

CITY OF DRIPPING SPRINGS

EQUIPMENT LEASE AGREEMENT

FOR

**PHASE II EXPANSION TO 0.125 MGD AT THE
ARROWHEAD RANCH WASTEWATER TREATMENT PLANT**

July 2023

AUC Group, LLC

ARROWHEAD RANCH WWTP EXP EQUIPMENT LEASE

EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT (“Agreement”), made this ___ day of _____, 2023 (“Effective Date”), is entered into by and between **AUC Group, LLC**, a Delaware limited liability company with its principal place of business in Houston, Texas (the “Lessor”), and **City of Dripping Springs**, a political subdivision of the State of Texas (the “Lessee”).

SECTION 1 – LEASED PROPERTY

Subject to the terms and conditions of this Agreement, Lessor will construct, install and lease a wastewater treatment plant at the facilities owned by Lessee and located at 2303 West Highway 290, Dripping Springs, Hays County, TX 78620 (“Lessee’s Facility”), and Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the equipment listed on **Exhibit A** attached hereto and incorporated herein by reference (hereinafter referred to as the “Leased Property”).

SECTION 2 – DELIVERY, INSTALLATION, ACCESS AND SUBSTANTIAL COMPLETION

The Lessor shall cause the Leased Property to be delivered, unloaded, assembled, and installed on Lessee’s Facility. Lessee hereby grants to Lessor a full and unrestricted right of entry and access (including all weather access) to Lessee’s Facility for the purposes set forth in this Agreement. Lessor shall be responsible for the work set forth on **Exhibit B** attached and incorporated herein by reference (the “Lessor’s Work”). Lessor’s Work shall be considered complete once Lessor’s Work is substantially complete in accordance with the scope of Lessor’s Work, which may occur before final engineer certification and commencement of operations (“Substantial Completion”). Lessor’s engineer (“Lessor’s Engineer”) will certify Substantial Completion of Lessor’s Work by written notice to Lessee. Lessee may engage an engineer (the “Lessee’s Engineer”), at its cost, to inspect the Leased Property and confirm Substantial Completion, which confirmation shall be provided within five (5) days following Lessor’s Engineer’s certification being delivered to Lessee. Notwithstanding the foregoing, Lessor and Lessee expressly agree that neither Lessor’s Engineer, Lessee or Lessee’s Engineer may (i) point to or rely upon the fact that work that must be completed by others that is not part of Lessor’s Work, including, without limitation, providing permanent electrical service and/or power to Lessee’s Facility, or (ii) rely upon the fact that a portion of Lessor’s Work cannot be completed or finished as a result of work that must be completed by others that is not part of Lessor’s Work (i.e., if Lessor has completed all of Lessor’s Work except for a portion of Lessor’s Work that requires the ability to tie Lessor’s Work into power lines or a power pole that has not yet been installed at Lessee’s Facility) in order to avoid a determination that Lessor’s Work has achieved Substantial Completion. For example, if Lessee has not, for any reason, provided permanent electrical service power, or utility power poles, by the time that Lessor’s Work is completed that failure shall not be considered in making the determination, since such obligation is not included in Lessor’s Work, even if Lessor has not been able to conduct start-up testing or commence operations, due to the failure of such work to be done. Following a determination of Substantial Completion (or deemed Substantial Completion) prior to Final Completion, the parties agree that the Leased Property must still thereafter pass final testing and be functioning in a reasonably acceptable manner before final completion is certified by Lessor’s Engineer and confirmed in writing by Lessee’s Engineer (“Final Completion”). Lessee’s Engineer’s interim confirmation of Substantial Completion or

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Final Completion, as applicable, of Lessor's Work will not be unreasonably withheld, conditioned or delayed. Failure to timely provide such confirmation in accordance with this Agreement will constitute a default by Lessee under this Agreement and Substantial Completion and/or Final Completion of Lessor's Work will be deemed to have occurred.

During the term of this Agreement, the Leased Property shall not be removed from the place of its initial installation without the prior written consent of Lessor. Lessee shall at all reasonable times and from time to time allow Lessor, by or through any of its officers, agents or attorneys, to examine and inspect the Leased Property.

SECTION 3 - TERM

The term of this Agreement shall commence on the date set forth in the commencement letter from Lessor to Lessee, which shall be the date of Substantial Completion (the "Commencement Date") and shall remain in effect for sixty (60) months thereafter unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Upon the Commencement Date, Lessee shall begin to make the Lease Payments (as hereinafter defined) to Lessor. The Initial Term shall automatically be extended and shall continue under the same terms and conditions for successive one (1) year periods (each, a "Renewal Term") until such a time as Lessor terminates this Lease or Lessee exercises a Purchase Option (as hereinafter defined). The Initial Term and any Renewal Terms shall be collectively referred to herein as the "Term".

SECTION 4 - PAYMENTS AND PURCHASE OPTION

Lessee agrees to pay Lessor the lease payments set forth on **Exhibit C** attached hereto and incorporated herein by reference (the "Lease Payments") for the use of the Leased Property during the Initial Term and any Renewal Term of the Lease. Each Lease Payment is due and payable to Lessor on the first (1st) day of each month, in advance, and shall be made to the office of the Lessor as set forth in Section 17 (Payments and Notices). The first and last month's Lease Payments, as detailed on **Exhibit C**, are due upon the Effective Date.

