

FIRST AMENDMENT TO
AGREEMENT FOR THE PROVISION OF NONSTANDARD WHOLESALE AND
RETAIL WATER SERVICE

This First Amendment to the Agreement for the Provision of Nonstandard Wholesale and Retail Water Service (the “First Amendment”) is entered into by and between the City of Dripping Springs, Texas (the “City”) a Type A General Law City located in Hays County, Texas, and Double L Development, LLC, a Texas limited liability company (“Developer”) All capitalized words contained in this First Amendment shall have the same meaning as those in the Original Agreement unless otherwise described herein.

RECITALS:

- A. Effective December 27, 2018, City and Developer entered into that certain Agreement for the Provision of Nonstandard Wholesale and Retail Water Service (the “Original Agreement”).
- B. Developer and City have contemplated certain changes to the Proposed Development as reflected by the Development Agreement for the Proposed Development.
- C. By a Service Availability Letter dated November 11, 2020 (“Service Availability Letter”), the WTCPUA agreed to provide 1710 LUEs of water through the City for the Proposed Development contingent upon compliance with the conditions set forth in that Service Availability Letter.

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

- 1. The Title of the Original Agreement shall be changed to AGREEMENT FOR THE PROVISION OF NONSTANDARD RETAIL WATER SERVICE.
- 2. The word “wholesale” shall be changed to “retail” in the following sections: 1.1(a), 3.1, 3.4.
- 3. Wherever the number “1710” is used in the Original Agreement, that number shall be amended to be “3393” (unless the number “1710” is added by this First Amendment).
- 4. Wherever the number “2040” is used in the Original Agreement, that number shall be amended to be “3393”.
- 5. The first and second “Whereas” clauses in the Recitals are hereby deleted in its entirety and the following is substituted therefor:

WHEREAS, Developer is developing approximately 1675.094 acres of Land in Hays County, Texas adjacent to RR 12 as described in **Exhibit A** attached hereto,

and the approximately 2.066 acres described in **Exhibit A-1** attached hereto in the event such land is acquired by Developer.

WHEREAS, Developer desires to obtain retail water service pursuant to the terms and conditions of this Agreement; and

6. The fourth and Fifth “Whereas” clauses in the Recital are hereby modified as follows (strikethrough text removed, underlined text added):

WHEREAS, it is the intent of the Parties that the City will supply water from the West Travis County Public Utility Agency in order to provide up to ~~2040~~ 3393 LUEs of ~~wholesale and, later,~~ retail water service to the Proposed Development as stated in this Agreement; and

WHEREAS, Developer and the City desire to enter into this Agreement to set forth the terms and conditions upon which the City will provide ~~wholesale and~~ retail water service to the Proposed Development.

7. Section 1.1(l) (definition of master meter) is hereby deleted in its entirety.
8. Section 1.1(m), and (n) of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

(m) “Offsite Facilities” shall mean all facilities required by the City or WTCPUA and necessary to connect to and extend water service from WTCPUA supply facilities to the Proposed Development’s Onsite Facilities.

(n) “Onsite Facilities” means all facilities on the Proposed Development necessary to connect to and extend water service to the Proposed Development and to each Retail Customer.

9. Section 2.1 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 2.1 Reservation of Water. The City and the Lower Colorado River Authority (“LCRA”) entered into a Service Agreement assigned to the WTCPUA. Pursuant to the Service Agreement, the City has submitted a service extension request (“SER”) with the WTCPUA for 1710 LUEs. The WTCPUA has approved the 1710 LUEs subject to certain conditions set forth in the Service Availability Letter. The City agrees to submit a service extension request (“SER”) to the PUA for reservation of an additional 1,683 LUEs for the Land within thirty (30) days of the Developer submitting the request in writing to the City. Such 1,683 LUEs will be in addition to the 1,710 LUEs previously approved by the WTCPUA that is reserved to serve the Land. Upon approval of the SER by the WTCPUA Board, water capacity of 3,393 LUEs for the Land is reserved, subject to compliance with all requirements set-forth in all conditions

set forth in any WTCPUA issued Service Availability Letters for the Proposed Development and subject to payment of applicable fees (which may include reservation fees and impact fees) as charged by WTCPUA, and, if applicable, and any fees charged by LCRA for raw water to serve the Proposed Development and passed through by the City without mark-up pursuant to this Agreement. Unless such facilities are included in the City's or the WTCPUA'S Capital Improvement Plan, the Developer will be responsible for the costs of its pro rata share of the facilities or actions required by the WTCPUA as specified in any Service Availability Letters issued by the WTCPUA for the Proposed Development. Developer or District shall pay all fees for submitting and processing the SER and for reserving the water for the Proposed Development directly to the WTCPUA or LCRA as required by those entities.

10. Sections 2.2 and 2.4 of the Original Agreement are deleted in their entirety and shall be considered "Reserved" so as not to require renumbering.
11. Section 2.3 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 2.3 Additional Water. Automatic reformation of the number of LUEs for the Proposed Development shall occur upon the appropriate amendment to the Development Agreement. In the event that additional water is requested by the Developer and has been approved by an amendment to the Development Agreement, the City shall submit SERs to the WTCPUA for reservation of additional LUEs as requested by Developer and within thirty (30) days of Developer's written request. Additional LUEs will be reserved for the Proposed Development as additional SERs are submitted by the City and approved by the WTCPUA Board pursuant to the same terms and conditions of the LUEs reserved pursuant to this Agreement.

