

## **WASTEWATER UTILITY SERVICE AND FEE AGREEMENT**

This Wastewater Utility Service and Fee Agreement (“**Agreement**”) is between the City of Dripping Springs, a Type A General Law City located in Hays County, Texas (“**City**”), and DS Propco Owner, LP, a Delaware limited partnership, whose address is 1515 S. Capital of Texas Highway, Ste. 400, Austin, TX 78746 (“**Owner**”).

## RECITALS

- A. Owner is the owner of the majority of the platted lots in ROGER HANKS PARK, a subdivision in Hays County, Texas (the "Subdivision"), according to the map or plat thereof (the "Plat") recorded in Book 11, Page 324, Plat Records of Hays County, Texas (the "**Land**") as more particularly described on **Exhibit A**, which Land is located wholly within the City and in Hays County, Texas (the "**County**"); and
- B. Owner intends to develop the Land as a master-planned, residential rental community with improvements and infrastructure pursuant to a series of final plats and approved construction plan to be approved by the City (the "**Project**");
- C. No sewer collection treatment and disposal system presently exists to serve the Land;
- D. Owner desires to receive wastewater service for the Land through the System and to connect to the System through the City's West Interceptor wastewater collection line;
- E. Subject to the terms of this Agreement, the City will allow Owner to receive wastewater service for the Land through the System and to connect to the System through the City's West Interceptor wastewater collection line that is yet to be constructed;
- F. This Agreement is necessary to protect the health, safety, and general welfare of the community, to limit the harmful effects of substandard subdivisions.

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

## ARTICLE I DEFINITIONS

- 1.1 Agreement.** This agreement between City and Owner, including all Exhibits, which are incorporated herein for all intents and purposes.
- 1.2 Chapter 395:** Chapter 395 of the Texas Local Government Code, as such may be amended from time to time.
- 1.3 City.** The City of Dripping Springs, an incorporated Type A, general law municipality located in Hays County, Texas.
- 1.4 City Engineer:** The person or firm designated by the City Council as the wastewater engineer for the City.
- 1.5 City Utility Standards.** City standards for design, location, construction, installation and operation of water, wastewater and drainage utility infrastructure, as of the date of this Agreement, and expressly including the following chapters of the City's Code of Ordinances and all related regulations and permits:

- (a) Utilities (Chapter 20)
- (b) Development and Water Quality Protection (Chapter 22)
- (c) Building Regulations (Chapter 24)
- (d) Subdivision and Site Development (Chapter 28)

**1.6 Connection Point.** The location where the Offsite Facilities connect to the System as shown on the attached **Exhibit C**.

**1.7 Construction Notice.** The Notice provided by the City to Owner that the City's contractor has been provided with a notice to proceed with the construction of the Discharge Permit facilities.

**1.8 Contractor.** A person or entity engaged by Owner to design, construct, install, alter or repair infrastructure required to serve the Land, whether located on or outside the Land, as further described in **§4.3**.

**1.9 Development.** The development on the Land, consisting of improvements and infrastructure to be constructed in accordance with the final plat and approved construction plan.

**1.10 Discharge Permit.** The Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014488003. Notwithstanding such authorization, it is City's goal to beneficially reuse all of the treated effluent that is authorized to be discharged by the Discharge Permit.

**1.11 West Interceptor Line.** The west interceptor wastewater collection line to be constructed to carry sewage to the WWTP from a point north of Highway 290. The West Interceptor Line has not yet been constructed and therefore the alignment has not yet been determined by the City.

**1.12 Effective Date.** The date set forth as the Effective Date in **§ 8.13** below.

**1.13 Impact Fees.** Impact Fees adopted by City pursuant to Chapter 395 of the Texas Local Government Code and City Ordinance.

**1.14 Land.** Those certain platted lots located in the ROGER HANKS PARK, a subdivision in Hays County, Texas (the "Subdivision"), according to the map or plat thereof (the "Plat") recorded in Book 11, Page 324, Plat Records of Hays County, Texas, as more particularly described in **Exhibit A**.