In addition, Lessee shall pay to Lessor the amount of the installation fees set forth on **Exhibit C**, if any.

Upon no less than sixty (60) days written notice to Lessor prior to the expiration of the then current Term of the Lease, and only after the expiration of the Initial Term, Lessee shall have the option to purchase all or a portion of the Leased Property from Lessor, free and clear of all liens and encumbrances, in "As-Is, Where-Is" condition, upon the terms and conditions set forth in **Exhibit D** attached hereto and incorporated herein by reference (the "Purchase Option"). Lessor agrees to execute customary conveyance documents reasonably satisfactory to Lessor and Lessee if Lessee exercises the Purchase Option. Notwithstanding the foregoing, in no event shall Lessee be entitled to exercise the Purchase Option if Lessee is in default of its obligations hereunder.

Notwithstanding the Lease Payments set forth on **Exhibit C** or otherwise agreed upon by the Parties, in the event that the necessary site preparations are not substantially completed within ninety (90) days after the Effective Date, Lessor and Lessee shall negotiate in good faith to account for proposed increases in any quoted installation payments and/or Lease Payments if costs to perform such installation materially increase following such ninety (90) day period, provided such

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costs are reasonable and documented by Lessor and compliance with applicable laws and regulations (including Section 49.273 of the Texas Water Code) may be retained.

SECTION 5 - TITLE TO LEASED PROPERTY; LIENS AND ENCUMBRANCES

The Leased Property shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no right of property therein, but only the right to use the Leased Property upon the terms and conditions herein contained, subject to the Purchase Option contemplated in Section 4. It is expressly agreed that the Leased Property shall be considered and remain personal property even though it may be attached or affixed to real estate. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, lease, sublease, security interest, restriction, covenant or claim of any kind or nature whatsoever (any of the foregoing, a "Lien") on or with respect to any piece of Leased Property, Lessor's title thereto or any interest therein. Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien, other than this Agreement, and Lessee shall keep each piece of Leased Property free from all Liens asserted by any persons. Lessee shall immediately advise Lessor regarding any notice of any claim, lien, levy, or legal process issued against the Leased Property. If Lessee shall fail to discharge any Lien filed against the Leased Property within sixty (60) days after the filing of same, Lessor may take any actions necessary to discharge said Lien and any costs and expenses incurred by Lessor, including, without limitation, reasonable attorneys', shall be added to the next monthly Lease Payment for reimbursement. Lessor is hereby authorized to file, in any jurisdiction deemed appropriate by Lessor, any UCC financing statements naming Lessor as secured party or lessor and naming Lessee as debtor or lessee, with a collateral description that includes all equipment now or hereafter leased by Lessor to Lessee and any proceeds and products thereof (including insurance proceeds). If the Leased Property is attached or affixed to real estate which is owned by any other person or entity other than Lessee or which is subject to a mortgage, Lessee shall obtain and deliver to Lessor a consent and waiver from the landlord or such mortgagee, as the case may be, in a form acceptable to Lessor which shall prohibit landlord from claiming a security interest in the Leased Property, and which shall permit Lessor to remove the Leased Property from said real estate at any time during the term of, or after the expiration of, this Agreement. Lessor may display notice of its ownership of the Leased Property by affixing to each item of equipment an identifying stencil or plate or other indication of ownership and Lessee agrees that it will not remove, deface or obliterate any such notice.

SECTION 6 – REMOVAL OR ALTERATION OF LEASED PROPERTY

Lessee shall not, without the prior written consent of Lessor, remove or relinquish possession of the Leased Property nor shall Lessee make any alteration or improvement in the Leased Property without having first obtained Lessor's prior written consent. Any alterations or improvements to the Leased Property shall be the property of Lessor. The Leased Property shall at all times be stored and located at Lessee's Facility.

SECTION 7 – LATE CHARGE

If any Lease Payment is not paid within thirty (30) days after the due date, Lessee shall pay to Lessor a later charge of five percent (5%) of the outstanding amount of the Lease Payment.

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SECTION 8 – LESSOR’S WARRANTIES

The Lessor covenants and agrees as follows:

- a) The Lessor has or will have by the date of beginning its delivery of the Leased Property, title to the Leased Property, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due and the lien or liens securing only the purchase money mortgage of the Leased Property or financing secured by this Agreement.
- b) The Leased Property shall be constructed to meet the current applicable TCEQ design criteria.
- c) The Lessor shall undertake any reasonable action requested by Lessee to enforce any and all warranties or guarantees to which Lessor is entitled on the Leased Property or assign such warranties or guarantees to Lessee.
- d) The Lessor warrants and guarantees that the Leased Property is and will be free from defects in materials and workmanship for twelve (12) months from Final Completion, so long as the Agreement remains in effect.
- e) Lessor shall have no obligation with respect the operation and maintenance of the Leased Property following Final Completion.

SECTION 9 – LESSEE’S WARRANTIES

The Lessee covenants and agrees as follows:

- a) The Lessee is a political subdivision of the State of Texas, duly organized and existing under the Constitution and laws of the State of Texas with full power and authority to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- b) Lessee has duly authorized the execution and delivery of this Agreement by proper action of its governing body at a meeting duly called, convened and attended by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement.
- c) Lessee knows of no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, a Lessee Event of Default (as hereinafter defined) as of the Effective Date.

