

FIRST AMENDED AND RESTATED WASTEWATER FACILITIES FACILITIES AGREEMENT

This First Amended and Restated Wastewater Facilities Agreement (the “Agreement”) is entered into by and between Cuncashca, LLC, a Texas limited liability company (“Cuncashca”) and the City of Dripping Springs, a general law city of Hays County, Texas (“City”).

RECITALS

A. Cuncashca and City executed a Wastewater Facilities Agreement with an effective date of April 18, 2023 (the “2023 Agreement”). Cuncashca and City now desire to amend and restate the 2023 Agreement as set forth in this Agreement.

A.B. Cuncashca is the owner of the land identified on Exhibit “A” attached hereto (the “Cuncashca Property”). For purposes of this Agreement, “Cuncashca Property” is only that land identified on Exhibit “A.”

B.C. City desires that Cuncashca grant City exclusive easements (together, the “Easement”) within the Cuncashca Property for the sole purposes of installing, constructing, operating, maintaining, upgrading, repairing, removing and replacing underground water, sanitary sewer lines, treated effluent lines, and related appurtenances. A map generally showing the Easement is attached hereto at Exhibit “B”. The Easement documents to be executed (which includes both a permanent easementPermanent Easements and a temporary construction easementTemporary Construction Easements) are attached hereto at Exhibit “C”. Cuncashca is willing to grant the Easement for the consideration set-forth in this Agreement. The permanentPermanent and temporary constructionTemporary Construction easements will be provided to City at no cost to City.

C.D. City desiresdesired to acquire approximately 6.79 acres of land in fee simple currently owned by Cuncashca so that City may construct a treated effluent pond south of its existing wastewater treatment plant (hereafter the land sought by City shall be referred to as the “Cuncashca Exchange Land”). A map of the Cuncashca Exchange Land is attached at Exhibit “D”. The special warranty deed to be executed to convey the Cuncashca Exchange Land is attached at Exhibit “E”. Cuncashca desiresdesired to acquire approximately 6.79 acres of land currently owned by City (hereafter the land sought to be acquired by Cuncashca shall be referred to as the “City Exchange Land”). A map of the City Exchange Land is attached at Exhibit “F”. The special warranty deed to be executed to convey the City Exchange Land is attached at Exhibit “G”. This exchange has already occurred.

AGREEMENT

In consideration of the mutual covenants and obligations hereinafter described, which consideration is deemed sufficient, Cuncashca and City agree as follows:that this Agreement

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replaces the 2023 Agreement in its entirety and agree as follows:

1. Cuncashca agrees as follows:

~~a. The parties acknowledge and agree that Cuncashca has already executed and delivered to City the Easement documents attached at Exhibit "C".~~ Within 30 days after the Effective Date of this Agreement (as defined below), Cuncashca will ~~re-execute and re-deliver or have executed~~ new Temporary Construction Easements (as shown in Part 3, Part 4, and delivered to City the Easement documents attached at Part 5 of Exhibit "C-1"). Further, Cuncashca agrees to the field location of ~~a single temporary construction~~ two Temporary Construction staging easement areas generally shown on the Exhibit "C-1". Cuncashca has already executed and delivered to the City the special warranty deed attached at Exhibit "E".

~~d.b.~~ Cuncashca agrees to allow City to continue to use the existing drip fields within the boundary of the land acquired by Cuncashca in accordance with paragraph ~~34~~ of this Agreement.

~~e.c.~~ Subject to the terms of the ~~temporary Easement~~ Temporary Easements, to allow City and ~~its~~ the contractors of City facilities temporary access to the most proximate existing ranch roads during construction of the East Interceptor and South Collector.

~~f.d.~~ Subject to the terms of both the ~~temporary Temporary and permanent Easement Permanent Easements~~ to allow, as reasonably necessary, City and ~~its~~ contractors of City facilities to access such easements on the Cuncashca Property through the new or relocated Charro Ranch/Cuncashca entrance gate on FM 150 so long as H. L. Burns or any entity related to H.L. Burns controls or owns the Cuncashca Property. A fully permitted and recognized new entrance is to be authorized by TX DOT. Documents from the highway regulator affirming authorization to install a longer term access for city equipment inspecting or maintaining the easement once the infrastructure has become 'operational' shall be delivered in advance of any pioneering efforts to access any Easement Included with this amendment.