**1.15 LUE.** Living Unit Equivalent of sewer usage, as established from time to time by City Ordinance.

**1.16 Notice.** Notice as defined in **§ 8.2** of this Agreement.

**1.17 Owner.** DS Propco Owner LP, a Delaware Limited Partnership.

**1.18 Onsite Facilities.** All wastewater facilities, equipment or related improvements necessary to serve the Land between the structures on the Land (including collection systems and lift stations).

**1.19 Offsite Facilities.** All wastewater facilities, equipment or related improvements necessary to serve the Land and not located on the Land and being located between the Onsite Facilities and the Connection Point, as shown on **Exhibit C** attached hereto. Offsite Facilities include a trunk line that extends from the Connection Point to the northwest corner of Roger Hanks and Lake Lucy Loop sufficient to handle \_\_ LUEs.

**1.19 Package Plant.** The temporary wastewater treatment facility operated and maintained by City that will provide wastewater treatment services to the Development until the Discharge Permit is issued and the System facilities are sufficient to accept the wastewater from the Land.

**1.21 Party.** Individually, City or Owner and any successors and assigns, as permitted by this Agreement.

**1.22 Pump & Haul Facilities.** Facilities located on the Land for the removal or treatment of sewage from the Land through pump and haul and related infrastructure.

**1.23 South Regional Wastewater Treatment Plant.** The wastewater treatment facility that is currently authorized by TCEQ Permit No. WQ0014488001 and that is located approximately 0.55 mile east of the intersection of Ranch Road 12 and Farm-to-Market Road 150, as measured along Farm-to-Market Road 150, and from that point, approximately 1,110 feet south of Farm-to-Market Road 150.

**1.24 System.** City's South Regional Wastewater Treatment System, including City's WWTP and all of City-owned collection facilities transporting wastewater to that plant, including the West Interceptor Line.

**1.25 TCEQ.** Texas Commission on Environmental Quality, or its successor agencies.

**1.26 TLAP Permit.** A Texas Land Application Permit as authorized by TCEQ.

**1.27 Trunk Line.** The Offsite facility capable of transporting wastewater from the Onsite Facilities to the Connection Point that is to be funded and built by Owner and transferred to City.

**1.28 Unit.** A residential dwelling located on the Land that will be assigned a wastewater LUE by City.

**1.29 WWTP.** The City's wastewater treatment plant that operates either pursuant to TCEQ Permit No. WQ0014488001 or the Discharge Permit.

## **ARTICLE II SERVICE TO THE DEVELOPMENT**

**2.1 City Wastewater Service.** Notwithstanding anything contained in this Agreement to the contrary, City will be the exclusive provider of wastewater collection and treatment service to the Development through the System or the Package Plant in an amount up to 244 residential LUEs and 30 commercial LUEs. City will make this retail wastewater service available to the Land pursuant to this Agreement upon (a) Owner's successful construction of Temporary Facilities as described in section 3.3 of this Agreement, or (b) Owner's construction and connection of the Onsite Facilities to the System and City's successful constructing and operation both the West Interceptor and the WWTP authorized by the Discharge Permit. Additional LUEs will not be made available to the Land except as may be agreed in writing by City from time to time. Pump and Haul sewage activities or facilities are not authorized from the Land.

**2.2 Commercial Development.** Owner contemplates future commercial development on the Land. The proposed amenity center facilities, however, shall not be considered "commercial development" and all LUEs applicable to the amenity center facilities are considered to be residential LUEs. Any lift stations contemplated by the Agreement shall be solely for residential purposes. Should a lift station be needed to serve the commercial development, an infrastructure agreement must be negotiated with the City for such lift station.

**2.3 Final Plat and Approved Construction Plan.** Nothing in this Agreement approves Owner's application for the preliminary or final plats and approved construction plans for the Land, which remains subject to approval under City ordinances and regulations governing such approvals.