SECTION 10 - OPERATION AND MAINTENANCE; RETURN OF LEASED PROPERTY

Lessee shall comply with and conform to all municipal, state, and federal laws relating to the operation of the Leased Property and shall ensure that the Leased Property is operated by competent and qualified personnel. Lessee shall maintain, at its own cost and expense, the Leased Property in good condition and running order at all times during the term of this Agreement. During the Term, Lessee shall be solely responsible for and pay any and all costs or expenses associated with the maintenance, repair and storage of the Leased Property, except for any

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maintenance or repair costs that fall within the scope of the 12-month warranty provided by Lessor pursuant to Section 8(d) hereof.

Upon the expiration or earlier termination of this Agreement, Lessee shall surrender the Leased Property to Lessor in good and satisfactory condition, normal wear and tear excepted. Thereafter, Lessor shall, at its sole cost and expense, remove the Leased Property from Lessee's Facility within ninety (90) days after the Leased Property is surrendered to Lessor. Notwithstanding the foregoing, Lessee shall be responsible for dewatering and cleaning of the Leased Property prior to its removal by Lessor. If Lessee fails to surrender the Leased Property upon the expiration or earlier termination of this Agreement, Lessee shall defend and indemnify Lessor from all liability and expenses resulting from the delay or failure to surrender.

If the Leased Property is not removed within the ninety (90) day period, Lessee may consider the Leased Property abandoned and may dispose of the Leased Property in any manner at Lessor's expense, which shall be reimbursed to Lessee within thirty (30) days after delivery of an invoice thereof. This paragraph shall not apply at any time after Lessee purchases the Leased Property.

SECTION 11 - RISK OF LOSS AND INSURANCE

- a) Lessee's Insurance: Upon Substantial Completion, Lessee shall furnish Lessor with a certificate(s) of insurance, and copies of policy endorsements, showing compliance with the insurance requirements set forth below. Lessee shall purchase and maintain the following liability coverage policies at all times with respect to the Leased Property and its operations.
 - i. Property and equipment breakdown liability coverage naming Lessor and its assigns as loss payee and insuring the Leased Property against loss or damage on a Special Causes of Loss policy form, including, but not limited to, loss caused by windstorm, terrorism, flood, tidal surge, earthquake, and sinkhole. Such insurance shall provide a property damage coverage limit equal to the replacement cost of the Leased Property and a business interruption limit equal to one year of Lease Payments.
 - ii. Commercial general liability coverage naming Lessor and its assigns as additional insured and providing a limit of not less than \$3,000,000 per occurrence. Such insurance shall cover liability arising from the premises and operations of the Leased Property and liability assumed under an insured contract. The additional liability coverage provided to Lessor shall apply as primary liability coverage with respect to any other liability coverage or self-insurance programs afforded to Lessor.
 - iii. Pollution legal liability coverage in an amount not less than \$2,000,000 per occurrence and providing coverage for third-party bodily injury and property damage claims, as well as coverage for cleanup costs, resulting

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from a pollution condition or event arising out of the operation of the Leased Property.

- iv. Workers compensation and employers liability coverage in such amounts and as otherwise required by the laws of the State of Texas.
- b) Lessor's Insurance: During the unloading, assembly and installation of the Leased Property, Lessor shall purchase and maintain the following insurance policies until Substantial Completion has been achieved:
- i. Property insurance covering damage to the Leased Property while being unloaded, stored, assembled, erected or in transit at or around the job site.
 - ii. Commercial general liability insurance naming Lessee and its assigns as additional insured and providing a limit of not less than \$3,000,000 per occurrence. The additional insured coverage provided to Lessee shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Lessor.
 - iii. Workers compensation and employers liability insurance in such amounts and as otherwise required by the laws of the State of Texas.
- c) Waiver of Subrogation: Lessee and Lessor hereby waive any recovery rights for damages against each other (including their employees, officers, directors, agents, or representatives) for loss, damage and injury to the extent the loss, damage or injury is covered by the insurance coverage required in this Section 11.
- d) Deductible and Self-Insured Retentions (SIRs): The Lessee shall be responsible for paying any deductibles or SIRs applicable to covered claims under any of the insurance policies required to be purchased and maintained by Lessee. Lessor shall be responsible for paying any deductibles or SIRs applicable to covered claims under any of the liability policies required to be purchased and maintained by Lessor.
- e) Financial Rating of Insurers: Lessee and Lessor shall purchase the required liability coverage from insurers/companies authorized to do business in the State of Texas and endeavor to secure insurance from a company having a financial strength rating by A.M. Best Company of A- or better rating, but in no instance less than "B+".
- f) Risk of Loss: Except as otherwise provided in this Section, Lessee shall bear the risk of any loss or damage to the Leased Property and all component parts thereof from any cause whatsoever, whether or not covered by insurance, unless the loss or damage is caused by the gross negligence, intentional act or willful misconduct of Lessor. In the event the Leased Property is destroyed, stolen or damaged beyond repair, Lessee shall forthwith pay to Lessor the replacement value of the Leased Property immediately prior to such destruction, theft or damage less (a) the salvage value, if any, of the Leased Property and (b) the insurance proceeds actually

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received by Lessor because of such destruction, theft or damage. Notwithstanding any damage to the Leased Property, the Lease Payments shall continue to be paid by Lessee.

