

**SECOND AMENDMENT TO  
WASTEWATER SERVICE AND IMPACT FEE AGREEMENT**

This Second Amendment to the Wastewater Service and Impact Fee Agreement (“**Second Amendment**”) is between the City of Dripping Springs, a Type A General Law City located in Hays County, Texas (the “**City**”) and M/I HOMES OF TEXAS, LLC, an Ohio limited liability company (“**M/I**”), whose address is 7600 N. Capital of Texas Hwy Bldg. C, Suite 250, Austin, Texas 78731 and to TRI POINTE HOMES TEXAS, INC., a Texas corporation formerly known as Trendmaker Homes, Inc., whose address is 13460 Briarwick Drive, Suite 170, Austin, Texas 78729 (“**Tripoint**”). M/I and Tripoint are collectively referred to herein as the “**Owner**”, and the City and each Owner may be individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

**RECITALS:**

- A. City and SLF IV - Dripping Springs JV, L.P., a Texas limited partnership (“**SLF**”) previously entered into the Wastewater Service and Impact Fee Agreement (the “**Agreement**”), effective October 17, 2017, as amended February 20, 2018.
- B. SLF previously assigned its rights, title and interests in and to the Agreement to Owner in accordance with the terms and conditions of the Agreement.
- C. City and Owner wish to revise certain obligations to reflect changed circumstances that have occurred since the Agreement was executed.
- C. The Parties agree that, in accordance with Section 2.8, Owner has elected to construct and operate, or cause to be constructed or operated, the Onsite WWTP to treat wastewater generated by the Development in excess of that generated from the Stage 1 LUEs.
- D. Owner and City wish to enter into this Second Amendment as set forth below in order to set forth the terms and conditions pursuant to which the City shall make available and furnish the Stage 2 LUEs to the Development, and the Owner shall defer construction of the Onsite WWTP.

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

**AGREEMENT**

- 1. Section 1.13 of the Agreement is hereby deleted and replaced with the following:

**1.13 Effluent Transmission Line.** The off-site wastewater line consisting of an extension of a twelve inch (12”) wastewater line conveying treated effluent to that Founders Park in the City of Dripping Springs.

- 2. Section 2.2(b) of the Agreement is hereby deleted and replaced with the following:

(b) Stage 2 Service. The City will provide wastewater collection, treatment and retail wastewater service to the Development through the City's System in a subsequent and additional amount of 330 LUEs (the "**Stage 2 LUEs**"). The City will make this wastewater service available to the Development upon Owner's construction of the Effluent Transmission Line. The foregoing shall not be construed to prohibit the issuance of building permits prior to completion of the Effluent Transmission Line. Subject to prior completion by Owner of the onsite infrastructure and acceptance thereof by the City and payment by Owner of all applicable fees, the City shall issue building permits for the lots to receive wastewater service from the Stage 2 LUEs prior to completion of the Effluent Transmission Line, but the City shall not issue a certificate of occupancy for any lot to be served by the Stage 2 LUEs until after completion of the Effluent Transmission Line.

3. Section 2.4 of the Agreement is hereby deleted and replaced with the following:

**2.4 Construction of the Effluent Transmission Line**. Owner agrees to construct and, subject to the potential receipt of the City Share (as defined below), fund the Construction Costs of the Effluent Transmission Line and shall construct such line as a condition for service for any of the Stage 2 LUEs.

(a) Funding of Effluent Transmission Line Based Upon Pro-Rata Capacity. Subject to potential receipt of the City Share, all Construction Costs for the Effluent Transmission Line shall be funded pro-rata by Owner and any other person that obtains capacity in the City System (at any time, whether such capacity is obtained before or after the completion of construction of the Effluent Transmission Line) as a result of use of the Effluent Transmission Line (but not by persons who use the Effluent Transmission Line solely for receipt of treated effluent for beneficial reuse). The pro rata allocation of funding between the Owner and any other person that obtains capacity in the City System shall be based upon the actual Construction Costs of the Effluent Transmission Line and the respective share of the Effluent Transmission Line based on the capacity obtained in the City System (at any time, whether such capacity is obtained before or after the completion of construction of the Effluent Transmission Line) as a result of use of the Effluent Transmission Line (but not by persons who use the Effluent Transmission Line solely for receipt of treated effluent for beneficial reuse).

(b) Owner's Funding Participation and Cap. To the extent that Owner's pro-rata share of the actual Construction Costs for the Effluent Transmission Line exceeds \$2,660,054 (to be adjusted from 2017 dollars by the Handy-Whitman water industry construction index) ("**ETL Threshold**"), Owner will be responsible for Owner's pro-rata share of one-half of the actual Construction Costs for the Effluent Transmission Line that exceed the ETL Threshold and the City will be responsible to fund one-half of the actual Construction Costs that exceed the ETL Threshold (although City's liability under this provision shall be capped at \$200,000) (the "**City Share**"). Throughout this Agreement "**Owner's ETL Cost**

**Share**” shall consist of the Owner’s pro-rata share of the actual Construction Costs for the Effluent Transmission Line up to the ETL Threshold plus Owner’s pro-rata share of one-half of the actual Construction Costs for the Effluent Transmission Line that exceed the ETL Threshold.