### **ARTICLE III**

#### **WASTEWATER SERVICE; FACILITIES CONSTRUCTION AND OPERATION**

##### **3.1 Service.**

a. **Discharge Permit.** City has received the Discharge Permit, but due to legal proceedings, the City is unable to employ the Discharge Permit at this time. The City is pursuing the acquisition of the necessary easements that will allow the construction of the West Interceptor Line and proposed new wastewater treatment plant (TCEQ Permit No. WQ0014488003) expansion that will allow sewage from the Land to be permanently transported through the Offsite Facilities to the West Interceptor Line and ultimately to be treated at City's proposed new wastewater treatment plant facility, as modified in accordance with the Discharge Permit. City pays all costs associated with the Discharge Permit including engineering and legal. City will construct, at its sole cost, the West Interceptor Line. Once the legal proceedings are resolved to allow the Discharge Permit to take effect, and the City has completed construction of the improvements to the System sufficient to accept the wastewater from the Land (including the West Interceptor Line and new wastewater treatment plant facility), City will permanently provide wastewater service from the Development to the System to allow the wastewater from the Land to be treated at the City WWTP. The City will provide Owner with the Construction Notice when the City's contractor has been provided with a notice to proceed with the construction of the Discharge Permit facilities.

**3.2 West Interceptor Line.** For the Development to connect to the System, the West Interceptor Line will need to be designed and constructed. City shall design and construct the West Interceptor Line at its sole cost and expense.

**3.3 Temporary Wastewater Service of the Land.**

a. Because of the uncertainties associated with the construction and operation of the WWTP pursuant to the Discharge Permit, in the event the City is not able to provide service pursuant to Section 3.1 of this Agreement when Owner desires such service, Owner may apply for a TLAP Permit and construct a temporary wastewater treatment plant on the commercial portion of the Land (“Package Plant”) and associated irrigation fields authorized by such TLAP Permit (“TLAP Fields”) (hereafter the Package Plant and the TLAP Fields are jointly referred to as “Temporary Facilities”, but the internal collection system and any lift stations are not considered part of the “Temporary Facilities”). The application for the TLAP Permit must be provided to and approved by the City prior to submission to TCEQ. Subject to §3.3.b. below, City will provide wastewater treatment service for the Land utilizing the Temporary Facilities and City will charge a rate sufficient to recoup the costs of the operation and maintenance of the Temporary Facilities (including the cost of lease payments for the Package Plant, if any) and City’s administrative costs. All Temporary Facilities and easements necessary for connection to the Temporary Facilities shall be constructed or provided by Owner at no cost to City.

b. Prior to obtaining a building permit for any structure that will use an LUE, either one of the following must have occurred: (1) Owner shall have obtained the TLAP Permit from TCEQ, or (2) the City must have issued the Construction Notice. Prior to obtaining a certificate of occupancy for any Unit that will use an LUE, (1) Owner shall have constructed the Temporary Facilities and they must be ready for connection, or (2) the WWTP authorized by the Discharge Permit must be constructed and ready to receive wastewater and the connection to the West Interceptor must be complete. In other words, a viable connection to wastewater facilities must be in-place prior to the issuance of any certificates of occupancy. If Temporary Facilities are constructed, upon completion of the Package Plant, all flows shall be directed to and treated by the Package Plant until such time as the flows may be diverted to the System authorized by the Discharge Permit.

c. Within 180 days of Owner’s submittal of the TLAP permit to TCEQ, Owner will deliver to City its design calculations and construction documents of the Package Plant and the specifications of the Package Plant. City shall deliver its comments on the design and specifications within 60 days after receipt of same and Owner shall implement all reasonable City comments.

d. Once City and Owner agree on the specifications for the Package Plant, Owner shall be responsible for the following (at no cost to City):

- (i) The costs and construction of the collection system (which includes any necessary lift stations) from individual units or properties on the Land to a central location for treatment or removal.