SECTION 12 - ASSIGNMENT AND SUBLEASE

Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee shall not sublease the Leased Property without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event of any such assignment pursuant to this Section 12, the relevant assignee shall thereupon acquire all of the rights, obligations, and remedies possessed by or available to the relevant assignor and shall execute an acknowledgment agreeing to be bound by the terms and conditions of this Agreement. Notwithstanding the foregoing, Lessee shall have the ability to freely assign this Agreement to an entity that controls, is controlled by, or is under common control with Lessee, or (if the Agreement is entered into on behalf of a developing municipal utility district or similar special district (“MUD”)), the MUD that the developer enters into a contract in connection with the organization of the MUD. Notwithstanding any assignment or sublease of Lessee hereunder, Lessee shall remain liable to Lessor for all obligations of Lessee under this Agreement.

SECTION 13 - EVENTS OF DEFAULT

- a) Lessee Events of Default: The following events shall be deemed to be events of default by the Lessee under this Agreement (each, a “Lessee Event of Default”):
- i. The Lessee fails to pay any Lease Payments during the Term and such failure shall continue for a period of thirty (30) days;
 - ii. The Lessee fails to comply with any other material term, provision or covenants of this Agreement and does not cure such failure within sixty (60) days after written notice thereof by the Lessor to Lessee;
 - iii. Lessee abandons the Leased Property;
 - iv. Any right or interest of Lessee under this Agreement is subjected to attachment, execution or other levy or seizure under legal process, if not released within thirty (30) days;
 - v. An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee bankrupt, unless with respect to an involuntary petition only, such petition is discharged within thirty (30) days;
 - vi. Lessee dissolves; or
 - vii. A receiver is appointed to take possession of Lessee’s property or of Lessee’s interest in the Leased Property.

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- b) Remedies of Lessor upon Lessee Default: Upon the occurrence of any such Lessee Event of Default, in addition to any other rights afforded to Lessor by Law, the Lessor shall have the following rights:
- i. terminate this Agreement and Lessee's right to possession of the Leased Property;
 - ii. the right to retake and retain the Leased Property, with or without terminating this Agreement by written notice to Lessee, and to recover from Lessee all costs of recovery, including without limitation, reasonable attorneys' fees, repair costs and other related expenses;
 - iii. file a lien against Lessee's Facility to the extent of any unpaid amounts owing under this Agreement; and
 - iv. seek a deficiency judgment against Lessee and seek reimbursement in an amount equal to all past due amounts of Lease Payments owed by the Lessee and any late payment penalties indicated on **Exhibit C** as limited by Government Code Section 271.153.

Lessor's rights hereunder shall be cumulative and non-exclusive. No waiver of any Lessee Event of Default shall constitute a waiver of any other breach or default by Lessee. The subsequent acceptance of a Lease Payment shall not constitute a waiver of an Event of Default by Lessor.

- c) Lessee Documentation Requirements: Lessee hereby represents and warrants that any financing arrangement impacted by the obligations of this Agreement is and shall be subordinated to the reimbursement obligations of Lessor in Section 13(b)(iv).
- d) Lessor Events of Default; Remedies of Less upon Lessor Default: In the event that the Lessor fails to comply with any material term, provision or covenant of this Agreement and does not cure such failure within sixty (60) days after written notice thereof by the Lessee to the Lessor, the Lessee shall have the right to either suspend payment of Lease Payments to Lessee until such default is cured or otherwise terminate this Agreement and exercise any of its rights hereunder, or otherwise available at law or in equity.
- e) Lessor Mortgage or Lender Defaults: In the event the Lessor receives any notice of default under its purchase money mortgage or another item which could create a lien on the Leased Property, Lessor shall promptly provide Lessee with a copy of such notice of default. If Lessor fails to make such payments, together with any interest or penalty, required to be paid in connection therewith, the Lessee shall have the right to make such payments, which may be deducted by the Lessee from any Lease Payments thereafter becoming due hereunder; provided, however, that the Lessee shall not be authorized or empowered to make any payment under the terms of this Section 13(e) unless the item paid is superior to the Lessee's interest hereunder. Lessor warrants to Lessee that it shall make all such payments timely,

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and LESSOR AGREES TO INDEMNIFY AND DEFEND LESSEE AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR NON-PAYMENT OF WORK, MATERIAL, LABOR AND/OR EQUIPMENT PROVIDED BY OR THROUGH LESSOR, AND/OR SUITS BROUGHT AGAINST LESSEE IN ANY WAY ARISING OUT OF LESSOR'S FAILURE TO PAY ITS SUBCONTRACTORS OR OTHERS FOR WORK RELATED TO THE LEASED PROPERTY (INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL FEES AND COURT COSTS).

