

**SIXTH AMENDMENT TO**  
**WHOLESALE WATER SUPPLY AGREEMENT BETWEEN**  
**LOWER COLORADO RIVER AUTHORITY AND**  
**THE CITY OF DRIPPING SPRINGS**  
**(Driftwood Ranch Tract Service Property Amendment)**

This Sixth Amendment to the Wholesale Water Supply Agreement Between Lower Colorado River Authority (“LCRA”) and The City of Dripping Springs (“Sixth Amendment”) is by and among City of Dripping Springs, a Type A General Law City located in Hays County, Texas ("City"), and the West Travis County Public Utility Agency (“WTCPUA”) a political subdivision of the state of Texas formed in accordance with Chapter 572 of the Texas Local Government Code.

**RECITALS:**

- A. The LCRA and the City negotiated and executed the Wholesale Water Supply Agreement Between LCRA the City with an effective date of March 11, 2003, as amended (the "Agreement").
- B. The WTCPUA assumed the rights and obligations of the LCRA set-forth in the Agreement effective March 19, 2012.
- C. The City recognizes and accepts the WTCPUA as having been assigned the rights and obligations of the LCRA set-forth in the Agreement.
- D. Consistent with its West Travis County Public Utility Agency Regional Water and Wastewater Systems Schedule for Rates, Fees, Charges and Terms and Conditions of Water and Wastewater Services (“WTCPUA Rate Tariff”) and all service rules and policies, the WTCPUA issued a Preliminary Finding of Capacity to Serve to the City for the Driftwood Ranch Tract Service Property February 16, 2017, as shown in **Exhibit A** and defined in Section 1.1 of this Sixth Amendment, originally for 300 Living Unit Equivalents (“LUEs”) of water service. On May 12, 2017, the City requested to increase the amount of LUEs from 300 to 350. The WTCPUA Board of Directors approved the increase of reserved capacity to 350 LUEs on June 15, 2017.
- E. Driftwood Ranch Tract Service Property is in the City’s Potential Service Area (as defined in the Agreement).
- F. The City has been issued water Certificate of Convenience (“CCN”) No. 13030 to provide retail potable water utility service in certain areas.
- G. The Parties now wish to enter into this Sixth Amendment to confirm that the City shall be the retail potable water utility service provider to the Driftwood Ranch Tract Service Property and the WTCPUA shall provide Wholesale Water Supply to the City for the

Driftwood Ranch Tract Service Property, and to provide other clarifications as set forth herein.

H. This Sixth Amendment replaces and supersedes the Third Amendment to the Agreement in its entirety.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including the agreements set forth below, the City and WTCPUA agree as follows:

## **ARTICLE 1 AMENDMENTS**

1.1 **Section 1.01.** Section 1.01 of the Agreement is hereby amended to add the following definitions:

“Driftwood Ranch Tract Service Property” means the two tracts of land in Hays County more specifically described in **Exhibit B**, attached hereto.

“Parties” means the City of Dripping Springs and the WTCPUA.

“Max Day Reservation – Driftwood Ranch Tract Service Property” means the maximum amount of water to be delivered to the City for the Driftwood Ranch Tract Service Property on a daily basis based on the flow rates and capacity commitments established in this Sixth Amendment. The City’s Max Day Reservation for the Driftwood Ranch Tract Service Property is 900 gallons per day per LUE.

1.2 **Section 7.07.** Section 7.07 of the Agreement is hereby amended such that the address for notice to LCRA shall be as follows:

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY  
13215 Bee Cave Parkway  
Building B, Suite 110  
Bee Cave, Texas 78738  
Office: (512) 263-0100  
Fax: (512) 263-2289  
rpugh@wtcpua.org

1.3 **Addition of Article IX.** The Agreement is hereby amended to add the following Article IX:

ARTICLE IX  
SPECIAL PROVISIONS APPLYING TO  
DRIFTWOOD RANCH TRACT SERVICE PROPERTY

Section 9.01. Driftwood Ranch Tract Service Property. This Article IX affects and applies only to the Driftwood Ranch Tract Service Property and it is not intended to nor should be it construed to affect any other portion of the City's Potential Service Area or the LCRA Service Area.

