

## **CITY OF DRIPPING SPRINGS**

### **AMENDED AND RESTATED WASTEWATER SERVICE AND FEE AGREEMENT**

This Amended and Restated 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 CRTX Development LLC ("Owner"), whose address is 9699 CR 132, Celina, Texas 75009.

#### **RECITALS:**

- A.** Owner is the owner of land consisting of approximately 8.564 acres of undeveloped land out of the P. A. Smith League No. 26, Abstract No. 415 and the A0415 Philip A. Smith Survey, in Hays County, Texas, being more particularly described at Exhibit A (the "Land").
- B.** Owner intends to develop the Land with a 200-unit multi-family apartment complex (including an office and welcome center) and infrastructure (the "Improvements") pursuant to a site development permit from the City.
- C.** Owner intends to rezone and replat the land prior to constructing the Improvements on the Land.
- D.** 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.
- E.** Owner and City recognize that although the City may physically accept wastewater from the Land at this time, the City's wastewater has already been fully committed to others, and in the event that the previously committed capacity is needed as described in this Agreement, that Owner will construct Temporary Wastewater Facilities in accordance with this Agreement to provide for the management of wastewater from the Improvements on the Land until such time as the City obtains additional capacity as a result of the construction of additional facilities pursuant to additional authorization from the Texas Commission on Environmental Quality.
- F.** 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.
- G.** The Parties wish to enter into an Amended and Restated Agreement due to a delay in permit submission and approval.

**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 (as amended and restated) 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 the Improvements and infrastructure to be constructed in accordance with a Site Development Permit.

**1.8 Discharge Permit.** The Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014488003, which has been issued by TCEQ, but which is the subject of an appeal, that authorizes the discharge of treated effluent at a volume not to exceed a daily average flow of 822,500 gallons per day.

**1.9 Discharge Permit Notification.** Written notice sent by the City to Owner that all infrastructure and facilities necessary to operate the City's wastewater treatment plant in accordance with the terms of the Discharge Permit for phase 1 is in-place;

**1.10 Expiration Date.** The date on which this document expires, and the City will release LUE's reserved under this agreement per Section 5.2.

**1.11 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.

**1.12 Land.** That certain 8.564-acre tract of land in Dripping Springs, Hays County, Texas, as shown on Exhibit A and more particularly described in Exhibit B.\*

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

**1.14 Notice.** Notice as defined in § 7.2 of this Agreement.

**1.15 Owner.** CRTX Development Group, LLC as assigned by SK7 Investment Group LLC a Texas LLC authorized to conduct business in Texas, and, if this Agreement is assigned pursuant to § 7.3, their successors and assigns as subsequent owners of the property.

**1.16 Onsite Facilities.** All wastewater facilities, equipment or related improvements necessary to serve the Land between the structures on the Land and the connection point on the Public Street, as shown on the attached Exhibit C.

**1.17 Offsite Facilities.** All wastewater facilities, equipment or related improvements necessary to serve the Land and located between the Onsite Facilities and the connection point shown on the attached Exhibit C. The Offsite Facilities include the actual physical connection between the Onsite Facilities to the Offsite Facilities.

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

**1.19 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.

**1.20 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

**1.21 Temporary Wastewater Facilities.** The On-Site Sewage Facility (OSSF) or City approved alternative that will treat and manage the wastewater from the Development until City's construction of all infrastructure and facilities necessary to operate the City's wastewater treatment plant in accordance with the terms of the Discharge Permit for Phase I of the Discharge Permit. The amount of land needed for the Temporary Wastewater Facilities is calculated by utilizing a

calculation of 215 gallons per day (“GPD”) for each LUE, and assuming an application rate of 0.1 GPD/square foot.