SECTION 14 – ENVIRONMENTAL MATTERS

a) The Parties hereby acknowledge that emerging contaminants, such as per- and polyfluoroalkyl substances (“PFAS”), MTBE and other Hazardous Materials that are not regulated by the United States Environmental Protection Agency (“EPA”) or state environmental agencies or health department but for which EPA or state agencies have issued a health or public safety advisory or guidance (“Emerging Contaminants”) may be present in municipal sewage and water which is collected by the Lessee and treated by the Leased Property. Lessee represents that it will make any available information regarding the constituents and Hazardous Materials in the sewage and water to be treated by the Leased Property available to Lessor upon reasonable notice. Lessee shall immediately notify Lessor of any Hazardous Materials of which Lessee becomes aware during the term of this Agreement that may cause damage to the Leased Property or result in a violation of Environmental Laws or discharge of a Hazardous Material or Emerging Contaminant into surface water or a source of drinking water. In no event shall Lessor be liable to Lessee for any Hazardous Materials located at Lessee’s Facility or for any other environmental matters unless caused by Lessor’s intentional acts, gross negligence or willful misconduct.

b) Lessor or Lessee may be required to notify the appropriate governmental authorities of the discovery of certain types of Hazardous Material in sewage and water collected by Lessee and that is treated and discharged through the Leased Property. Lessor and Lessee will, at all times, alert each other when they believe a discharge, release, bypass or other incident requires immediate attention and reporting, prior to reporting to the appropriate authorities. It shall be the responsibility of the Lessee to notify the appropriate federal, state, or local public agencies as required by law, and to disclose in a timely manner any information that may be necessary to prevent any danger to health, safety, or the environment. Nothing in this Agreement is intended to prevent Lessor or Lessee from complying with any Laws in an emergency situation or otherwise.

c) As used herein, “Hazardous Materials” shall mean any substance, whether mixed, commingled or otherwise combined with other substances, materials, or wastes: (i) the presence of which requires investigation, reporting, removal or remediation under any federal, state, or local environmental statute, regulation, permit, authorization, ordinance, rules, or guidance, as they may be amended from time to time (“Environmental Law”); (ii) that is or becomes defined as a “hazardous waste,” “hazardous substance,” “hazardous material,” “extremely hazardous substance,” “radioactive,” “toxic,” “noxious,” “contaminant,” or other type of pollutant or contaminant under any applicable Environmental Law; (iii) that is toxic, reactive, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic, teratogenic, or otherwise hazardous and is or becomes regulated by any applicable Environmental Law; (iv) that is or contains oil, gasoline, diesel fuel, aviation fuel, or other petroleum hydrocarbons, products or derivatives; (v)

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that is or contains polychlorinated biphenyls (PCBs), per- and polyfluoroalkyl substances (PFAS), asbestos, radon or urea formaldehyde, gasoline, diesel fuel or other petroleum hydrocarbons (including naturally occurring, man-made petroleum hydrocarbons or distillates), volatile organic compounds, semi-volatile organic compounds; (vi) the presence of which causes or poses or threatens to pose a hazard to the health or safety of any person, to plant or animal life, or to the environment; or (vii) Emerging Contaminants.

SECTION 15 – INDEMNIFICATION; LIMITATION OF LIABILITY

a) TO THE FULLEST EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, LESSEE SHALL APPEAR AND FULLY DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS LESSOR AND ITS MEMBERS, PARTNERS, SHAREHOLDERS, OWNERS, SUBSIDIARIES AND AFFILIATES, AND ANY OF THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS (COLLECTIVELY “INDEMNITEES”) FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, COSTS, JUDGMENTS, MECHANICS’ LIENS, VIOLATIONS OF ENVIRONMENTAL LAWS, ENVIRONMENTAL INVESTIGATIONS, REMEDIATIONS AND COMPLIANCE COSTS, STOP PAYMENT NOTICES, BOND CLAIMS, PENALTIES, FINES, DAMAGES, BREACHES, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING ANY FEES AND COSTS OF ACCOUNTANTS, ATTORNEYS, EXPERTS, CONSULTANTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES, LOSSES, OR LIABILITIES IN LAW OR IN EQUITY (COLLECTIVELY “DAMAGE”), ARISING OUT OF OR IN CONNECTION WITH, RESULTING FROM OR RELATED TO, THE INTENTIONAL, WILLFUL OR NEGLIGENT ACTS OF LESSEE RELATED TO THE LEASED PROPERTY, THIS AGREEMENT, THE LEASE BY LESSEE OF THE LEASED PROPERTY, OR THE OWNERSHIP, LEASING, SUBLEASING, POSSESSION, USE, OPERATION, LOCATION, PRESENCE, MAINTENANCE, ALTERATION, MODIFICATION, IMPROVEMENT, SERVICING, REPAIR, EXCHANGE, SUBSTITUTION, REPLACEMENT, OR LOSS OF, OR ANY DAMAGE TO, ANY ITEM OF THE LEASED PROPERTY OR ANY INTEREST THEREIN, OR THE EXECUTION, DELIVERY, FILING, REGISTRATION, RECORDING, PRESENCE, PERFORMANCE OF, ANY PAYMENT UNDER OR THE ENFORCEMENT OF, OR THE CURE OF ANY DEFAULT OR THE EXERCISE OF ANY REMEDY UNDER, THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED FROM TIME TO TIME PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT SUCH DAMAGE IS CAUSED BY AN INDEMNITEES’ NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, AND FURTHER PROVIDED THAT IN NO EVENT SHALL LESSEE BE LIABLE FOR CONSEQUENTIAL OR INDIRECT DAMAGES IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS PRESENT IN THIS SECTION 15(A) EXCEPT TO THE EXTENT SUCH DAMAGE IS CAUSED BY LESSEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND SUCH LIABILITY IS OTHERWISE PERMITTED BY THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS. THE OBLIGATIONS OF THE LESSEE UNDER THIS SECTION 15(A) SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL THE EXPIRATION OF THE STATUTE OF LIMITATIONS APPLICABLE TO THIS AGREEMENT.

b) **Limitation of Liability:** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOR CLAIMS BASED ON LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR THIRD-PARTY CLAIMS COVERED BY LESSOR'S INDEMNIFICATION OBLIGATIONS, LESSOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR INDIRECT DAMAGE OR LOSS ARISING FROM, RELATING TO OR IN CONNECTION WITH THE LEASED PROPERTY AND/OR LESSOR'S PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, REGARDLESS OF FAULT. Lessor shall not be liable for any damages by reason of negligent operation of the Leased Property by Lessee. Notwithstanding anything to the contrary in this Section 15(b), any limitation of liability present in Section 15(b) shall in no way limit any indemnity obligations of Lessor in Section 13, respectively.

