

**FIRST AMENDMENT TO
WATER AND WASTEWATER UTILITY AGREEMENT
(Westwood Subdivision)**

THIS FIRST AMENDMENT TO WATER AND WASTEWATER UTILITY AGREEMENT (this "Amendment") is dated effective April 17, 2018 and is entered into between the CITY OF DRIPPING SPRINGS ("City") and SCENIC LAND HOLDINGS, LLC, a Delaware limited liability company ("Owner").

RECITALS:

- A. City and Owner's predecessor-in-interest, Paintbrush 290 GP LLC, a Texas limited liability company ("Paintbrush") entered into that certain Water and Wastewater Utility Agreement dated effective July 10, 2007 (the "Agreement") related to the construction and operation of the Infrastructure for that certain Development (as defined therein) located in the City of Dripping Springs, Hays County, Texas, as more particularly described in the Agreement.
- B. Owner is the current owner of the Land, and pursuant to that certain Assignment and Assumption of Agreement effective as of November 18, 2014, Paintbrush assigned its rights under the Agreement to Owner.
- C. Owner is developing the Land as a subdivision which is commonly known as the Westwood Subdivision (the "Project" or "Subdivision").
- D. Owner desires to sell lots within the Project, and desires that should persons purchasing such lots desire to build homes on such lots and obtain certificates of occupancy for such homes prior to the completion of the Wastewater Improvements (as defined in the Agreement), wastewater service may be provided through pump and haul until the Wastewater Improvements are complete subject to the terms and conditions contained in this Agreement.
- E. City and Owner desire to modify and amend the Agreement in certain respects, as more particularly set forth in this Amendment.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby agree as follows:

- 1) Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Amendment to the same extent as if set forth herein in full.
- 2) Capitalized Terms. All capitalized terms in this Amendment shall have the same meanings as in the Agreement unless expressly provided otherwise herein.

- 3) Issuance of Building Permits and Certificates of Occupancy. Owner may obtain building permits and certificates of occupancy within the Project prior to completion of the Wastewater Improvements, subject to full compliance with the following terms and conditions:
- a) 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.
 - b) Owner is in compliance with the terms and conditions of this Agreement.
 - c) Owner demonstrates to the City that Owner has a current contract with a pump and haul provider that meets the requirements of this Agreement.
 - d) 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.
- 4) 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 Subdivision 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 Wastewater Improvements are completed and the City accepts and puts into service the Wastewater Improvements. Design of and specifications related to the pump and 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 and haul facilities. Costs related to the design, construction, and operation of the pump and haul facilities are not eligible to be funded or reimbursed through the Westwood PID. Owner is solely responsible for the costs of all design, construction, operation, and removal of the pump and haul facilities. Owner shall maintain all facilities related to the pump and haul service in good repair and working condition and all wastewater effluent in compliance with applicable law. Owner will report any spills or leaks to the Deputy City Administrator immediately, but no later than 12 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 **Exhibit A**. Upon termination of use of the pump and haul facilities Owner will remove at its sole cost and expense the pump and haul facilities (except for those facilities that will be used for the Wastewater Improvements). Pump and haul service shall be temporary and shall be terminated as soon as practicable and replaced with permanent wastewater service through the Wastewater Improvements. Wastewater Service through pump and haul facilities on the Land shall not exceed 150 LUEs.

- 5) Pump and Haul Provider. Owner 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 Subdivision 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. Owner 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.
- 6) Fees and Charges. Owner is constructing the Wastewater Improvements pursuant to the Agreement, therefore it is hereby acknowledged and agreed that Owner shall not be required to pay Impact Fees or any other equivalent fees or charges that may be associated with obtaining permanent wastewater service to the Project. City shall charge and collect standard wastewater rates and fees to customers on a particular lot receiving wastewater service through pump and haul (hereafter “Pump and Haul Lot”). In other words, the fees and charges charged to the Pump and Haul Lot customer will be equivalent to that charged to other 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 a pump and haul system. Until the Pump and Haul Lots are converted to a 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. Owner understands and agrees that it will not likely recoup the costs of pump and haul from users of the system, and that Owner is responsible for any deficiency in its operation.
- 7) Records. Owner shall make commercially reasonable efforts to cause the Provider to maintain complete records of the pump and haul service provided, and Owner shall maintain with the City a copy of any reports required by applicable state and federal regulations, related to providing pump and haul services.
- 8) Transition of Services. The City and Owner shall reasonably cooperate to smoothly transition wastewater service from the Owner to the City upon completion of the Wastewater Improvements.
- 9) 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.
- 10) Notice of Agreement and Pump and Haul Services. A memorandum of this Amendment (“Memorandum”) acceptable to City and Owner shall be recorded 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 Owner shall further give notice to purchasers of lots within the Subdivision that wastewater service will be

provided by pump and haul until completion of the Wastewater Improvements and shall cause homebuilders who purchase lots within the Subdivision to give such notice to subsequent purchasers.

11) Assignment. In the event that the City takes over providing pump and haul services to the Subdivision as provided by this Amendment, Owner shall assign the contract with the company providing pump and haul services under this Amendment to the City upon the City's request.

12) Notices. The notice address for Owner is hereby deleted and replaced with the following:

Scenic Land Holdings, LLC
c/o Argent Management
Attn: Travis Devan
2392 Morse Avenue
Irvine, CA 92614

With Copy To:

Metcalf Wolff Stuart & Williams, LLP
Attn: Talley Williams
221 W. 6th Street, Suite 1300
Austin, Texas 78701

13) Ratification of Agreement/Conflict. All terms and conditions of the Agreement are hereby ratified and affirmed, as modified by this Amendment. To the extent there is any inconsistency between the Agreement and this Amendment, the provisions of this Amendment shall control.

14) No Waiver. Neither City's nor Owners' execution of this Amendment shall (a) constitute a waiver of any of its rights and remedies under the Agreement or at law with respect to the other party's obligations under the Agreement or (b) be construed as a bar to any subsequent enforcement of any of its rights or remedies against the other party.

15) Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of Texas.

16) Entire Agreement. The parties hereto agree and understand that no oral agreements, or understandings, shall be binding, unless reduced to a writing which is signed by said parties. The parties hereto agree and understand that this Amendment shall be binding on them, their personal representatives, heirs, successors and assigns.

17) Counterparts. This Amendment may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement.

18) For the avoidance of doubt, this Amendment is being entered into solely for the purpose of providing assurances to the Owner that wastewater service will be available to the

Project if the Wastewater Improvements are not completed and ready to receive wastewater prior to homes within the Project needing wastewater service.

[Signatures to Follow on the Next Page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF DRIPPING SPRINGS:



Todd Purcell, Mayor

SCENIC LAND HOLDINGS, LLC
A Delaware limited liability company

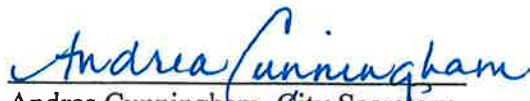


Signature

ATTEST:



Printed Name



Andrea Cunningham, City Secretary



Title



EXHIBIT A
Terms of Service

The Owner shall comply with the following 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 new Phase 1 lift station will be used as the pump system 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 damage components.
3. 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.
4. 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) It is proposed that new Phase 1 lift station will be used as the pump system for the pump and haul activities. If the float elevations of the proposed design are to be changed from the original design, provide new calculations of storage capacity during peak wet weather flow
 - d) Plan and profile of wet well/holding tank and sewer main(s), including maximum design level elevation on profile
 - e) If any lines are to be backed up, compute storage volume in the sewer laterals to be backed up
 - f) Constant storage tank level monitoring with auto-dialer capabilities