

**THIRD AMENDMENT TO AGREEMENT CONCERNING CREATION AND  
OPERATION OF HEADWATERS MUNICIPAL UTILITY DISTRICT**

THIS THIRD AMENDMENT TO AGREEMENT CONCERNING CREATION AND OPERATION OF HEADWATERS MUNICIPAL UTILITY DISTRICT ("*Third Amendment*") is made and entered into by and among: (i) the City of Dripping Springs, Texas (the "*City*"), (ii) WFC Headwaters Owner VII, L.P., a Delaware limited partnership ("*WFC*"), (iii) Rathgeber Investment Company, Ltd. ("*Rathgeber*"), (iv) Oryx Development, LLC, a Texas limited liability company ("*Oryx*"), successor in interest to E.E. Townes Family Trust (the "*Trust*") and (v) Headwaters Municipal Utility District, a municipal utility district organized and operating in Hays County, Texas pursuant to Chapters 49 and 54 of the Texas Water Code (the "*District*"). The City, WFC, Rathgeber, Oryx and the District are hereinafter sometimes collectively referred to as the "*Parties*" and singularly as a "*Party*".

**RECITALS:**

A. Effective February 8, 2005, the City, the Trust, Headwaters Development Company, a Texas corporation ("*Headwaters DevCo*"), and the District entered into that certain "Agreement Concerning Creation and Operation of Headwaters Municipal Utility District" (the "*Creation Agreement*"), Trust and Headwaters DevCo being then owners of land in the District.

B. Effective June 10, 2008, the City, the Trust, Headwaters DevCo and the District entered into that certain "First Amendment to Agreement Concerning Creation and Operation of Headwaters Municipal Utility District" (the "*First Amendment*").

C. In connection with the prior sale and conveyance of certain lands in the District being developed for single family residential purposes, Headwaters DevCo previously assigned its rights and obligations under the Creation Agreement to Rathgeber Investment Company, Ltd. ("*RIC*"); RIC then assigned its rights and interests under the Creation Agreement to HABC, Ltd. ("*HABC*"); HABC assigned its rights and interests under the Agreement to Robert Pittenger Company, Inc. ("*Pittenger*"); Pittenger assigned its rights and interests under the Creation Agreement to Austin-Highway 290 LLC ("*Austin-Highway 290*"); and Austin-Highway 290 assigned its rights and interests under the Creation Agreement to WFC.

D. Effective July 28, 2015, the City, Trust, Rathgeber, WFC and the District entered into that certain "Second Amendment to Agreement Concerning Creation and Operation of Headwaters Municipal Utility District" (the "*Second Amendment*"). The Creation Agreement, as amended by the First Amendment and Second Amendment, is hereinafter referred to as the "*Agreement*."

E. In connection with the prior sale and conveyance of certain lands in the District being developed for mixed use purposes, the Trust previously assigned its rights and obligations under the Agreement to Oryx.

F. The Parties desire to amend certain terms of the Agreement relating to the District's authority to issue bonds.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of their mutual covenants and agreements, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **District Bonds.** The Parties agree that Article III, Section C, of the Agreement is hereby amended to read in its entirety as follows:

“C. The District agrees that it shall issue bonds only in the maximum amount of \$119,245,000 for the purpose of: (i) providing for construction or acquisition of water, sanitary sewer, fire protection or drainage facilities, or contract rights therefor; (ii) the purposes set out in Article III (the “Facilities”); (iii) for the payment of creation, organization, and other costs and expenses reimbursable under the rules of TCEQ, and in the manner provided by the Commission and as permitted herein; and (iv) to finance costs relating to road projects through powers secured by the District under Section 52, Article III, Texas Constitution. The District shall submit to the City Administrator for City staff review a copy of the bond application, including the engineering report, at the time the District submits the same to the Commission for any bonds subject to review and approval by the Commission. All bonds of the District shall be approved by the City Council of the City prior to issuance. Review for such approval shall be performed by the City in a timely manner so as not to delay the TCEQ’s schedule for approval of the District’s bonds (if applicable). In addition, such approval shall not be unreasonably withheld or delayed and may be withheld only if either of the Landowners or the District is in material breach of this Agreement or the Development Agreement. Issuance of bonds is also contingent upon fees in escrow accounts being current. The City and Landowners agree that the provisions of this paragraph relate only to bonds payable from ad valorem taxes levied upon all taxable property within the District and shall not apply to bonds issued by the District to pay for improvements, facilities, or services that primarily benefit a defined area of the District and that do not generally and directly benefit the District as a whole (the “*Defined Area Bonds*”). The terms and conditions applicable to the issuance of any Defined Area Bonds by the District shall be set forth in a separate written agreement between the District, the City and one or more of the Landowners.

2. **Capitalized Terms.** Except as otherwise defined herein, all capitalized terms shall have the meanings set forth in the Agreement.
3. **Effect on Agreement.** Except as specifically modified by this Third Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Third Amendment in multiple copies, each of which will be deemed to be an original and of equal force and effect, to be effective as of the Effective Date.