SECTION 16 - DISCLAIMER OF WARRANTIES

LESSOR HAS NOT MAKE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITIONS, QUALITY, DURABILITY, SUITABILITY, OR MERCHANTABILITY OF THE LEASED PROPERTY. EXCEPT AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE LEASED PROPERTY, OR DEFECT THEREIN UNLESS CAUSED BY THE INTENTIONAL ACT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LESSOR. LESSEE ASSUMES ALL RESPONSIBILITY FOR THE CONDITION OF THE LEASED PROPERTY AND ACCEPTS THE LEASED PROPERTY IN ITS "AS-IS, WHERE-IS" CONDITION.

SECTION 17 – PAYMENTS AND NOTICES

Except as otherwise provided herein, each provision of this Agreement or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by the Lessor to the Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to the Lessor shall be deemed to be complied with, when and if the following steps are taken:

- a) All Lease Payments and other payments required to be made by the Lessee to the Lessor hereunder shall be payable to Lessor at the address herein below set forth, or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.
- b) Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered upon actual receipt of the parties hereto at the respective addressed set out opposite their names below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith.

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LESSEE: City of Dripping Springs, TX
Attention: Public Works Director
areed@cityofdrippingsprings.com
511 Mercer Street
Dripping Springs, Texas 78620

LESSOR: AUC Group, LLC
contracts@aucgroup.net
1800 Augusta Drive, Ste 108
Houston, Texas 77057

SECTION 18- INTERPRETATION

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

SECTION 19 – BINDING EFFECT

The terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns except as otherwise expressly provided.

SECTION 20 - TAXES

During the Term, Lessee shall be solely responsible for the payment of all applicable taxes (including, without limitation, all property and sales taxes), assessments and licensing and registration fees imposed or levied by any taxing authority or other entity on the Leased Property.

SECTION 21 – GOVERNING LAW

This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based on, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the Texas Constitution and the laws of the State of Texas, including its statutes of limitations.

SECTION 22 – FORUM FOR DISPUTES

The parties agree that should any suit, action or proceeding arising out of this Agreement be instituted by any party hereto (other than a suit, action or proceeding to enforce or realize upon any final court judgment arising out of this Agreement), such suit, action or proceeding shall be instituted only in the county in which Lessee is located. Each of the parties hereto consents to the in personam jurisdiction of any such state or federal court in the county in which Lessee is located and waives any objection to the venue of any suit, action or proceeding.

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SECTION 23 – ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified unless in a writing signed by all parties.

SECTION 24 - SEVERABILITY

If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

SECTION 25 - COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which together shall constitute one Agreement.

SECTION 26 – CHAPTER 2271 VERIFICATION

By signing and entering into the Agreement, Lessor verifies, pursuant to Chapter 2271 of the Texas Government Code, that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

SECTION 27 – ANTI-TERRORISM

Each of Lessor and Lessee hereby represents and warrants that at the time of this Agreement neither they, nor any of their respective wholly owned subsidiaries, majority-owned subsidiaries, parent companies or affiliates:

- a) engages in business with Iran, Sudan, or any foreign terrorist organization pursuant to Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code; or
- b) is a company listed by the Texas Comptroller pursuant to Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" has the meaning assigned to such term pursuant to Section 2252.151 of the Texas Government Code.

SECTION 28 – ANTI-CORRUPTION AND TRADE CONTROL

a) Anti-Corruption Terms. To the extent applicable, Lessee, its officers, directors, employees, agents, and any other persons acting on its behalf are in compliance with, and shall continue to comply with, the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA") and any other applicable anti-bribery or anti-corruption laws or regulations. Lessee, its officers, directors, employees, agents, and any other persons acting on its behalf shall not take any action in furtherance of making, offering, promising, or authorizing, directly or indirectly, the payment

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or giving of money or anything else of value to any: (i) officer, member, or employee of a state or government-owned business, anyone acting in an official capacity for or on behalf of a governmental agency, instrumentality or institution, a political party official, a candidate to a political or governmental office, members of monarchies or royal families, or any government officer or employee (“Government Official”) for any improper purpose; or (ii) other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, promised, or given, directly or indirectly, to a Government Official for any improper purpose. Lessee shall immediately notify Lessor in writing if subsequent developments cause the statements in this section to be inaccurate or incomplete.