~~g. So long as H. L. Burns or any entity related to H.L. Burns controls or owns the Cuncashca Property, after the land exchange contemplated in this Agreement, Cuncashca may access City's roadway that is adjacent to the exchanged property to move hay to or from the City Exchange Land.~~

e. Cuncashca will install a new cattle guard in a location that satisfies its own security and controls while working with the City and its vendors to locate/install/secure and operate a new temporary gate off the laydown but prior to the most proximate road.

2. City agrees as follows:

a. To allow Cuncashca, its heirs and assigns access to the treated water line within

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~~to be provided by the City to the Contractor for the purpose of the disposal of the waste.~~

a-b. Section 4 below, the location of such access to be determined by the mutual agreement of the parties at such time as such use is permitted. Access means, subject to prior contractual arrangements between City and third parties and in accordance with the City's reclaimed water requirements, the ability to connect and obtain service of the utility and water.

b-c. ~~Simultaneously~~ The parties acknowledge and agree that simultaneously with the time of receiving the executed special warranty deed attached at Exhibit "E", ~~to deliver the City~~ delivered an executed special warranty deed for City Exchange Land, which is attached at Exhibit "G". The warranty deed ~~must~~ clearly ~~affirms~~ affirms that land exchanged will be released free and clear of any special provisions that run with the exchanged land due to any defect resulting from its prior legally permitted use as a treated effluent land disposal field.

e-d. To take all reasonable steps and instruct ~~its~~ contractors of City facilities to take steps to prevent cattle escaping the Cuncashca Property during City's construction activities. ~~City further agrees that it will, within seven business days after the discovery of damage by City or after City's receipt of notification thereof by Cuncashca, replace any damaged Buried/Surface Services (as defined herein) within the easements or damaged as a result of City's actions under this Agreement, including proximate to any roadways used by City, its employees, agents or contractors. For purposes hereof, the term "Buried/Surface Services" means all water, sewer, electrical, communications equipment or infrastructure, wells, fencing, posts, gates, locks, gaps, cattleguards, valves, pipes, headers, outlets, splits, T's, etc. situated on the Cuncashca Property. City will take all reasonable efforts to avoid adverse impact to any Buried/Surface Services. If the City determines it necessary to relocate any Buried Surface Services situated in any easement area, the City may relocate such item(s), provided that (i) there is no interruption in the service provided by such items(s) other than temporary interruptions required to effectuate such relocation, and (ii) the City provides Cuncashca with a survey or other geo-referenced drawing of the location of any relocated item(s).~~

e. The City agrees to restrict its work hours to 8am-5pm on Monday – Friday unless an agreement in writing has been obtained by City from Cuncashca.

f. The City agrees that temporary and permanent easements should be clearly marked on engineering level documents and turnover as-built surveys but does not require monuments, signs, placards or public notice unless the section closest to the easement is developed.

g. The City agrees that if fuel is stored onsite during the project, the City will utilize double lined petroleum storage tanks with spill control.

for construction will be in a designated location in temporary laydown area and will not impede landowners' access to property and facilities as well as emergency vehicles.

(b) Any vehicles or equipment leaving designated parking area will need to have placards on windshields or affixed to all mobile equipment for any vehicle leaving the designated parking area.

(c) Placards or the company name shall be affixed to all vehicles and equipment that leave the Temporary Construction Easement and Staging areas. No unmarked vehicles will travel on closest proximate road without being identified with its company name or a placard.

f.-j. City, promptly after departure from the temporary construction easement Temporary Easements, shall repair and maintain the road to the original condition.

g.-k. City will restrict the easements for utilities only.- Notwithstanding the prior sentence, if the Cuncashca Property is developed in the future, City may allow walking paths or trails, or potable water lines on the permanent easement Permanent Easement areas (i.e., not over any temporary roadway areas used during construction or any roadways used for the subsequent operation of the City facilities) pending any negotiated agreements with the ultimate developer of the Cuncashca Property.-

h. Within ninety (90) days of the Effective Date, City and Cuncashca will jointly develop a mutually agreeable plan to determine where City will bore beneath trees (considering all trees 6 inches in diameter and larger, except cedar trees, located within 10 feet of each side of the permanent Easement) when constructing the gravity wastewater alignment and treated effluent line. Measurement of the diameter of such trees will be made in compliance with applicable City standards and regulations. If the parties are unable to reach agreement on such plan, the City will comply with the City of Austin tree protection guidelines, as applicable.