- (ii) The funding and the mobilization of the Package Plant and related infrastructure for the proper operation of the Package Plant, including irrigation lines thereto and reuse storage tanks as each phase is needed. The term “mobilization” in this sub-paragraph shall mean the delivery of the Package Plant to the Land, its proper set up on the Land and such other work as may be required to make the Package Plant operational, including, but not limited to the phases of the irrigation lines thereto and the reuse storage tanks. Owner may mobilize the Package Plant and construct the irrigation lines thereto and place the necessary reuse storage tank(s) after either (A) the approval of the specifications of the Package Plant by City and execution of a construction contract for the irrigation lines, or (B) the approval of the TLAP Permit by TCEQ. All such out of pocket costs for the mobilization of the Package Plant and related infrastructure paid by Owner and shall not be reimbursed by City.
- (iii) Providing the necessary easements and land (reasonably acceptable to City) needed for siting, construction and operation of all Onsite Facilities and Temporary Facilities necessary for the operation of the Package Plant.

After construction of the Temporary Facilities and the facilities described in **§3.3 d. (ii)** above (including the Package Plant), upon acceptance of same by City, all Temporary Facilities and easements shall be turned over to the City for operational purposes, and City will be solely responsible for the cost, operation, maintenance and repair of the Temporary Facilities; provided, however, City and Owner acknowledge that the some of the easements associated with the Temporary Facilities are temporary and shall be terminated and released, where appropriate, upon the permanent connection to the System. Nothing in this paragraph should be construed as requiring or allowing the Owner to turn-over onsite collection system facilities (including any lift stations) to the City. Owner shall be responsible for the cost of and the operation and maintenance of the collection system (and any lift stations).

e. Owner shall notify City in writing immediately upon receiving a permit from TCEQ that authorizes the use of a Package Plant on the Land. If the Package Plant is leased, no lease shall be executed by Owner or its affiliates without prior City approval. Furthermore, after construction or installation of the Package Plant, and upon acceptance of same by City, the Package Plant shall be turned over to the City and City will be solely responsible for the cost, rent (if applicable), operation, maintenance, and repair of the Package Plant and reuse storage tanks. City will bill retail customers and retain all monies collected from retail customers.

f. Owner, or its assigns, will remain responsible to mow (and conduct surface maintenance of) the TLAP Fields in accordance with the permit issued for the Package Plant as long as the Package Plant is in service. Owner shall also be responsible for for the cost of and the operation and maintenance of the collection system (and any lift stations).

**3.4 Termination of Package Plant.** As soon as the West Interceptor Line and the wastewater plant authorized by the Discharge Permit (“Discharge Permit WWTP”) is

complete and City is authorized to and physically able to receive wastewater from the Development, City will notify Owner and Owner will begin, with deliberate speed, the cessation of the use of the Package Plant in favor of the System. Except for facilities needed to utilize the System, all the Temporary Facilities associated with the Package Plant and the TLAP Fields shall be removed at Owner's sole expense (other than reuse facilities) in accordance with 30 Tex. Admin. Code § 222.163 requirements and as approved by the City. If the Package Plant was purchased by Owner, the Package Plant will be returned to Owner. After termination of the Temporary Facilities, the collection system and lift stations shall remain property of Owner and Owner shall remain responsible for all costs associated with the collection system and lift stations.

#### **ARTICLE IV INFRASTRUCTURE CONSTRUCTION, CONNECTION AND DEDICATION**

**4.1 Construction Standards.** Owner shall construct all Onsite Facilities in compliance with (a) this **Article 4**; (b) the City Utility Standards; and (c) the rules and regulations of the Texas Commission on Environmental Quality, or its successor agencies.

**4.2 Construction in Phases.** The Onsite Facilities may be constructed in separate phases, and as such, the requirements in this Agreement apply separately to each phase.