## **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 70 LUEs as set forth in this Agreement. The City will make this retail wastewater service available to the Land upon Owner's construction and connection of the Onsite and Offsite Facilities pursuant to this Agreement subject to the conditions described in this section 2.1. Owner and City recognize that although the City may physically accept wastewater from the Development at this time, the City's existing wastewater capacity has already been fully committed to others. Therefore, in exchange for the commitment by the City to provide wastewater collection and treatment service to the Land through the City's System in an amount of up to 70 LUEs, the Owner and the City agree as follows: If and when the City notifies Owner that the City's wastewater system is at 80% capacity (as determined by the City in its sole discretion), Owner agrees that it will, at its sole cost and expense, (a) construct, and operate Temporary Wastewater Facilities for the 70 LUEs within 6 months from notification from the city (b) utilize the Temporary Wastewater Facilities for the 70 LUEs, and (c) remove the flow for the 70 LUEs from the City System until such time as the City has completed the construction of the facilities for operation of Interim Phase I authorized by the Discharge Permit. The design and construction of the Temporary Wastewater Facilities are subject to review and approval by the City and shall not be constructed without the City's review and approval. The parties understand and agree that Site Plan Approval will not be granted by the City without a design of the Temporary Wastewater Facilities that is acceptable to the City being submitted as part of the Site Plan Approval process. The City agrees that once the design for the Temporary Wastewater Facilities is approved, unless state or federal law requires a change, the approval for the design will vest and remain valid until such time as Temporary Wastewater facilities are no longer needed. Owner agrees to pay all the City's costs associated with the City's review. If Temporary Wastewater Facilities are constructed, Owner, not the City, shall be responsible for obtaining any required approvals for the Temporary Wastewater Facilities and shall manage and operate the Temporary Wastewater Facilities at Owner's sole cost and expense in accordance with applicable law. City is diligently pursuing the necessary improvements to expand its wastewater capacity in accordance with the Discharge Permit. Upon constructing the improvements authorized by Interim Phase I of the Discharge Permit, City will deliver the Discharge Permit Notification and Owner will promptly divert its wastewater from the Temporary Wastewater Facilities to the City System at Owner's cost, and the City will be the permanent provider of wastewater service to the Land. 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 Temporary Wastewater Facilities Use and Approval.** The design and construction of the Temporary Wastewater Facilities are subject to review and approval by the City and shall not be constructed without the City's review and approval. The parties understand and agree that Site Plan Approval will not be granted by the City without a design of the Temporary Wastewater

Facilities that is acceptable to the City being submitted as part of the Site Plan Approval process. The City agrees that once the design for the Temporary Wastewater Facilities is approved, unless state or federal law requires a change, the approval for the design will vest and remain valid until such time as Temporary Wastewater facilities are no longer needed. Owner agrees to pay all the City's costs associated with the City's review. If Temporary Wastewater Facilities are constructed, Owner, not the City, shall be responsible for obtaining any required approvals for the Temporary Wastewater Facilities and shall manage and operate the Temporary Wastewater Facilities at Owner's sole cost and expense in accordance with applicable law. City is diligently pursuing the necessary improvements to expand its wastewater capacity in accordance with the Discharge Permit. Upon constructing the improvements authorized by Interim Phase I of the Discharge Permit, City will deliver the Discharge Permit Notification and Owner will promptly divert its wastewater from the Temporary Wastewater Facilities to the City System at Owner's cost, and the City will be the permanent provider of wastewater service to the Land. 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.

**2.3 Application for Wastewater Service.** Within 30 days of receipt of the Effective Date, Owner shall execute and file with the City a completed copy of the City's form of application for wastewater service to the Development.

**2.4 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.

### **ARTICLE III INFRASTRUCTURE CONSTRUCTION, CONNECTIN 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 one year from the date of the issuance by the City of all required permits for the construction of the Improvements.

**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 180 days from the date of issuance by the City of all required permits for the construction of the Improvements, subject to Force Majeure set forth in Section 7.10.

**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 Temporary Wastewater Facilities, and 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 Temporary Wastewater Facilities, and the Onsite and Offsite Facilities with the City for review and approval. Construction of the Temporary Wastewater 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. 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.
- (e) 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 the City's final inspection of the Onsite Facilities and the Offsite Facilities (if any), and after Owner has transferred the Offsite Facilities (if any) 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 70 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.

