

**AGREEMENT CONCERNING CREATION AND OPERATION
OF
DRIFTWOOD CONSERVATION DISTRICT**

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Agreement Concerning Creation and Operation of Driftwood Conservation District (the “Agreement”) is made and entered into by and among the City of Dripping Springs, Texas (the “City”), a general law city situated in Hays County, Texas, acting herein by and through its undersigned duly authorized Mayor, as authorized by specific action of its City Council; Driftwood DLC Austin II, LLC a Texas Limited Liability Company, its successors and assigns (sometimes referred to as “Owner”) and Driftwood Conservation District, a Conservation & Reclamation District created by the 85th Texas Legislature and operating pursuant to powers granted by HB 4301 and codified in Subtitle F, Title 6, Special District Local Laws Code, Chapter 7982 (the “District Act”).

RECITALS

A. Owner owns approximately 522 acres, as described on **Exhibit A** (the “Property”). The Property lies entirely within the City’s extraterritorial jurisdiction (“ETJ”). Owner petitioned to obtain the consent of the City for creation of a district to be known as the Driftwood Conservation District (“District”).

B. Pursuant to Section 42.042 of the Texas Local Government Code and Section 54.016, Texas Water Code, the City consented, subject to the terms and conditions of this Agreement, to the creation of the District by Resolution adopted on February 21, 2017, in an open and duly posted public meeting of the City, and amended March 9, 2021, in an open and duly posted public meeting of the City (the “Resolutions”), which meet the requirement for consent of the City under Section 7982.004 of the District Act.

C. H.B. 4301 in the 85th Texas Legislature created the District and it will operate pursuant to the District Act; however, it is an essential element of the granting of the City’s Consent that the contemplated District will approve this Agreement and become a party to it after the District’s confirmation election.

D. For and in consideration of the premises and the mutual agreements, covenants and conditions hereinafter set forth, the parties hereto hereby contract and agree as follows:

ARTICLE I

CONSENT TO CREATION AND REORGANIZATION OF DISTRICT BOUNDARIES

The City consents to creation of the District over the boundaries described earlier as the Property. This Agreement satisfies Section 3 of the City's Resolution No. 2017-27 and Resolution No. 2021-R07.

ARTICLE II

THE DEVELOPMENT AGREEMENT AND WATER AND WASTEWATER AGREEMENT

Owner and City have entered into a separate Development Agreement regarding the proposed development within the District (the "Project"), which will provide for orderly development of the Project, which may include a master-planned mixed-use development, including but not limited to, residential, commercial, recreational and open space. In addition, the City and Owner have entered into a Water and Wastewater Agreement for the provision of water and wastewater service to the District. Should the terms of this Agreement and the Development Agreement or Water and Wastewater Agreement conflict, the terms of either the Development Agreement or the Water and Wastewater Agreement shall control.

ARTICLE III

ISSUANCE OF BONDS BY DISTRICTS

- A. The District may issue bonds as permitted by law.
- B. Pursuant to Section 54.016, the parties agree that the purposes for which the District's bonds, or other lawful obligations to be issued by the District, may be issued are limited to the purposes and extent in the District Act, including, but not limited to:
 - 1. To provide a water supply for municipal uses, domestic uses and commercial purposes;
 - 2. To collect, transport, process, dispose of and control all domestic, commercial, industrial or communal wastes, whether in fluid, solid or composite state;
 - 3. To gather, conduct, divert and control local storm water or other local harmful excesses of water in the District, related water quality facilities, including storm water injection, and/or the payment of organization expenses, operation expenses during construction, and interest during construction;

4. To provide open space, conservation land, mitigation land, easements and other recreational facilities as may be consistent with the District Act and the rules of relevant and applicable State of Texas regulatory bodies, including the Texas Commission on Environmental Quality (the “Commission”);

5. To provide any other facilities, amenities and/or improvements authorized by the District Act, including roads, streets and appurtenant landscaping and drainage, that benefit the Property within the District and that qualify for developer reimbursement;

6. Organizational, creation and administrative costs; and

C. The District shall not issue bonds payable either partially or wholly from the levy of assessments.

D. The District agrees that it shall issue bonds only in the maximum amount of \$213,039,000 for Utility Bonds; \$244,995,000 for Utility Refunding Bonds; \$48,863,000 for Road Bonds; \$56,192,000 for Road Refunding Bonds for the purposes set out in Article III (B) of this Agreement (the “Facilities”), and in the manner provided by the relevant State of Texas regulatory body, if applicable, and as permitted herein. The District shall submit to the City Administrator a copy of the final bond transcript and the Official Statement for Bonds issued for the above purposes.