**4.3 Onsite Facilities.** Owner is required to fund, construct and install the Onsite Facilities within the Development at Owner's sole cost. Onsite Facilities will remain the property of the Owner and shall not be conveyed or dedicated to the City and Owner will be responsible for operation and maintenance of all Onsite Facilities. Offsite Facilities.

**4.4 Offsite Facilities.** Owner is required to construct and install all Offsite Facilities at its cost. Owner agrees that Offsite Facilities includes a trunk line from the Connection Point to the northwest corner of Roger Hanks and Lake Lucy Loop sufficient to handle \_\_\_ LUEs. Owner agrees to complete the Offsite Facilities within 2 years after the City's Construction Notice is given to Owner, subject to Owner obtaining all necessary offsite easements and right-of way for which Owner shall use all reasonable efforts to obtain. Owner and City agree only 274 LUEs are needed to serve the Land. Therefore, The City shall require any entity or person that is not the Owner that connects to or utilizes any Offsite Facility that is contemplated by this Agreement and for which reimbursement is available pursuant to Article 20.05 (Wastewater Line Extension) of the City's Wastewater Ordinance, to pay their reasonable pro-rata share of the Owner's costs incurred for providing capacity greater than that needed by the Owner (hereafter "Reimbursement Costs"), and the City agrees to reimburse the Owner by paying the Owner those prorated amounts collected from such persons. The pro-rata share to be attributable to Reimbursement Costs shall be determined by the City Engineer based on wastewater engineering factors, the City will adopt an ordinance establishing the charge for the line extension as provided by the Wastewater Ordinance, and the Owner's Reimbursement Costs shall be calculated and paid as provided in Chapter 20, Article 20.05 (Wastewater

Line Extension) of the City's Wastewater Ordinance. All facilities located in the areas dedicated to the City are deemed to be Offsite Facilities.

**4.5 Construction Warranty and Guarantee.** Any facilities to be dedicated to City shall have a contract warranty with a guarantee of 2 years, enforceable by City as both Owner's assignee and as a third-party beneficiary. In addition, Owner's contract(s) with its Contractor for the construction of any facilities to be dedicated to City (including the Offsite Facilities) shall: (i) state that the "OWNER" includes Owner and its permitted assigns, including City, and (ii) include the following provision:

"Immediately before the expiration of the two-year guarantee period, the CONTRACTOR shall make an inspection of the Work in the company of the Engineer and Owner. The Engineer and Owner shall be given not less than 20 days' notice prior to the anticipated date of Guarantee expiration and the inspection. Failure to comply with these requirements within the guarantee period shall extend the guarantee period until 20-days after the inspection is completed.

During the guarantee period, where any portion of the Work is found to be defective and requires replacement, repair or adjustment (whether as a result of the foregoing inspection or otherwise), the CONTRACTOR shall immediately provide materials and labor necessary to remedy such defective work and shall prosecute such work without delay until completed to the satisfaction of the Engineer and Owner, even though the date of completion of the corrective work may extend beyond the expiration date of the guarantee period.

The CONTRACTOR shall not be responsible for correction of work which has been damaged because of neglect or abuse."

Owner shall provide a copy of the contract to City upon execution, assign the contract to City and shall immediately advise City of any notice it receives under this provision, and send City a copy of the notice as provided in this Agreement.

**4.6 Construction Plan Review and Approval.** City has the right to review and approve all plans and specifications for the Onsite Facilities and to charge applicable City review and approval fees. Owner shall cause to be filed a copy of each set of approved plans and specifications and a copy of all inspection certificates for the Facilities with City for review and approval. Construction of the Onsite Facilities shall not begin until the plans and specifications have been reviewed and accepted by City for compliance with the construction standards required by this Agreement, a pre-construction conference has been held by Owner's contractor(s) and the City Engineer, and the applicable City fees have been paid. City agrees to provide comments to plans and specifications within twenty (20) days of receipt.