Section 9.02. CCN Authorization for Driftwood Ranch Tract Service Property.

Section 5.03 is modified to add the following:

The City may provide retail potable water utility service to the Driftwood Ranch Tract Service Property pursuant to the Sixth Amendment even though the Property is outside the current CCN of the City. The City may pursue an amendment to its CCN to serve the Driftwood Ranch Tract Service Property after the information to apply for the amendment is available. The WTCPUA will support the application of the City to amend its CCN to provide retail potable water utility service to the Driftwood Ranch Tract Service Property.

Section 9.03. Supply of Water to Driftwood Ranch Tract Service Property. The Parties agree that pursuant to Section 3.01 of the Agreement, except as provided in Section 9.02 of this Article, the WTCPUA shall provide Wholesale Water Supply to the City for the Driftwood Ranch Tract Service Property in the amount not to exceed 350 LUEs as measured at the Delivery Point. The Parties agree that pursuant to Section 3.01 of the Agreement, the City shall provide retail potable water utility service for the Driftwood Ranch Tract Service Property in the amount of 350 LUEs.

For purposes of this Agreement, the average daily water use within the Property, as measured at the Delivery Point, shall not exceed 450 gallons per day per LUE or a total of 157,500 gallons per day (i.e., 57,487,500 gallons per year) for 350 LUEs, computed as a daily average over a calendar year. In the event the total annual quantity of water as measured at the Point of Delivery exceeds 57,487,500 gallons, the WTCPUA may assess and the City agrees to pay a water surcharge for water used that is in excess of 57,487,500 gallons.

In addition, the maximum or peak day water use for the Property, as measured at the Delivery Point, shall not exceed 900 gallons per day per LUE, or 315,000 gallons per day. In the event the City's maximum or peak day water use on any given day exceeds 315,000 gallons over any 24-hour day, the WTCPUA may:

1. Install, at the City's sole cost, a water rate flow of controller to restrict or limit the maximum flow to the Property to a maximum of 219 gpm on an instantaneous basis; and/or
2. Assess a surcharge for any quantity used in excess for 315,000 gallons per day.

Provided, however, the Parties agree and acknowledge that Developer of the Project plans to construct a golf course in the initial phase of development of the Driftwood Ranch Tract. The Parties also acknowledge and agree that Developer intends to use treated effluent to grow and sustain the golf course. The Parties further acknowledge and agree that there will not be sufficient effluent necessary to grow and sustain the golf course. The Parties thus agree that Developer may utilize water described in Section 9.03, on a temporary, interruptible basis not to exceed ten years, to construct, grow and sustain the golf course. The water use will vary from time to time and may not, combined with other water service to the Property, exceed maximum or peak day water use of 315,000 gallons over a 24-hour day as measured at the Delivery Point. The WTCPUA will have the right to assess a surcharge for any quantity used in excess of 315,000 gallons a day during this ten year golf course grow in period.

Finally, the City understands and agrees the WTCPUA does not and is not required to provide fire flows to the Property. As such, the City is solely responsible for the installation and maintenance any water improvements necessary to provide fire flows to the Property. Such improvements, if installed, shall be located on the City's side of the Delivery Point.

Section 9.04 The City agrees to ensure that all water infrastructure to provide service pursuant to this Sixth Amendment will be designed, constructed and inspected according to WTCPUA Standard Specifications and Rules and Policies, including water quality requirements outlined in the "Memorandum of Understanding" between the LCRA and the United States Fish and Wildlife Service (USFWS), dated May 24, 2000 (MOU) and the "Settlement Agreement and Stipulation of Dismissal" from the lawsuit, Hays County Water Planning Partnership, et. al. vs. Lt. General Robert B. Flowers, U.S. Army Corps of Engineers, Thomas E. White, Secretary of the Army, Gale Norton, Secretary of the Department of the Interior, and the Lower Colorado River authority, W.D. Tex. 2002 (No. AOOCA 826SS) (Settlement Agreement). The City also agrees that such facilities will be properly conveyed to the City and contained in public rights of way, easements in final plats, or separate easements granted to the City to facilitate maintenance, repair, and improvement of the facilities. The WTCPUA will reserve the right to review and approve all construction and water quality plans, inspect the construction, and review and approve all Conveyance Agreements and Easement Agreements. The City shall be responsible for maintenance and repairs of all the facilities constructed in the Driftwood Ranch Tract Service Property.