12. Section 3.2 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 3.2 Maximum Volume and Rate of Flow for Retail Water. Subject to all the terms and conditions set forth in this Agreement, the City agrees to sell and deliver, at the Point(s) of Delivery, Water for the operation of a retail water system for domestic, commercial, and industrial uses on an as-needed basis in an amount not to exceed 3393 LUEs at the maximum daily rate permitted for that amount by the WTCPUA and the physical facilities constructed to convey such water.

13. Section 3.3 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 3.3 Point(s) of Delivery for Retail Water. Water will be supplied from the City Water System, as extended by the Offsite Facilities, to the Point of Delivery for the Proposed Development as reasonably determined by the WTCPUA and City Engineers and within the area depicted on Exhibit C. Developer will cause to be constructed at its cost the Onsite Facilities to points of delivery for each Retail Customer. Title to Water delivered to the Proposed Development will remain with the City until it reaches the point of delivery to a Retail Customer.

14. Section 3.5 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 3.5 Metering of All Water Delivered. All Water delivered to the Proposed Development will be measured by a Master Meter installed at each Point of Delivery. The Developer is responsible for installing all necessary Master Meters at its sole expense. Once installed, Developer shall convey the Master Meters to the City. Developer will also install all retail meters at points of connections for Retail Customers as part of the Onsite Facilities.

15. Section 3.7 of the Original Agreement is hereby deleted in its entirety.

16. The following language from Section 4.1 of the Original Agreement shall be struck:
“Fifteen (15) years after the first connection to a permanent Retail Customer within the Proposed Development through to the Onsite Facilities, the City will become the retail provider for the Proposed Development.”

17. Section 4.2 of the Original Agreement is hereby deleted in its entirety.

18. Section 5.3 of the Original Agreement is hereby deleted in its entirety and the following is substituted therefor:

Section 5.3 Location of Offsite Facilities. The alignment of the transmission main which is a part of the Offsite Facilities will follow the alignment approved by the WTCPUA and the City pursuant to Section 3.3.

19. The first sentence of Section 5.10 is deleted and replaced as follows:

Upon completion of construction of each phase of the Onsite Facilities, Developer shall convey such Onsite Facilities to the City.

20. Section 6.1 of the Original Agreement is hereby modified as follows (strikethrough text removed, underlined text added):

Section 6.1 Impact, Reservation, and Other Fees. Developer shall pay, or cause to be paid, to the WTCPUA all impact fees in the amounts and at the times required by the WTCPUA for the provision of water to the Proposed Development. The Developer shall pay, or cause to be paid, to the WTCPUA the

reservation fees for all water capacity obtained pursuant to a Service Extension Request by the City for the Proposed Development. Developer agrees to pay all fees charged by the WTCPUA to the City associated with obtaining water supply and delivery of this ~~wholesale~~ water to the City for the Proposed Development. It is the intent of this Agreement that all costs and fees charged to the City by the WTCPUA for the wholesale supply of Water to the Proposed Development be passed through, without mark-up to the Developer. Retail water rates shall be charged in accordance with the City's retail water rate ordinance or tariff in effect at the time the retail water is supplied. If the City submits a service extension request to the WTCPUA for multiple wholesale or retail users, Developer will pay its pro rata share based upon Developer's number of LUEs compared to others' LUEs. It is the intent of this Agreement that Developer pay only its share of costs and fees charged by WTCPUA for wholesale water for the Proposed Development.

21. Section 6.3 of the Original Agreement is hereby modified as follows (strikethrough text removed, underlined text added):

Section 6.3 Conditions Precedent to Commencement of Wholesale Service.

Developer and City agree that the City is not required to commence ~~wholesale~~ water service to the Proposed Development until (1) all fees and charges imposed by the WTCPUA for commencement of wholesale water service to the City for the Proposed Development are paid directly to the WTCPUA by the Developer and/or a Retail Customer, (2) Developer has complied with the City Rules and Policies and the WTCPUA Rules and Policies, (3) Developer has paid the City the fees and charges set-forth in this Agreement; ~~and~~ (4) Developer has obtained from the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service; and (5) compliance with all requirements set-forth in all conditions set forth in any WTCPUA issued Service Availability Letters for the Proposed Development.

22. Exhibits A and A-1 to the Original Agreement are hereby replaced in their entirety with the attached Exhibit A, A-1, and C.

Except as expressly amended herein, the provisions of the Original Agreement shall continue in full force and effect, and Owner and City each acknowledge and reaffirm their respective obligations thereunder. In the event of an inconsistency between this Agreement and the terms of the Original Agreement, this Agreement shall govern.

Effective as of September 21, 2021.

[signatures on following pages]

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

City Secretary

By: _____

Bill Foulds, Mayor

STATE OF TEXAS

COUNTY OF _____

This instrument was executed by Bill Foulds before me on _____, 2021.

Notary Public, State of Texas

DEVELOPER

DOUBLE L DEVELOPMENT, LLC

By:
Title:

STATE OF TEXAS
COUNTY OF _____

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

Notary Public, State of Texas