**4.7 City Inspections.** City has the right, but not the obligation, to inspect and test at any time (including during construction and before beginning operation), and the right to

participate in a final inspection of, all Onsite Facilities, including any connections to onsite structures and to City's System. In addition, Owner or its Contractor shall notify City when the Onsite Facilities are ready for final inspection and connection to City's System. If City concurs that construction of the Onsite Facilities is substantially complete, then City will schedule a final inspection by City within seven (7) days. After such final inspection, Owner shall timely correct any punch list items.

**4.8 Review and Inspection Fees.** With respect to wastewater improvements to or for the Land, Owner shall pay City all of the City Engineer's fees (plus a 20% administrative fee mark-up) for City Engineer review of plans or specifications, and for City Engineer inspections and consultation during the construction phase(s) and final inspections. Such payment is due within 60 days of receipt from the City of its invoice.

**4.9 City Acceptance of Offsite Facilities.** After completion of the Onsite and Offsite Facilities in accordance with the construction standards of this Agreement, the City's final inspection, and the Owner's completion of any punch list items to the City's satisfaction, the Owner will dedicate and the City agrees to accept the Offsite Facilities for dedication to the City's System.

**4.10 Conveyance of Offsite Facilities.** Within sixty (60) days after the City's acceptance of the Offsite Facilities under § 4.9, the Owner shall convey them to the City as follows. Owner shall execute and deliver to the City properly executed bills of sale, assignments, or other instruments of transfer that are reasonably necessary to convey the Offsite Facilities as well as:

- (a) all warranties secured for their construction;
- (b) all bonds, warranties, guarantees, and other assurances of performance;
- (c) all record drawings, easements and project manuals and all other documentation related to the Offsite Facilities; and
- (d) all easements required by this Agreement.

Owner is responsible for removing any lien or any other encumbrance from any real or personal property to be transferred to the City. Upon transfer, the Offsite Facilities shall become part of the City's System.

**4.11 Connection to the System.** After the permanent connection to the System, Owner shall connect all wastewater flows up to 244 residential LUEs and 30 Commercial LUEs from the Land to the System in compliance with the City's Wastewater Ordinance.

**4.12 Delivery of Drawings.** Upon completion of the Onsite Facilities and Offsite Facilities, the Developer shall provide to the City: (i) three sets of record drawings of the as-built plans, including complete and accurate locations of all Onsite Facilities (ii) autocad plans; (iii) GPS files noting location of the Onsite Facilities and Offsite Facilities; and (iv) certifications sealed by a registered professional engineer stating that the Onsite Facilities and Offsite Facilities are fully completed in substantial compliance

with the Plans and Specifications approved by the City and in accordance with the as-built plans.

## **ARTICLE V FEES AND CHARGES**

**5.1 Impact Fees.** The payment for the Impact Fees for each LUE will be due upon the later of (i) completion of the West Interceptor Line and the wastewater plant authorized by the Discharge Permit and same are ready and able to receive and treat wastewater from the Project or (ii) the issuance of a certificate of occupancy for such Unit. The Impact Fee for each LUE for this Development is agreed to be and shall be set at \$7,580.00 per LUE. Connection of any structure on the Land to the System is prohibited until Owner pays the Impact Fees as required herein. This Agreement is an agreement providing for the time and method of payment of the Impact Fees and an Owner's voluntary request for reservation of capacity pursuant to Chapter 395. Owner is not entitled to any reimbursement of Impact Fees.

**5.2 Delayed Connection Fees.** Two years after receiving the Construction Notice, Owner shall begin paying to the City a Delayed Connection Fee of \$50/month for each LUE reserved pursuant to this agreement to reserve capacity in the System until the Impact Fee for that LUE is paid.

**5.3 Beneficial Reuse Infrastructure.** Rather than provide beneficial reuse infrastructure on the Land, Owner shall pay \$1,675.00 per LUE for each lot within a final plat approved by City. Such payment is to be used by City in funding beneficial reuse infrastructure at another location. This payment shall be due within sixty (60) days after the recording of each final plat of the Project. City stipulates and confirms that the payment made by Owner pursuant to this paragraph constitutes complete compliance with Chapter 22, Article 22.06.007 of the City's Code of Ordinances.