The City shall be responsible for design and construction of the Delivery Point facilities, including Master Meter and appurtenances. The Master Meter shall meet WTCPUA specifications and be set after WTCPUA approval. The WTCPUA shall own and maintain the facilities, including calibration of the Master Meter. The City agrees that the Delivery Point facilities will be properly conveyed to the WTCPUA and contained in public rights of way, easements in final plats, or separate easements granted to the WTCPUA to facilitate maintenance, repair, and improvement of the facilities. The WTCPUA shall read the Master Meter monthly and bill the City pursuant to the Rates and Charges outlined in Section 9.05 below.

Section 9.05. Rates and Charges.

(a) The Base Fee to be paid by the City to the WTCPUA for the Driftwood Ranch Tract Service Property shall be determined by the following formula:

$$\{ \text{Annual Allocated Debt Service Payment} + (25\% \text{ times coverage} * \text{Annual Allocated Debt Service Payment}) - (\text{Effective Impact Fee Credit} * \text{Annual Debt Service Payment}) / 12 \text{ months} \}.$$

(b) The Driftwood Ranch Tract Service Property Volume Charge shall recover the WTCPUA's expenses associated with operating and maintaining the Regional Facilities, including a systems raw water loss fee per thousand gallons to be calculated as follows:

$$[\text{LCRA Raw Water cost per Thousand Gallons}/(1-\text{10 water loss})]/10$$

Upon the effective date of this Sixth Amendment, the initial Base Fee for the Driftwood Ranch Tract Service Property will be \$30,349.29 per year, or \$2,529.02 per month. The Base Fee shall be assessed by the WTCPUA on a monthly basis. Upon the effective date of this Sixth Amendment, the initial monthly Volume Charge will be \$1.62 per thousand gallons used.

The WTCPUA shall utilize the base-extra capacity methodology performed by a qualified professional to determine the appropriate Base Fee and Volume Charge for each wholesale customer, including the Driftwood Ranch Tract Service Property, and may be adjusted from time to time by the WTCPUA's Board of Directors.

The absorption (i.e., build-out) schedule used as part of the Base Fee calculation for the Driftwood Ranch Tract Service Property is ten (10) years. The City shall pay the Driftwood Ranch Tract Service Property Base Fee regardless of whether the Driftwood Ranch Tract Service Property meets the absorption schedule used to develop the annual debt payment schedule.

The Effective Impact Fee Credit shall be determined based upon the following formula:

Project Costs Recovered by Impact Fees / Total Project  
Costs

Project Costs Recovered by Impact Fees shall be determined by the following formula:

Project costs eligible for impact fee recovery as determined  
by the WTCPUA's most recent impact fee study \* the  
percent level of impact fees adopted by the WTCPUA Board  
of Directors.

The Annual Allocated Debt Service Payment for the Driftwood Ranch Tract Service Property, from time to time due and payable, shall be based on the City's allocated pro-rata share of the WTCPUA's capital costs for the Regional Facilities (including interest expense) as determined based on input from the City prior to the issuance of bonds to fund the Regional Facilities so long as the total capital cost allocated to the City is recovered within the life of the bonds, including interest expense. The City's pro-rata share of the WTCPUA's capital costs for the Driftwood Ranch Tract Service Property is calculated based on its Max Day Reservation, multiplied by the WTCPUA's Cost per Gallon of the Regional Facilities. **Exhibit C** attached hereto and incorporated herein for all purposes, sets forth the current schedule of the Annual Allocated Debt Service Payment. **Exhibit C** may be amended from time to time by the WTCPUA to reflect future LCRA installment payments as well as future debt issuances associated with future Regional Facility projects.

The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "System-Wide" Facilities shall be calculated by dividing the total cost of the System Wide Regional Facilities by 27,000,000 gallons. The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "Hwy 71" shall be calculated by dividing the total cost of the Hwy 71 Regional Facilities by 14,829,230 gallons. The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "US 290" shall be calculated by dividing the total cost of the US 290 Regional Facilities by 12,170,770.