**WFC:**

WFC Headwaters Owner VII, L.P.,  
a Delaware limited partnership

By: WFC Headwaters GP VII, L.L.C.,  
a Delaware limited liability company,  
its General Partner

By: WFC Headwaters Holdings JV VII, L.L.C.,  
a Delaware limited liability company,  
its Sole Member

By: FCA Austin, LLC,  
a Delaware limited liability company,  
its Administrative Member

By:   
Name: Jesse R. Baker  
Title: Authorized Signatory

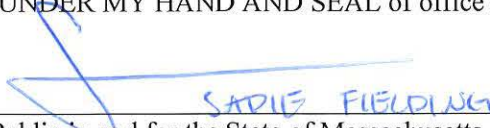
COMMONWEALTH OF MASSACHUSETTS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF SUFFOLK

Before me, the undersigned authority, on this day personally appeared Jesse R. Baker, known to me to be the Authorized Signatory of FCA Austin, LLC, Administrative Member of WFC Headwaters Holdings JV VII, L.L.C., Sole Member of WFC Headwaters GP VII, L.L.C., General Partners of WFC Headwaters Owner VII, L.P. on behalf of said limited partnership and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 21<sup>st</sup> day of May, 2020.

  
Notary Public in and for the State of Massachusetts  
My Commission expires on: 6/12/26



CITY:

CITY OF DRIPPING SPRINGS



*Bill Foulds Jr*

Bill Foulds, Jr., Mayor

ATTEST:

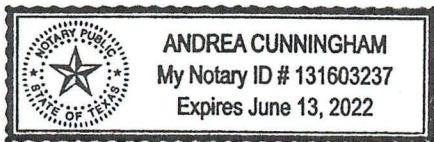
*Andrea Cunningham*  
Andrea Cunningham, City Secretary

STATE OF TEXAS

§  
§  
§

COUNTY OF HAYS

This instrument was acknowledged before me on May 19, 2020, by Bill Foulds, Jr., Mayor of the City of Dripping Springs, Texas, a Texas municipality, on behalf of said municipality.



*Andrea Cunningham*  
Notary Public, State of Texas  
Printed Name: Andrea Cunningham  
My Commission Expires: 6/13/2020

[SEAL]

**DISTRICT:**

HEADWATERS MUNICIPAL UTILITY DISTRICT OF HAYS  
COUNTY:

By: Harvey Zinn, Jr. President  
Name: Harvey Zinn, Jr.  
Title: President

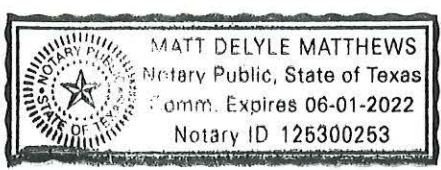
ATTEST [Signature]  
Secretary, Board of Directors

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 24<sup>th</sup> day of may, 2019, by HARVEY ZINN, JR., PRESIDENT of Headwaters Municipal Utility District of Hays County, a conservation and reclamation district of the State of Texas, on behalf of said conservation and reclamation district.

[Signature]  
Notary Public, State of Texas  
Printed Name: MATT D. MATTHEWS  
My Commission Expires: 6.1.2022

[SEAL]



**RATHGEBER:**

RATHGEBER INVESTMENT COMPANY, LTD., a  
Texas limited partnership

By: Rathgeber Investment G.P., Inc.,  
a Texas corporation, its general partner

By: *Edward R. Rathgeber*  
Edward R. Rathgeber, President

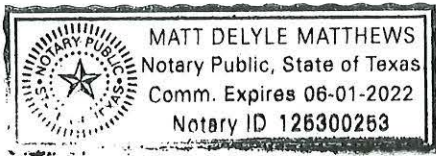
STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

This instrument was acknowledged before me on this 29th day of May, 2017, by Edward R. Rathgeber, as President of Rathgeber Investment G.P., Inc., a Texas corporation, general partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, on behalf of said entities.

*Matt D. Matthews*


Notary Public, State of Texas  
Printed Name: MATT D. MATTHEWS  
My Commission Expires: 6-1-2022

[SEAL]



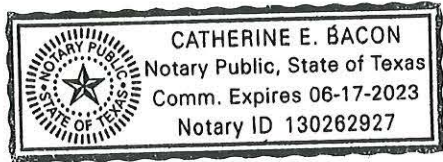
**ORYX:**


ORYX DEVELOPMENT, LLC  
a Texas limited liability company

By:   
Blake A. Rue, Managing Member

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was executed on this the 29<sup>th</sup> day of May, ~~2019~~ 2020 <sup>CEB</sup> by Blake A. Rue, as  
Managing Member of Oryx Development, LLC a Texas limited liability company, on behalf of said  
entity.



  
Notary Public, State of Texas  
Printed Name: Catherine E. Bacon  
My Commission Expires: 6-17-2023

[SEAL]