E. The District further agrees to the following concerning the sale of, and on the terms and provisions of, District bonds, warrants or other obligations and notes (the “District Bonds”) that are issued to provide service to the Property, so long as the restrictions do not generally render the bonds and notes unmarketable. The City may obtain the recommendation of the District’s Financial Advisor, that the sale and amount of each particular bond issue is feasible and prudent based upon a number of considerations including, but not limited, to any overlapping tax rates, assessed value and ratio of debt to assessed valuation within the District all in relation to Commission rules. Further, unless the following conditions are waived by the City based on the advice of its Financial Advisor, the parties agree that the District Bonds:

1. are limited to a maximum maturity of 30 years;
2. may not have interest rates that exceed 2% above the weekly tax-exempt Bond Buyer 20 Bond index;
3. may not be issued if the District’s debt to certified or estimated taxable assessed valuation ratio does not meet Commission feasibility standards, if applicable;
4. must have amortization that results in reasonably approximate level debt service payments considering all bond issues, except for an initial period of interest only payments;

5. shall contain call redemption features, and
6. may be refunded and additional bonds may be issued as refunding bonds.

F. The District shall proceed to obtain the necessary authorization for and to issue District bonds for the financing of the acquisition or construction of the Facilities to the extent and as permitted by laws applicable to the District. The City hereby consents to the issuance of the District's bonds to the extent, for the purposes, and in the manner described in this Agreement.

ARTICLE IV

AREA OF, AND LIMITATIONS ON, SERVICE

Unless the prior approval of the City Council of the City is obtained, the District shall not: (1) construct, acquire or install Facilities to serve areas outside the District; (2) sell or deliver water or wastewater service to areas outside the District; or (3) annex any additional lands to the District. Any land for which annexation to the District or out-of-district service is hereafter requested and approved shall be subject to the terms of this Agreement.

ARTICLE V

ANNEXATION OF THE DISTRICT BY THE CITY

A. The parties hereto acknowledge and agree that the Property lies, and will continue to lie, wholly within the ETJ of the City; is not bordered by another city, town, or village; and is not currently anticipated to be scheduled for annexation by the City in accordance with any annexation plan of the City. The parties acknowledge that the creation of the District, and the City's consent thereto, are for the purpose of promoting the orderly development and extension of City services to the Property.

B. One of the purposes of this Agreement is to authorize the District and the City, pursuant to the provisions of Section 54.016 of the Texas Water Code that allow a district and a city to contract regarding annexation, to enter into a binding contract regarding the terms and conditions of annexation of areas within the District by the City. The parties acknowledge that the City may annex area within the District in the future and the terms and conditions of the parties' agreement regarding annexation are contained within the Development Agreement. Accordingly, the Parties agree as follows:

1. If the City annexes the entire area in the District, the City will succeed to all the powers, duties, assets and obligations of the District, including but not limited to any rights and obligations under valid and duly-authorized contracts entered into by the District prior to the first notice of annexation (e.g.,

developer reimbursement agreement). The District will not enter into any developer reimbursement agreements or agreements for new projects or extraordinary expenses except as necessary for continued operation and maintenance of existing District Facilities, after publication of the first notice of proposed annexation, which shall be provided to the District by the City. The District further agrees that any agreements with the District in violation of this requirement shall be void.

2. Alternatively, subject to the terms of the Development Agreement, the City may exercise any options available under Chapter 43 of the Texas Local Government Code, or similar annexation laws of the State of Texas, that are in effect with regard to the provision of water and/or sewer service to areas within Municipal Utility Districts that are annexed by cities.

C. In furtherance of the purposes of this Agreement, the District and Owner, and their respective successors and assigns, covenant and agree to the extent allowed by law that, except upon written consent of the City Council of the City they will not: (1) seek or support any effort to incorporate any of the Property, or any part thereof; or (2) sign, join in, associate with or direct to be signed any petition seeking to incorporate any of the Property or to include any of the Property within the boundaries of any other district, incorporated entity, or political subdivision of the State of Texas.

ARTICLE VI

SEVERABILITY AND ENFORCEABILITY

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, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby.

ARTICLE VII

ASSIGNMENT OF AGREEMENT

Neither the District nor the City shall assign this Agreement without written consent of each of the other parties hereto. Owner shall not assign this Agreement without written consent of the City, except that Owner is specifically authorized to assign this Agreement to the District upon its creation; provided, however, that such assignment shall not relieve Owner or any successors or assigns from their obligations hereunder. It is specifically intended that this Agreement and all terms, conditions and covenants herein shall survive a transfer, conveyance or assignment occasioned by the exercise of foreclosure of lien rights by a creditor or a party hereto, whether judicial or non-judicial.

ARTICLE VIII

TERM OF AGREEMENT

This Agreement shall be effective from the date of execution hereof by the City and Owner, and shall be adopted by joinder of the District at their first available meeting of the Board of Directors after such execution, and shall continue in effect until the District is annexed and dissolved by the City.

ARTICLE IX

BENEFITS OF AGREEMENT

This Agreement is for the benefit of the City, the District and the Owner, their successors and assigns, and shall not be construed to confer any benefit on any other party except as expressly provided herein.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Dated effective _____, 2021.

CITY OF DRIPPING SPRINGS

By: _____
Name: _____
Its _____

ATTEST:

By: _____
Name: _____
Its _____

Driftwood DLC Austin II, LLC a Texas
Limited Liability Company

By: _____
Name: _____
Its _____