The WTCPUA shall not allocate costs for future Regional Facilities to the City beyond 27 million gallons per day (MGD) of water treatment plant capacity if the City establishes to the WTCPUA's satisfaction that it has reached eighty percent (80%) of its projected absorption schedule of the Driftwood Ranch Tract Service Property six months prior to the WTCPUA's issuance of bonds for such expansion.

(b) Within ten business days of a written request from the WTCPUA, the City shall provide the WTCPUA with copies of the City's monthly operating

reports indicating the City's peak day consumption, including a break-out of the Driftwood Ranch Tract Service Property. At any time, the WTCPUA may also install, at its sole discretion, a max-day meter and/or a flow regulator on the City System, including the Driftwood Ranch Tract Service Property, to assess or control actual maximum daily demands by the City.

If the WTCPUA determines that the City is exceeding the Max Day Reservation for the City or Driftwood Ranch Tract Service Property, the City will be subject to a surcharge as determined by the WTCPUA Rate Tariff and all service rules and policies.

## **ARTICLE 2 RATIFICATION**

- 2.1 By entering into this Sixth Amendment, the Parties hereby ratify the Agreement, and affirm and agree that it is in full force and effect, as amended.

## **ARTICLE 3 MISCELLANEOUS**

- 3.1 Incorporation; Definitions. The background as set forth in the recitals is true and correct, forms a material part of this Sixth Amendment and is hereby incorporated into this Agreement. Words with initial capital letters that are used but not defined in this Sixth Amendment shall have the meanings given to them in the Agreement.
- 3.2 Effective Date of Sixth Amendment; Supersedes Third Amendment. The Effective Date of this Sixth Amendment June 6, 2020. This Sixth Amendment replaces and supersedes the Third Amendment in its entirety.
- 3.3 Counterparts. This Sixth Amendment may be executed in multiple counterparts, each to be considered an original, to be effective upon execution by all Parties.

**IN WITNESS THEREOF**, the Parties hereto, acting under the requisite authority, have caused this First Amendment to be duly executed to be effective as of the Effective Date as provided above.

**[Signature Page Follows]**

**CITY OF DRIPPING SPRINGS, TEXAS**

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

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

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

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

ATTEST:

\_\_\_\_\_  
Kerri Craig  
City Secretary

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
City Attorney



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For purposes of this Agreement, the average daily water use within the Property, as measured at the Delivery Point, shall not exceed 450 gallons per day per LUE or a total of 157,500 gallons per day (i.e., 57,487,500 gallons per year) for 350 LUEs, computed as a daily average over a calendar year. In the event the total annual quantity of water as measured at the Point of Delivery exceeds 57,487,500 gallons, the WTCPUA may assess and the City agrees to pay a water surcharge for water used that is in excess of 57,487,500 gallons.

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Section 9.05. Rates and Charges.

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## **ARTICLE 2 RATIFICATION**

- 2.1 By entering into this Sixth Amendment, the Parties hereby ratify the Agreement, and affirm and agree that it is in full force and effect, as amended.

## **ARTICLE 3 MISCELLANEOUS**

- 3.1 Incorporation; Definitions. The background as set forth in the recitals is true and correct, forms a material part of this Sixth Amendment and is hereby incorporated into this Agreement. Words with initial capital letters that are used but not defined in this Sixth Amendment shall have the meanings given to them in the Agreement.
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**IN WITNESS THEREOF**, the Parties hereto, acting under the requisite authority, have caused this First Amendment to be duly executed to be effective as of the Effective Date as provided above.

**[Signature Page Follows]**

**CITY OF DRIPPING SPRINGS, TEXAS**

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

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

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

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

ATTEST:

\_\_\_\_\_  
Kerri Craig  
City Secretary


APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
City Attorney



WTCPUA:

WEST TRAVIS COUNTY PUBLIC UTILITY  
AGENCY

By:   
Scott Roberts  
President  
Board of Directors

Date: 4/20/23

ATTEST:

  
Walt Smith, Secretary  
Board of Directors