b) Trade Control Terms: sanctions and export controls. To the extent applicable, Lessee, its officers, directors, employees, and any individuals or entities (“persons”) acting on its behalf shall at all times comply with all sanctions and export control laws, regulations, and orders, which may be administered and enforced from time to time by the U.S. Government (including but not limited to the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), the U.S. Department of Commerce’s Bureau of Industry and Security, and the U.S. Department of State), as well as by any relevant sanctions or export control authority of a jurisdiction where the parties to this Agreement operate (collectively, “Trade Control Laws”). Lessee, its officers, directors, employees and any persons acting on its behalf (i) are not, and (ii) are not owned or controlled directly or indirectly by: (a) persons that are the target of any Trade Control Laws, including but not limited to persons that are identified on the OFAC Specially Designated Nationals and Blocked Persons List, persons meeting the definition of the Government of Venezuela, or (b) persons located, organized, or resident in Venezuela or in any country or region that is the target of any U.S. comprehensive sanctions (including currently Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the Donetsk People’s Republic, and the Luhansk People’s Republic together “Sanctioned Countries”). In the performance of this Agreement, Lessee shall not directly or indirectly export, re-export, transfer, or import commodities, software, technology, or services (i) to or from any person located in or acting on behalf of a person located in Venezuela or in any Sanctioned Country, or (ii) in any other manner that would result in a violation of any Trade Control Laws, including U.S. sanctions and export control laws, by any person. Lessee shall immediately notify Lessor in writing if subsequent developments cause the statements in this Section to be inaccurate or incomplete.

SECTION 29 – ANTI - BOYCOTT OF ENERGY COMPANIES VERIFICATION

By signing and entering into this Agreement, Lessor verifies, pursuant Chapter 2274 (as added by Senate Bill 13, 87th Legislature Regular Session) of the Texas Government Code, it is a Company that does not boycott energy companies and will not boycott energy companies during the term of this Agreement. For purposes of this paragraph, “boycott energy company” has the meaning assigned by Section 809.001, Texas Government Code. For purposes of this paragraph, “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

SECTION 30 - ANTI-DISCRIMINATION OF FIREARM ENTITY OR FIREARM TRADE ASSOCIATION VERIFICATION

By signing and entering into this Agreement, Lessor verifies, pursuant to Chapter 2274 (as added by Senate Bill 19, 87th Legislature Regular Session) of the Texas Government Code, that it is a Company that does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association. For purposes of this paragraph, “discriminate against a firearm entity or firearm trade association” has the meaning assigned by Section 2274.001(3), Texas Government Code. For purposes of this paragraph, “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit. The term does not include a sole proprietorship.

SECTION 31 – WAIVER OF CHAPTER 2272 CLAIMS PROCEDURES

The Parties mutually agree that Chapter 2272 of Subtitle F, Title 10, of the Texas Government Code (“Chapter 2272”), shall not apply to this Agreement, and waive any application of Chapter 2272 to this Agreement.

[Signatures follow]

EXECUTED this ____ day of _____, 2023.

AUC GROUP, LLC

Signature

Title

Print Name

CITY OF DRIPPING SPRINGS

Signature

Title

Print Name

Exhibit A
Leased Property

Wastewater treatment plant expansion to 125,000 gallons per day average daily flow constructed per AUC Standards.

1. (1) Aeration Basin
2. (1) Aeration/Digester Basin
3. (1) Clarifier
4. (1) CL2 Basin
5. (1) Manual Bar Screen
6. RAS, WAS, Scum, and Decant Air Lifts
7. (Lot) Air Diffuser Assemblies with Course Bubble Diffusers
8. (5) Positive Displacement Blowers with Combination Motor Starters
9. Flow Measuring System
10. (Lot) Access Bridges and Stairs
11. Interconnecting Piping
12. Coatings
13. Modifications to Existing Plant
14. Modifications to Existing Sodium Hypochlorite Chlorination System

Exhibit B

Scope of Work

1. Preparation of submittals.
2. Deliver, offload and set all equipment on accessible foundation(s). **Foundations to be provided by others.**
3. (1) 19'-6"Ø x 12'-2" tall Clarifier, with internals, access bridge, components, drive unit with torque monitoring device, and local control panel.
 - a. **Clarifier panel shipped loose for installation by others.**
 - b. Sand and grout.
4. (1) 24-ft x 12-ft x 12'-2" tall Aeration Basin. The tank will include:
 - a. (1) Partition wall along the length of the aeration basin to provide (2) aeration compartments.
 - b. (Lot) 2-inch AUC-SP2 diffusers with drop pipes and ball valves.
 - c. (2) 3-inch tank drain nozzles with gate valves.
5. (1) 52-ft x 12-ft x 12'-2" tall combination Aeration/Digester Basin. The tank will include:
 - a. (1) Partition wall between the aeration and digester compartments.
 - b. (Lot) 2-inch AUC-SP2 diffusers with drop pipes and ball valves.
 - c. (2) 3-inch tank drain nozzles with gate valves.
 - d. (1) 3-inch sludge draw-off with quick-disconnect.
 - e. (1) 3-inch adjustable decant arm airlift.
6. (1) 12-ft x 6-ft x 10'-2" tall Chlorine Contact Basin. Basin shall include baffle walls, v-notch weir, mixing device, diffuser drop assemblies, and drains with gate valves.
 - a. Effluent nozzle at wall. **Outfall piping from flange on the tank shall be by others.**
7. Above-ground, interconnecting valves, piping, fittings, and appurtenances, limited to aeration transfer lines, clarifier influent/mixed liquor piping, clarifier effluent line, airlift discharge lines, and air piping from blowers to Aeration, Digester, and C12 Basins.
 - a. (Lot) miscellaneous supply lines to air lifts.
 - b. Pipe supports as necessary. **Concrete pads/pedestals for pipe supports by others.**
 - c. **NPW piping, including hose bibbs to new plant shall be by others.**
8. Airlift Pumps, including RAS/WAS, scum, and decants.
9. (1) Manual bar screen and flow splitter box, with influent force main nozzle. **Force main piping to nozzle at box shall be by others.**
10. Modifications to existing sodium hypochlorite disinfection system, including (1) new metering pump and integration of new pump with existing system. One pump shall be dedicated to each C12 Basin with a common standby.
 - a. **Chlorine solution piping from building to injection point shall be by others.**
11. Flow measuring equipment, including flow meter, chart recorder, staff gauge and transducer.
 - a. Recalibration and re-ranging of the existing flow meter.
12. (5) Positive Displacement Blowers with blower accessories, including blower discharge header and valves, enclosures, and control panels.