k.-m. City will implement oak wilt controls during any of its construction activities. If tree impacting, including stumpage (removal, replacement, trimming, cutting, pruning, etc.), is required to obtain access for equipment, or for any reason or purpose during the initial installation and subsequent operation phase of the utilities inside the Easement, then City will immediately (same day, same shift) cause its employees and agents to seal cut areas with pruning sealer. -The organic matter cut (stumps, limbs, leaves, etc.) and lain inside or proximate to the Easement by City must be removed within 3 business days by City from any portion of Cuncashca Property and disposed off-site. -City will provide 24-hours' prior notice of construction activities in any new section of the Easement so that Cuncashca representatives can observe oak wilt control activities and confirm the City's compliance therewith. -City will contractually obligate its contractors of City facilities to implement all such oak wilt controls.

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h. After construction, City will restore the existing ranch roads used by City and its contractors of City facilities to their same or substantially similar condition as they were prior to the commencement of construction by the City, which shall be reasonably acceptable to Cuncashca and City. Any further access to the Cuncashca Property to enter upon the permanent easement Permanent Easements after completion of the construction contemplated hereunder shall be subject to prior notification to Cuncashca or its successors and assigns, by means of phone call, text and/or email, as long as such contact information has been provided to City. This would include perpetual entry from FM 150 via the new TX Dot authorized permanent access in order for the city to fulfill the primary access gate as agreed. Said permanent gate once construction has concluded shall become the access to the LLC's easement. At this point in time the gate shall become a dual use gate in the future if the property is developed and requires a compliant highway department access off FM 150 (including as an expanded roadway with future access to FM150 from the LLC). Said dual use includes LLC and City access under the same controls until said time that public access is required to serve housing or commercial activities on the LLC's property. Notwithstanding and until that time, the gate to be built, permitted to TXDOT standard and will be held in contemplation for the eventual expansion of FM 150 and then shall become the primary easement access upon conclusion of construction.

i. So long as H. L. Burns or any entity related to H.L. Burns controls or owns the Cuncashca Property, after the land exchange contemplated in this Agreement, Cuncashca may access City's roadway that is adjacent to the exchanged property. In the event development is contemplated to consider additional access to FM 150 the city will not deny the same access it's been granted while exchanged and under lease to the LLC in the future. Until or as long as the LLC ceases to perform agricultural activities including the movement of hay onto or off the exchanged land access to FM 150 cannot be denied the LLC. If this exchanged parcel is developed, the LLC may continue to obtain access to FM 150 for either agricultural or commercial purposes and that access shall not be denied.

j. Within 12 months of the Effective Date of this Agreement, the City will install a suitable sewer connection at manhole near the residential home on the Cuncashca property using standard City of Austin details. As-builts of this service will be provided to Cuncashca upon complete construction of this service and shall be grandfathered in the event the city has designed it's own or another municipal tap for a standard connection at the time of said request by the LLC.

k. City and its vendors shall install and maintain and arrange a suitable fencing that will allow Cuncashca the enjoyment and use of both Cuncashca and the vendor assigned to the City projects that require access to the site from FM 150 W.

l. Upon successful awarding of contracts for the City projects, City will provide

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to Cuncashca the primary names of the Engineer of Record and Primary Surface Supervisor at the vendor level (a person in a leadership role and who is likely to frequent the project work sites).

3. Concurrently with the Execution of this Agreement, the Parties are executing a Tree Removal Credit Agreement (“Tree Agreement”) that defines how trees will be handled in the easement areas that have been agreed to in this Agreement. The Tree Agreement is incorporated herein by reference.

