withheld or conditioned by the staff or City Council in its sole discretion.

7.9 Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

7.10 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, 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.

7.11 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.

7.12 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A	Map of the Land
Exhibit B	Legal Description of the Land
Exhibit C	Map of Offsite and Onsite Facilities (also shows connection point)
Exhibit D	Form of Easement

7.13 **Effective Date.** The Effective Date of this Agreement is January 15, 2021.

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

Andrea Cunningham, TRMC
City Secretary

By: _____
Bill Foulds, Jr., Mayor

Date: _____

STATE OF TEXAS
COUNTY OF HAYS

This instrument was executed by **Bill Foulds, Jr.** before me on this the ____ day of _____, 2021.

Notary Public, State of Texas

OWNER

Harrison Hills, LP

By: Burt Dement
Title:

STATE OF TEXAS
COUNTY OF _____

This instrument was executed by Burt Dement, in the capacity set forth above, and before me on this the ____ day of _____, 2021.

Notary Public, State of Texas

Exhibit A
Map of the Land

Exhibit B

Legal Description of the Land

Exhibit C

Map of Offsite and Onsite Facilities

Exhibit D
FORM OF EASEMENT

EASEMENT

STATE OF TEXAS

§
§
§
§

KNOW ALL PEOPLE BY THESE PRESENTS:

COUNTY OF HAYS

**CITY OF DRIPPING SPRINGS
SANITARY SEWER EASEMENT**

THAT _____, a _____
_____ (“Grantor”) of Hays County, Texas, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration paid by The City of Dripping Springs, a general law city of Hays County, Texas (“City”), the receipt of which is hereby acknowledged, does grant, bargain and convey to the City, its successors and assigns, a permanent easement for use and passage in, over, across, beneath, and along that certain parcel of land situated in Hays County, Texas, as described in the legal description attached hereto as Exhibit A and as depicted in the plat attached hereto as Exhibit B (“Easement Area”), for the purposes of installing, constructing, operating, maintaining, upgrading, repairing, and replacing underground sanitary sewer lines (which may include collection lines, force mains, and treated effluent lines) and all attendant facilities thereto as the City may from time to time deem necessary or advisable, including but not limited to incidental underground and aboveground attachments, equipment, manholes, manhole vents, lateral line connections, pipelines, junction boxes, and other appurtenant facilities (“Sanitary Sewer Easement”). It is intended by these presents to grant and convey the Sanitary Sewer Easement to the City as described above, with the usual rights of ingress and egress as the City may deem necessary in the use of such Sanitary Sewer Easement, at any time, in, over, across, upon, beneath, and along the Easement Area.

Grantor agrees that it shall not place, construct, or allow any buildings, structures, or other improvements of any kind over, under, or upon the Easement Area, other than a fence, without the City’s prior written consent, which the City may grant or withhold in its sole discretion.

TO HAVE AND TO HOLD the above-described Sanitary Sewer Easement, together with, all and singular, the rights and appurtenances thereto in anywise belonging unto the City, its successors and assigns, forever. And Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the Sanitary Sewer Easement unto the City, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this the _____ day of _____, 200__.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

This instrument was executed by _____
before me on this the ____ day of _____, 20____.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT "A"

Legal Description of Easement Area

[To include a 25-foot (measured at right angles to the pipeline corridor) construction easement for use by the City during installation or repair of the wastewater lines.]

[page break]

EXHIBIT "B"

Drawing of Easement Area