- (c) Timing and Payments. Prior to any Stage 2 LUEs being served, Owner shall design and bid the Effluent Transmission Line subject to the City’s review and approval pursuant to Article III of this Agreement. To the extent that City has funding obligations under this Section, City’s payment of the City Share shall be due in multiple progress payments based upon the progress of construction of the Effluent Transmission Line and each such payment shall be made within 30 days after Owner’s Notice to City for such payment. Likewise, pro-rata payments by others shall be due 30 days after City’s Notice to them. City shall use its best efforts to ensure timely payment of pro-rata payments by others and City shall not allow persons who obtain capacity in the City System as a result of use of the Effluent Transmission Line to use such capacity until such payments have been made.
  - (d) Construction. The design and construction of the Effluent Transmission Line shall meet the reasonable requirements of the City, as generally applicable to the Onsite Facilities as set forth in Article III, herein. The Effluent Transmission Line may, to the extent feasible, be located on public property or public rights-of-way (and the City hereby grants its consent for such location and use), but any portions of such facilities on private property shall be in an easement obtained in the manner, and conforming to the terms, set forth in Article IV, herein. Owner shall be entitled to reimbursement for all Construction Costs incurred in designing and constructing the Effluent Transmission Line for costs and expenses that exceed Owner’s ETL Cost Share. The City shall use its best efforts to ensure that Owner receives timely reimbursement from other users, or prospective users, of the Effluent Transmission Line (but not by persons who use the Effluent Transmission Line solely for receipt of treated effluent for beneficial reuse). City shall not allow persons who obtain capacity in the City System as a result of use of the Effluent Transmission Line to use such capacity until such payments have been made.
4. The third sentence of Section 2.6 (“To the extent not already constructed as a TLAP Amendment 2 Facility, Owner shall construct the Effluent Transmission Line in accordance with Section 2.4 above concurrently with the City’s construction of the Discharge Permit Facilities”) is hereby deleted.
  5. Section 2.7 is deleted in its entirety.
  6. The Parties agree that in accordance with Section 2.8, Owner has elected to construct and operate, or cause to be constructed or operated, the Onsite WWTP to treat wastewater generated by the Development in excess of that generated from the Stage 1 LUEs. The Parties agree that such election was timely made. Owner agrees to defer construction of the Onsite WWTP for purposes of furnishing the Stage 2 LUEs to the Development provided the

City makes available the Stage 2 LUEs to the Development upon completion of the Effluent Transmission Line by Owner in accordance with the terms of this Second Amendment.

7. The first paragraph of Section 2.8 is hereby amended to read in its entirety as follows:

“2.8 **Owner’s Onsite WWTP.** In the event that (i) any portion of the Stage 2 LUEs or Stage 3 LUEs described in this Agreement are not available, or are anticipated to not be available, to the Development when connections are needed by Owner, then Owner shall be entitled to construct and operate, or cause to be constructed or operated, the Onsite WWTP to treat wastewater generated by the Development in excess of that generated from the Stage 1 LUEs or Stage 2 LUEs (as applicable). Such election must be made in writing. The City shall cooperate with Owner in Owner's efforts to obtain all necessary permits, including those from TCEQ, for the design, construction and operation of the Onsite WWTP and the associated effluent disposal field (collectively the "**WWTP Permits**"). Nothing in this Agreement shall be construed to obligate Owner to construct the Onsite WWTP.”

8. Section 2.8(a) is hereby amended to read in its entirety as follows:

“(a) Owner agrees to delay and not to begin construction of the Onsite WWTP so long as the City makes available the Stage 2 LUEs upon Owner’s completion of the Effluent Transmission Line, and the City timely begins and continues to completion construction of the improvements necessary to serve the Stage 3 LUEs.”

9. Section 2.8(c), including all subsections (i)-(ii), is hereby deleted in its entirety.

10. **Definitions.** The capitalized terms in this Second Amendment have the same meanings defined in the Agreement.

11. **Effect of Second Amendment.** Except as amended by this Second Amendment, all terms of the Agreement, as previously amended, continue to govern the rights and obligations of the Parties and remain in full force and effect as set forth therein.

12. **Effective Date.** The Effective Date of this First Amendment is the last date of execution by the Parties below.

13. **Authority.** The execution, delivery and performance of this Second Amendment has been duly authorized by all necessary action on the part of each of the Parties, and the person executing this Second Amendment on behalf of a Party has been fully authorized and empowered to bind the Party to the terms and provisions of this Second Amendment.

14. **Counterparts.** This Second Amendment may be executed in counterparts.

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment to be effective as of the Effective Date of this Second Amendment.

*[Signatures on following pages]*

**CITY OF DRIPPING SPRINGS, TEXAS**

**Attest:**

\_\_\_\_\_

City Secretary

By:

\_\_\_\_\_  
Bill Foulds, Jr., Mayor

Date:

\_\_\_\_\_

STATE OF TEXAS           §  
COUNTY OF HAYS       §

This instrument was executed by Bill Foulds, Jr., in the capacity set forth above, and before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

**OWNER:**

**M/I HOMES OF AUSTIN, LLC**, an Ohio limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_                §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, of **M/I Homes of Austin, LLC**, an Ohio limited liability company, on behalf of said limited liability company.

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

[SEAL]

**OWNER:**

**TRI POINTE HOMES TEXAS, INC.**, a Texas corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

ACKNOWLEDGEMENT

THE STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_               §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, of **Tri Pointe Homes Texas, Inc.**, a Texas corporation, on behalf said corporation.

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

[SEAL]