3-4. Cuncashca agrees to allow City to continue to operate the City Exchange Land as a drip irrigation field for the City's wastewater system on the City Exchange Land and Cuncashca will execute any document (if any) required by TCEQ to allow the City to continue to operate in accordance with this paragraph. At no point shall Cuncashca be legally obligated to perform any function required by TCEQ in order to release the drip field lands to Cuncashca from TCEQ or the City, as any such requirement shall be the sole responsibility of City. City will completely abandon the exchange portion of the irrigation field (at its cost) with the approval of TCEQ no later than December 31, 2031. On or before December 31, 2031 City will turn over the City Exchange Land "free and clear" of any encumbrance or regulatory burden that runs with the land as a result of its prior use as a regulated ~~water body~~. ~~At the time the land is being turned over to the City, the City shall remove all equipment and infrastructure (including, but not limited to, sub-surface and surface drip irrigation headers, boxes, valve junctions, wiring and drip related piping and/or infrastructure supporting the drip field) and restoration of the surface of irrigation fields. Restoration of the surface of the irrigation fields shall be deemed accomplished when the grass has grown to at least 1 1/2" high with 90% coverage and no bare spots larger than 16 square feet exist. The topography shall match adjoining topography. City shall also follow the TCEQ rules for abandonment of the City Exchange Land as drip fields (as set forth at 30 Tex. Admin. Code § 222.163 (a) and a copy of such rules is hereby provided to Cuncashca prior to the execution of this Agreement) may be electronically accessed at https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&p_pg=1&p_tac=&ti=30&pt=1&ch=222&rl=163). To the extent that closure of the City Exchange Land as drip fields results in the encumbrance of any restrictions against any specific activity on the property, City will use commercially reasonable efforts to have such restrictions removed as expeditiously as possible. To the extent that such restrictions cannot be removed within one year of the approval of the abandonment of the City Exchange Land as drip fields, then (i) City will pay to Cuncashca or its assigns the then current appraised value of Cuncashca Exchange Land and City will be reconveyed possession and ownership of the City Exchange Land, or (ii) City and Cuncashca shall agree to work together in good faith to develop a mutually agreeable plan to lease from Cuncashca the City Exchange Land and, if desired by City, other land within the Cuncashca Property proximate to the City's existing waste water facilities for its 210 disposal requirements. Such lease would be for a period of twenty (20) years, be upon commercially reasonable terms agreed to by the parties, and would be subject to the terms and provisions of this Agreement, but modified as reasonably necessary to address any future phases of City's disposal uses. — in advance of the delivery date back to Cuncashca. Until such time as~~

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the City Exchange Land has been turned over to Cuncashca as required hereunder, the City shall be responsible for the payment of any and all ad valorem taxes, assessments, levies, and fees, including the final tax payment due in 2032 for 2031's use of the Exchange Land by the City that are assessed against or levied on the City Exchange Land by any taxing authority or other governmental entity.

4.5. City has previously entered into agreements with RPC Investments, Inc. H. L. Burns, and L.R. Hibberd concerning phase III wastewater deposits (all ~~three~~such agreements are attached at Exhibit "H"). Phase III is triggered by the construction and operation of the facilities contemplated by the Amendment to TPDES Permit No. WQ0014488003, which the City contemplates submitting an application for in FY 2027. City acknowledges and agrees that 365 LUE Rights under these three agreements have been assigned to and are currently held by Cuncashca and commit a total of ~~380~~365 LUE Rights for the Cuncashca Property based on the terms set forth in such agreements.- As further consideration for this Agreement, City agrees that no Reservation Fees will be charged for the ~~380~~365 LUEs committed by the agreements at Exhibit "H" until the first day of the month after City has ~~either~~ completely abandoned the irrigation fields and turned over the City Exchange Land in accordance with the terms of ~~Section 3 above or the terms of the terms of Section 3.4 above.~~ For purposes of this Agreement, "Reservation Fee" means any fee charged by City prior to connection to hold or reserve capacity in the City's wastewater system. -When City offers to serve any portion of the Cuncashca Property in Phase III (as set forth in the agreements at Exhibit "H", notwithstanding any provisions in such agreements concerning the timing of submitting a "Residential/Commercial Application for Wastewater Service" (hereinafter referred to as "Application"); ~~the City shall be responsible for the payment of any and all ad valorem taxes, assessments, levies, and fees, including the final tax payment due in 2032 for 2031's use of the Exchange Land by the City that are assessed against or levied on the City Exchange Land by any taxing authority or other governmental entity.~~ Notwithstanding anything to the contrary in this Agreement, the City agrees that once Phase III wastewater service becomes available, Cuncashca shall be permitted to submit Applications for the use of its LUE Rights, including on the returned exchange land, of which Applications shall be processed by the City in a non-discriminatory manner.