**3.13 Temporary Wastewater Facilities.** To the extent such facilities are required, Owner will design, construct, install, operate and maintain all Temporary Wastewater Facilities at its cost and expense. Owner shall design, locate, and construct the Temporary Wastewater Facilities to the specifications and requirements of the City Engineer and consistent with all applicable laws. Owner shall reimburse City for any of City Engineer's time reasonably spent on the Temporary Wastewater Facilities. Within one year after the City delivers the Discharge Permit Notification treatment service to the Development through the City's System in an amount up to 70 LUEs as set forth in this Agreement, Owner will abandon the Temporary Wastewater Facilities at its cost.

## **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 the 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.** Prior to issuance of its initial building permit, 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(2)(A) of the City's Code of Ordinances (as amended or replaced) for the 70 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. Consistent with Section 20.02.008 of the City's Code of Ordinances, if after construction of the Improvements it is determined that wastewater service demand, as determined by water use, exceeds the gallons per LUE assigned to the Improvements, the City may assess and collect additional connection fees for that excess use. The number of LUEs assigned to the Improvements is 70. The additional assessment shall be based on each additional LUE or fraction thereof, as determined by the water use above the gallons per LUE per day initially assigned to the customer's connection, at the dollar amount per LUE authorized by section 20.02.005 of the City's Code of Ordinances, based on the gallons per LUE in effect at the time of the assessment.

The city shall send written notice of the assessment to the property owner stating the additional water use and the amount of the assessment, which must be paid to the city as provided in the notice.

- (a) The Owner shall pay a connection fee to the city at the time of issuance of all required permits for the construction of the Improvements from the City. This "connection fee" shall be assessed at a value of \$7,580.00 per LUE.

- 1. The maximum assessment of "connection fee's" by the City to the Owner cannot be assessed in excess of  $(\$7,580.00 \times 70 = \$530,600.00)$

## **5.2 Release of LUEs.**

- (a) If Owner does not obtain approval by the City's Planning and Zoning Commission for a Planned Development District by June 30, 2020, then this Agreement expires, and the City will release the LUEs reserved for Owner under this Agreement and the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs.
- (b) If Owner does not file an application that is deemed administratively complete for a Site Development Permit within 365 days from May 12, 2020 and is approved within 210 days of filing, then this Agreement expires, and the City will release the LUEs reserved for Owner under this Agreement and the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs.
- (c) If Owner does not submit a Donation Agreement to the Texas Department of Transportation, with copy to the City, for approval of their road improvements within sixty (60) days of securing the right-of-way required for the road improvements, or May 12, 2021, whichever is earlier, the City will release the LUEs reserved for Owner under this Agreement.
- (d) If Owner does file an application that is deemed administratively complete for all plats of the property within 180 days from May 12, 2020 of the Original Agreement. The final plat shall be approved within 120 days of filing of its initial complete plat application then this Agreement expires, and the City will release the LUEs reserved

for Owner under this Agreement and the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs.

- (e) If Owner does not obtain Building Permits for the Development within 180 days after receiving Site Plan approval from the City, then this Agreement expires, and the City will release the LUEs reserved for Owner under this Agreement and the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs.
- (f) Owner shall submit the design of its Temporary Wastewater Service Facilities as part of its Site Development Permit application. If Owner does not obtain City approval of said Temporary Wastewater Service Facilities from the City Engineer concurrently with its Site Development Permit then this Agreement expires, and the City will release the LUEs reserved for Owner under this Agreement and the City shall be relieved of its § 2.1 wastewater service obligation for the released LUEs.
- (g) If Owner does not construct the Onsite and Offsite Facilities within two years of the Site Plan Approval by the City, then this Agreement Expires, and the City will release the LUEs reserved for the Owner under this Agreement and the City shall be relieved of its §2.1 wastewater service obligation for the release LUEs.
- (i) At any time after one year after service to the Development begins through the City System, 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.

**5.3 Line Extension Charges.** In addition to Impact Fees, Owner agrees to pay the line extension charges, if applicable, pursuant to Article 20.05 (Wastewater Line Extension) of the City's Code of Ordinances.