- a. **Local blower panels to be shipped loose for installation by others.**
 - b. **Blower equipment pad foundation to be provided by others.**
13. (1) Access stairs with handrail and treads. **Concrete stair landing pad shall be provided by others.**
14. (Lot) Air bridges with grating, handrail, and kick plates.
15. (Lot) interconnecting access bridges with grating, handrail, and kick plates.
16. Modifications to existing plant, including:
 - a. Installation of aeration transfer line from new partitioned Aeration Basin to existing Aeration Basin.
 - b. Re-routing of existing 4" RAS line from existing plant to the new Aeration Basin.
 - c. Modifications to handrails of existing air bridge to accommodate interconnecting access bridge from new plant.
17. Coatings and corrosion protection of items furnished by AUC.
18. All fasteners for items provided by AUC.
19. Electrical service is assumed to be single-phase, 240V.
20. AUC will provide O & M manuals and start-up services for equipment provided.
21. Freight allowed to your accessible jobsite. All of the items will be offloaded by AUC.
22. Guarantee is two years from date of acceptance, not to exceed 30 months from date of shipment, and shall be limited to defects in materials and workmanship.

Exclusions:

1. All-weather access, including tree trimming, for delivery of all equipment and for the duration of the installation of the wastewater treatment plant.
2. All items not specifically listed above.
3. Any and all site work.
4. Permits, bonds, taxes or fees.
5. All tank foundations, including subgrade stabilization, fill, and sub-base for foundations.
6. All concrete pads for equipment, blowers, pipe supports, and stair landings.
7. Site leveling, grading, pavement and access, fencing, pipe bollards or any other site work not specifically identified in the scope.
8. Expansion and modifications to the effluent disposal system, including storage.
9. All electrical work, including installation of panels and wiring and conduit from to panels, devices, disconnects, and motors.
10. Emergency backup power, transformer, MCC, autodialer system, tank and area lighting, electrical service and any other electrical work not identified above.
11. Geotechnical report, soil borings, survey and site plan (to be furnished by Owner).
12. Water to fill and test the plant or seed sludge.
13. Any and all underground piping.
14. Yard piping, force main, potable water, NPW water lines, hose bibs, chlorine solution lines, drain lines, etc. unless specifically noted above.
15. Cold-weather protection, including insulation, heat tracing and/or aluminum jacketing.
16. Any other item not specifically described herein or in above scope of work.

OWNER AGREES TO PROVIDE STABLE ALL WEATHER ACCESS TO AN ACCESSIBLE WASTEWATER TREATMENT PLANT FOUNDATION FOR DELIVERY OF ALL EQUIPMENT AND BASINS, INCLUDING ACCESS FOR THE DURATION OF THE INSTALLATION OF THE WASTEWATER TREATMENT PLANT EQUIPMENT. OWNER SHALL PROVIDE A CLEAR, STABLE & LEVEL WORK AREA OF AT LEAST 25 FEET WIDE AROUND THE PERIPHERY OF THE WWTP FOUNDATION DURING THE INSTALLATION PROCESS. THE SITE AND ACCESS SHALL BE CAPABLE OF SUPPORTING A CRANE WITH LIFTING CAPACITY OF 100 TONS. ANY FILL OR GRADING NECESSARY TO ACCOMPLISH THIS IS THE RESPONSIBILITY OF THE OWNER.

Exhibit C

Monthly Payments

Lease payments shall be as follows:

- Initial term (Months 1 to 60): \$15,530.00 per month
- Renewal term: \$9,700.00 per month

First and last month's rent due upon Effective Date shall be \$31,060.00.

Exhibit D

Purchase Option

(1) 60 months after commencement of Lease Term	\$435,428.00
(2) 66 months after commencement of Lease Term	\$402,541.00
(3) 72 months after commencement of Lease Term	\$367,630.00
(4) 78 months after commencement of Lease Term	\$330,572.00
(5) 84 months after commencement of Lease Term	\$291,235.00
(6) 90 months after commencement of Lease Term	\$249,477.00
(7) 96 months after commencement of Lease Term or anytime thereafter	\$205,150.00

Exhibit E

Leased Property Design Criteria

Current design criteria set forth in Title 30, Chapter 217 of the Texas Administrative Code Commission on Environmental Quality ("TCEQ") for domestic sewage to produce an effluent of 10 mg/l BOD₅ and 15 mg/l TSS at 2-hour peak flow of 4Q.