**5.4 Line Extension Charges.** In addition to Impact Fees, Owner agrees to pay the line extension charges for the West Interceptor when they are adopted in substantial compliance with the Wastewater Line Extension Ordinance of the City's Code of Ordinances. Additionally, City agrees to pay to Owner the line extension charges it receives for the users that are required to pay their respective portion of the sewer lines constructed by Owner.

## **ARTICLE VI EASEMENTS**

**6.1 Onsite Facility Easements.** Owner shall retain all easements for Onsite Facilities.

**6.2 Offsite Facilities Easements.** Acquisition of rights-of-way easements necessary for Offsite Facilities is primarily the responsibility of Owner at no cost to City, but if needed, City may, in its sole discretion, elect to employ its statutory authority to acquire the rights-of-way. If City has existing easements that can be used for Offsite Facilities, City shall allow

their use at no expense to Owner. All Offsite Facility easements shall be conveyed or retained by City. City shall maintain all acquired easements at City's sole cost. Owner will reimburse City for all reasonable costs of acquisition of easements.

**6.3 Easements from Owner.** Owner shall provide to City a non-exclusive easement or easements, if necessary, to access the Proposed Development's private roadways to access Onsite Facilities, Offsite Facilities, and wastewater facilities. Prior to execution of any such easement, Owner agrees that City shall have a reasonable right of access to any roadway or designated trail on the Land for ingress or egress to Onsite Facilities, Offsite Facilities, and wastewater facilities.

## **ARTICLE VII TERM AND TERMINATION**

**7.1 Term.** This Agreement remains in effect so long as City is providing wastewater service to the Development, unless otherwise expired or terminated under this Article VII or otherwise rendered null and void by the terms of this Agreement.

**7.2 Termination for Breach.**

- (a) If Owner breaches this Agreement, then City may send a notice of default to Owner. The notice must include a reasonable description of the breach. If Owner fails to cure the breach within 60 days of that notice (including payment of all past-due amounts), then City may send a second notice describing the breach and Owner's failure to cure. Owner's failure to cure the breach within 30 days after the second notice gives City the right to terminate this Agreement by sending a termination notice to Owner. The effective date of the termination will be the date the notice is sent and, as of that date, City will be released from all obligations under this Agreement, and Owner will not receive any refunds of amounts already paid to City under this Agreement. Owner expressly agrees that its forfeiture of such amounts, to be retained by City upon termination under this § 7.2(a), is a reasonable amount of liquidated damages to City for such breach of this Agreement, in addition to actual damages, if any, should Owner improperly connect to or tamper with City's System during construction.
- (b) If City breaches this Agreement, Owner may send a notice of default to City. The notice must include a reasonable description of the breach. If City fails to cure the breach within 60 days of that notice, then Owner may send a second notice describing the breach and City's failure to cure. If City's breach is a failure to commence wastewater service to the Development as provided in **§2.1 or §2.2**, and if Owner is not in breach of this Agreement, then City's failure to cure the breach within 30 days after the second notice gives Owner the right to:

- (1) demand City's specific performance, subject to the other terms of this Agreement including Force Majeure or the City's inability to utilize the Discharge Permit because of legal proceedings; or
- (2) terminate this Agreement by sending a termination notice to City and, upon such notice and termination, to receive a refund (without interest) of all Impact Fees and Delayed Connection Fees paid to City under this Agreement. The effective date of the termination will be the date the notice is sent and, as of that date, City will be released from all obligations under this Agreement except its refund obligation under this §7.2(b)(2).