**5.4 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 70 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.

**5.5 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 construct a multi-family unit apartments development subject to issuance

of a Site Development Permit. Owner shall be responsible for, and to guarantee payment of, deposits and monthly service bills for all tenants.

## **ARTICLE VI FEES AND CHARGES**

**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 Articles V or VI.

**6.2 Breach.** In the event Owner breaches this Agreement, City may send 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 (at its Option) to (a) terminate this Agreement by sending a termination notice; (b) order a halt to construction on the Lad; and/or (c) seek judicial relief in law or equity.

## **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; (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; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. 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

**To the Owner:**  
CRTX Development LLC

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

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

Attn: Doug Cobb  
9699 CR 132  
Celina, Texas 75009  
[doug@crtxdev.com](mailto:doug@crtxdev.com)  
*With Copy to:*  
Bruin Ventures I, LP  
Attn: Mac Jones  
4611 Bee Cave Road, Suite 203  
Austin, Texas 78746  
[mjones@estagepm.com](mailto:mjones@estagepm.com)

**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 Condition Precedent.** It is a condition precedent to the City's obligations under this Agreement that Owner re-plat the Land such that the Land consists of a single lot. If this condition precedent is not satisfied, the City shall be relieved of its all obligations under this Agreement, including its § 2.1 wastewater service obligation.

- (a) A re-plat of the Land as a single lot is only necessary until such time that the City has,
  - (i.) completed the construction of the facilities for operation of Interim Phase I authorized by the Discharge Permit, and ii. delivered to the Owner all 70 LUE per Section 2.1 of this agreement.
- (b) The Owner, at his sole cost, may re-plat the land into two parcels as depicted in the Conceptual Plat attached to this document as Exhibit A, at any time after the City has delivered to the development all 70 LUE's per Section 2.1 of this agreement as long as a single lift station does not serve more than one parcel.

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

**7.6 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.

**7.7 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.

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

**7.9 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.

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

**7.11 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.

**7.12 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.

**7.13 Water Reuse Ordinance.** Owner understands and agrees that the Development will be subject to the City's Water Reuse Ordinance and Owner will pay \$1,675.00 for each of the 70 LUEs that are the subject of this Agreement. This payment is due within 60 days of the Effective Date of this Agreement.

**7.14 Restatement and Amendment.** This Amended and Restated Wastewater Service and Fee Agreement replaces the initial Wastewater Service and Fee Agreement dated May 12, 2020

between the Parties. All rights and obligations of the Parties shall be governed by this Agreement (the Amended and Restated Wastewater Service and Fee Agreement) as if it had been executed on the date of execution of the initial Wastewater Service and Fee Agreement.

**7.15 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:

<b>Exhibit A</b>	<b>Land Plan</b>
<b>Exhibit B</b>	<b>Legal Description of the Land</b>
<b>Exhibit C</b>	<b>Form of the Easement</b>

**Effective Date.** The Effective Date of this Agreement is May 12, 2020.

[SIGNATURES FOLLOW ON NEXT PAGE]

**CITY OF DRIPPING SPRINGS:**

---

Bill Foulds, Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Andrea Cunningham, City Secretary

**STATE OF TEXAS  
COUNTY OF HAYS**

This instrument was executed by **Bill Foulds, Jr.** before me on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**  
*CRTX Development, LLC*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