5.6. The City has reserved 1 additional LUE and a constructed connection point for the ~~house structure near the main gate existing on the Cuncashca Property as Cuncashca's property according to the field alignment of the Effective Date of this Agreement.~~ anticipated service. Service for this LUE shall become available upon completion of the wastewater line to be constructed on the Cuncashca Exchange Land. To obtain service for that reserved LUE, Cuncashca will submit an Application, construct facilities needed to connect, and pay any required fees. An application for or service for the LUE contemplated by this paragraph does not trigger any obligations under paragraph 5 of this Agreement.

6.7. ADDITIONAL FENCING PROVISIONS: -City will assure that ~~its~~ contractors of City facilities will install temporary fencing to the extent necessary to keep livestock on the Cuncashca Property from leaving the premises or wandering from one internally fenced area to another. -Wherever the ~~permanent Easement~~ Permanent Easements crosses a fence, City shall install a gate and replace/repair the remaining fence line where the crossing occurs. -Cuncashca shall be responsible for any perimeter fencing around the City Exchange Land ~~once completely abandoned in accordance with the terms of Section 3 above or the terms of the terms of Section 3.4.~~ City shall

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be responsible for any perimeter fencing around Cuncashca Exchange Land. -If- any party installs gates having locks that prevent such party from accessing property to which they are entitled to access, double locks (one from each party) shall be used such that both parties may obtain access.

~~7.8.~~ MEDIATION: Should any dispute concerning this Agreement arise, parties will attempt in good faith to resolve such dispute through informal discussions. -In the event that informal discussions do not resolve the issue, the dispute will be submitted to a mutually acceptable mediation service or provider as a condition precedent to filing suit in a court of law. -The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction after mediation is complete.

9. INSURANCE:- At all times during City's use of any portion or the Cuncashca Property, City shall indemnify and save Cuncashca harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments for personal injury, death or property damage arising out of City's use of the Easement, including activities of City and its employees, agents, and contractors (and such agents' and contractors' respective employees and agents). -City shall at all times maintain, or cause to be maintained general public liability insurance against claims for personal injury or death and property damage occasioned by any acts and occurring upon, in or on the Cuncashca Property, such coverage to have combined limits for bodily injury and property damage of not less than-

~~8.~~ \$1,000,000.00 per occurrence, and not less than \$2,000,000.00 in the aggregate. Such general public liability insurance shall name Cuncashca, any lessee of Cuncashca, and any mortgagee of the Cuncashca Property or of such lessee's leasehold interest as additional insureds and shall contain the agreement by the insurer that the insurance cannot be terminated, modified or not renewed without thirty (30) days' prior written notice to Cuncashca, any such lessee, and any such mortgagees. -City shall deliver to Cuncashca, any such lessee, and any such mortgagees a certificate issued by the insurance carrier evidencing such general public liability insurance within ten (10) days after request ~~therefor~~therefor.

~~9.10.~~ _____ If any provision of this Agreement shall be or become invalid, illegal, or unenforceable in any respect under applicable law the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

~~10.11.~~ _____ The prevailing party in any suit brought to enforce this Agreement shall be entitled to recover reasonable attorney's fees and necessary disbursements in addition to any other awards.

~~11.12.~~ _____ All signatories represent and warrant that they have authority to execute this Agreement.

~~12.13.~~ _____ This agreement may be executed in counterparts.

Effective as of ~~June 14, 2022~~ (date executed by last party ("the "Effective Date")).

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AGREED:

CUNCASHCA, LLC,
a Texas limited liability company

By: _____
Name: H.L. Burns
Title: Manager

STATE OF TEXAS
COUNTY OF _____

This instrument was executed by H.L. Burns as the Manager of Cuncashca, LLC before me on
this the ____ day of _____, ~~2022~~2026.

Notary Public, State of Texas

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

~~Andrea Cunningham, TRMC Name:~~ Bill Foulds, Jr.
City Secretary
Date: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was executed by Bill Foulds, Jr. before me on this the ____ day of _____, ~~2022~~2026.

Notary Public, State of Texas