**7.3 Termination for Non-use.** If Owner does not connect the Land to the System within five years after the West Interceptor Line and the wastewater plant authorized by the Discharge Permit are ready and able to receive and treat wastewater from the Development, then the LUEs committed by the City by this agreement are released, and the City will be under no further obligation to serve the Land and this Agreement shall terminate. If this Agreement terminates pursuant to the provision, no monies paid to the City prior to the termination shall be refunded.

## **ARTICLE VIII MISCELLANEOUS**

**8.1 Governing Law, Jurisdiction and Venue.** This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of Hays County, and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

**8.2 Notice.** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To City:

City of Dripping Springs, Texas  
Attn: City Secretary  
P. O. Box 384, Dripping Springs, Texas 78620  
FAX: (512) 858-5646

City of Dripping Springs, Texas  
Attn: City Administrator  
P. O. Box 384  
Dripping Springs, Texas 78620  
FAX: (512) 858-5646

To Owner:

DS Propco Owner LP  
1515 S. Capital of Texas Highway, Ste. 400  
Austin, TX 78746  
Attn: Isaac Karpay  
Tel: 813 785-7964

With copy to:  
Baker & Robertson  
171 Benney Lane, Bldg II  
Dripping Springs, Texas 78620  
Attn: Rex G. Baker, III  
Tel: 512 894-0890

**8.3 Assignment.** Owner may assign this Agreement to another owner of the Land without the consent of City provided the assignee agrees to be bound by the obligations contained herein. This Agreement is binding on Owners' successors and assigns, including future owners of any land or structures within the Development.

**8.4 Amendment.** This Agreement may be amended only with the written consent of Owner and approval of the governing body of City.

**8.5 No Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by a writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

**8.6 Severability.** 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, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.

**8.7 Captions.** Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the agreement.

**8.8 Interpretation.** The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “include” or “including” means to include “without limitation.” Any provision of this Agreement that provides for the agreement or approval of City staff or City Council, such agreement or approval may be withheld or conditioned by the staff or City Council in its sole discretion.

**8.9 Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**8.10 Force Majeure.** If any Party is delayed in meeting, or fails to meet, a deadline required by this Agreement (other than a deadline to pay money due and payable hereunder), and such delay or failure is due to causes beyond that Party's reasonable control, including, without limitation, failure of suppliers, contractors, subcontractors and carriers, then the dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused, provided that the Party experiencing the failure or delay gives the other Party reasonably prompt Notice specifically describing the cause relied upon.

**8.11 Professional Fees.** Owner agrees to place funds into City’s escrow account, as necessary from time to time, to pay City’s reasonably necessary engineering and legal fees incurred to prepare, negotiate, implement, interpret, or amend this Agreement. City is entitled to reimbursement of such fees plus a 20% administrative charge.

**8.12 Incorporation of Exhibits by Reference.** All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

- |           |                               |
|-----------|-------------------------------|
| Exhibit A | Map of the Land               |
| Exhibit B | Legal Description of the Land |
| Exhibit C | Map of Connection Point       |
| Exhibit D | Form of Easement              |

**8.13 Effective Date.** Effective Date. The Effective Date of this Agreement is July 19, 2022.

**[signatures on following pages]**

**CITY OF DRIPPING SPRINGS, TEXAS**

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_  
City Secretary

By: \_\_\_\_\_  
Bill Foulds, Mayor

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

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on \_\_\_\_\_, 2022 by Bill Foulds, Mayor of the City of Dripping Springs, Texas general laws municipality, on behalf of said municipality.

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

My Commission Expires: \_\_\_\_\_.

**OWNER**

DS Propco Owner LP  
a Delaware limited partnership  
by its general partner:  
DS Propco GP, LLC  
A Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was executed before me on \_\_\_\_\_, 2022 by  
\_\_\_\_\_, \_\_\_\_\_ of DS Propco GP, LLC, a Delaware limited  
liability company, which is the general partner of DS Propco Owner LP, a Delaware  
limited partnership, on behalf of said limited partnership.

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

My Commission Expires: \_\_\_\_\_.