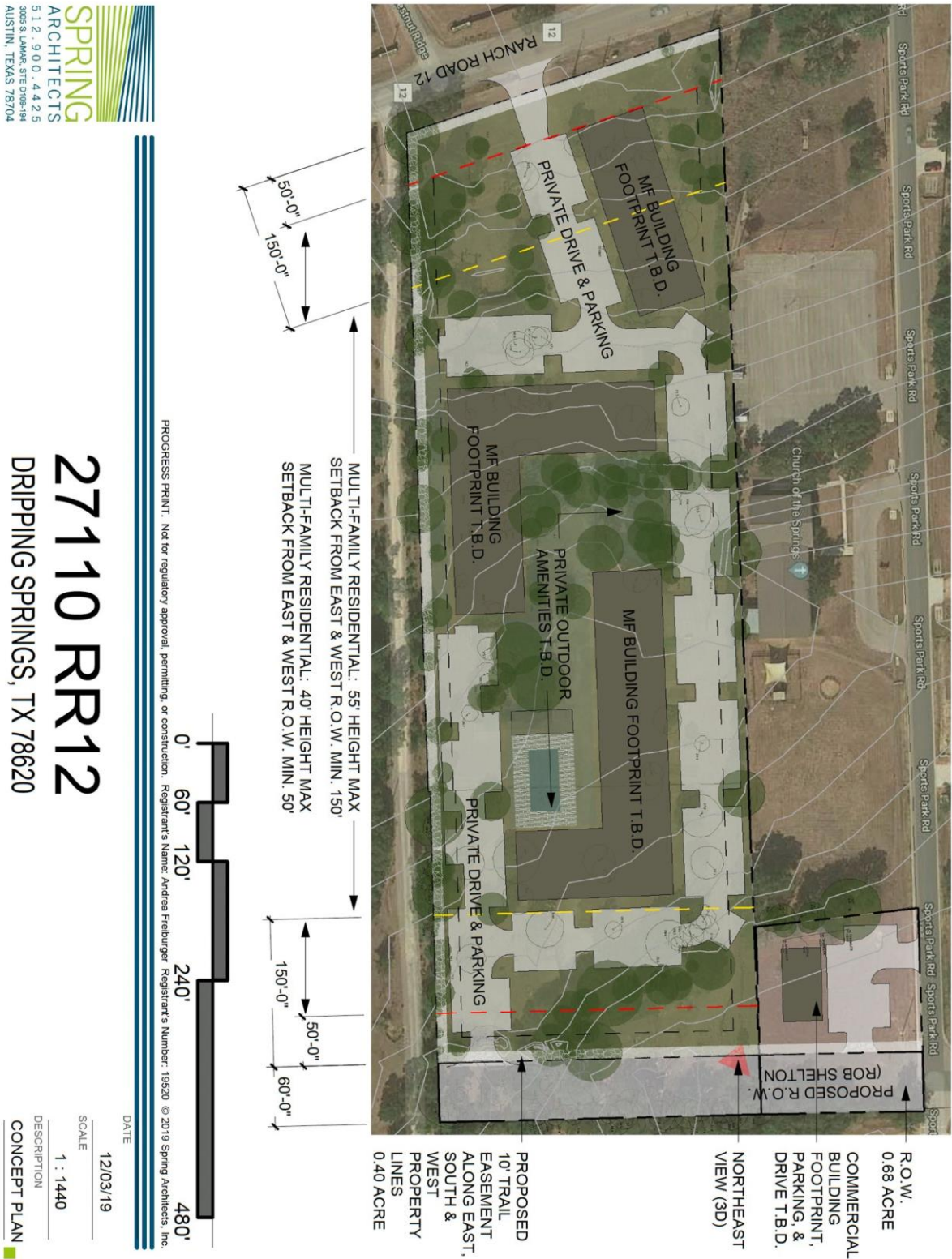
**STATE OF TEXAS  
COUNTY OF HAYS**

This instrument was executed by \_\_\_\_\_ before me on

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

# EXHIBIT A LAND PLAN



## **EXHIBIT B LEGAL DESCRIPTION OF THE LAND**

**LEGAL DESCRIPTION:** Being 7.82 acres of land out of the P. A. Smith League No. 26, Abstract No. 415, Hays County, Texas and also being that certain 5.314 acre tract of land described in Volume 5057, Page 320 of the Official Public Records of Hays County, Texas and that certain 2.500 acre tract described in Volume 360, Page 405 of said Official Public Records; Said 7.82 acre tract being more particularly described as follows and as surveyed under the supervision of Intrepid Surveying & Engineering Corporation in June, 2018:

BEGINNING at a wood fence corner post found in the northeast line of Ranch Road No. 12 for the southwest corner of that certain 4.27 acre tract described in Volume 2535, Page 838 of said Official Public Records, the northwest corner of said 5.314 acre tract and the northwest corner hereof;

THENCE along the south lines of said 4.27 acre tract, the following 3 courses:

1. North 87°48'10" East a distance of 767.14 feet along the north line of said 5.314 acre tract to a 1/2 inch iron rod found for the northeast corner of said 5.314 acre tract and a northeast corner hereof;
2. South 01°27'22" East a distance of 0.35 feet along the east line of said 5.314 acre tract to a 1/2 inch iron rod set for the northwest corner of said 2.500 acre tract and an interior corner hereof;
3. North 87°44'36" East a distance of 336.25 feet along the north line of said 2.500 acre tract to an iron pipe found in the west line of that certain 40.00 acre tract described in Volume 1462, Page 671 of said Official Public Records for the northeast corner of said 2.500 acre tract and the northeast corner hereof;

THENCE South 01°25'32" East a distance of 326.29 feet along the common line of said 4`0.00 acre tract and said 2.500 acre tract to a 1/2 inch iron rod set in the north line of that certain 82.2 acre tract described in Volume 1265, Page 776 of said Official Public Records for the southwest corner of said 40.00 acre tract, the southeast corner of said 2.500 acre tract and the southeast corner hereof;

THENCE along the north lines of said 82.02 acre tract, the following 3 courses:

1. South 88°24'53" West a distance of 336.04 feet along the south line of said 2.500 acre tract to a 1/2 inch iron rod set in the east line of said 5.314 acre tract for the southwest corner of said 2.500 acre tract and a south interior corner hereof;
2. South 01°27'22" East a distance of 1.99 feet along the east line of said 5.314 acre tract to a 1/2 inch iron rod found for the southeast corner of said 5.314 acre tract and a southeast corner hereof;
3. South 88°08'17" West a distance of 668.55 along the south line of said 5.314 acre tract to a 1/2 inch iron rod set in the east line of Ranch Road No. 12 for the southwest corner of said 5.314 acre tract and the southwest corner hereof;

THENCE along the northeast lines of Ranch Road No. 12 and the southeast lines of said 5.314 acre tract, the following 2 courses:

1. Following a curve turning to the right through the angle of 00°36'32", having a radius of 1597.42 feet, and whose long chord bears North 19°17'43" West a distance of 16.98 feet to a concrete monument found for a west corner hereof;
2. North 18°33'47" West a distance of 317.34 feet to POINT OF BEGINNING containing 7.82 acres more or less, and as shown on certified plat herewith.

Note: Bearings, distances and acreage shown hereon are NAD 83, South Central Zone and are derived from GPS techniques. Iron Rods set are a 1/2 inch rod with plastic caps marked "INTREPID".

Together with:

**BEING A 0.750 ACRE (32,670 SF) TRACT OF LAND, OIJT OF A 4.27 ACRE TRACT OF LAND CONVEYED BY WARIWITY DEED TO SPRING VALLEY FELLOWSHIP D/B/A CHURCH OF THE SPRINGS, AS RECORDED IN VOLUME 2535, PAGE 636 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.**

**THE UNDERSIGNED DOES HEREBY CERTIFY TO STEWART TITLE GUARANTY COMPANY, THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE UPON THE GROUND OF THE PROPERTY SHOWN HEREON, AND THAT THERE ARE NO ENCROACHMENTS OF VISIBLE IMPROVEMENTS, EXCEPT AS SHOWN HEREON, AND THAT THIS PROPERTY HAS ACCESS TO A PUBLIC ROADWAY, EXCEPT AS SHOWN HEREON.**

**THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A SURVEY.**

**EXHIBIT C FORM OF THE 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 \_\_\_\_\_, 2020.

[SIGNATURE PAGE FOLLOWS]

GRANTOR:

\_\_\_\_\_

\_\_\_\_\_

BY:

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

This instrument was executed by \_\_\_\_\_ before me on

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_