

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

State of Texas §
 §
County of Hays §

This First Amendment to Agreement Concerning Creation and Operation of Headwaters Municipal Utility District (the "First Amendment") is made and entered into by and among the City of Dripping Springs, Texas (the "City"), a general law city situated in Hays County, Texas, Townes Family Trust (the "Trust"), Headwaters Development Co., a Texas corporation (collectively "Landowners"), and Headwaters Municipal Utility District, a municipal utility district organized and operating in Hays County, Texas (the "District"), is as follows:

RECITALS

- A. City and Landowners have previously entered into the Agreement for the Creation and Operation of Headwaters Municipal Utility District (the "Agreement"), approved by the Dripping Springs City Council on January 11, 2005.
- B. The Texas Commission on Environmental Quality ("Commission") approved the Landowner's application for the creation of Headwaters Municipal Utility District ("District") on August 8, 2007 and the District has been approved by the voters and has commenced operation.
- C. Before the District was created, a portion of the land over which the District was created was annexed into the corporate limits of the City, as authorized by the April 13, 2005 "Headwaters at Barton Creek Development Agreement between City of Dripping Springs and Townes Family Trust and Headwaters Development Company" ("Development Agreement") regarding certain property described in the Development Agreement recorded in the Official Public Records of Hays County, Texas in Volume 265, page 649, which property description is incorporated herein as the "Property"
- D. The District wishes to ratify and join in the Agreement.
- E. The Parties desire to amend portions of the Agreement.

NOW THEREFORE, for an in consideration of their mutual covenants and agreements, the Parties agree as follows:

AMENDMENT ARTICLE 1

The District consents to, adopts and joins as a Party to the Agreement, to be bound in all respects by the terms applicable to the District. Capitalized terms in this First Amendment have the same meaning that they have in the Agreement. Owner agrees to reimburse the City for professional fees incurred by the City in negotiating and preparing this First Amendment.

AMENDMENT ARTICLE 2

Article III, Section C, is deleted and amended and replaced with the following:

C. The District agrees that it shall issue bonds only in the maximum amount of \$58,000,000 for the purpose of providing for construction or acquisition of water, sanitary sewer, fire protection or drainage facilities, or contract rights therefore, and the purposes set out in Article III (the "Facilities"), and 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. 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. 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. In addition, such approval shall not be unreasonably withheld or delayed and may be withheld only if either 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.

AMENDMENT ARTICLE 3

Article III, Section C, is amended to add the following at the end of the section:

City agrees that the rights and obligations under the Agreement may be assigned to Rathgeber Investment Company, Ltd. City further agrees that portions of the rights and obligations under the Agreement may be further assigned in whole or in part by Rathgeber Investment Company, Ltd. to any person or entity ("Assignee"), under the following conditions:

- a. Assignee is a successor owner of all or any part of the Property;
- b. The assignment is in writing executed by the Assignor and Assignee;
- c. Assignee expressly assumes the obligations under the Agreement with regard to the portion of the Property owned by Assignee; and
- d. A copy of the fully executed assignment is provided to the City within fifteen (15) days after execution.

AMENDMENT ARTICLE 4

Article VII, Section A, is deleted and amended and replaced with the following:

A. The parties hereto acknowledge and agree that, except for the 176.409 acre tract of the Property that was annexed by the City on August 14, 2007, the Property lies, and will continue to lie, wholly within the ETJ of the City; is not bordered by another city, town, or village; and is not

currently anticipated to be scheduled for annexation by the City in accordance with any annexation plan of the City. The parties further acknowledge and agree that the creation of the District, and the City's consent thereto, are for the purpose of promoting the orderly development and extension of City services to the Property. Finally, the parties acknowledge and agree that, when the entirety of the Property has been annexed by the City subject to the terms of the Development Agreement, then the District shall dissolve and cease to exist, and no portion of the District shall then exist or continue to exist within the City limits.

The parties now ratify and confirm that the Agreement, as amended by this First Amendment, is in full force and effect and is binding on all parties. The Effective Date of this First Amendment is June 10, 2008.

CITY OF DRIPPING SPRINGS:

Attest:

Jo Ann Touchstone
Jo Ann Touchstone
City Secretary

By: *Todd Purcell*
Todd Purcell, Mayor

Date: 8/15/08

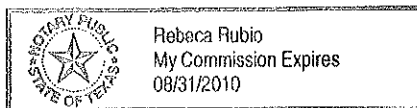
STATE OF TEXAS

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COUNTY OF Hays

This instrument was acknowledged before me on this 15th day of August, 2008 by Todd Purcell, Mayor of the City of Dripping Springs, Texas, a Texas municipality, on behalf of said city.

Rebeca Rubio
Notary Public's Signature



HEADWATERS MUNICIPAL UTILITY DISTRICT:

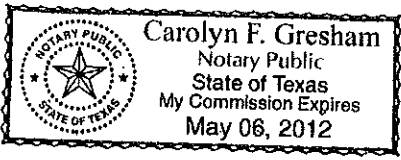
By: *Jeremy Martin*
Jeremy Martin, President

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this 14th day of July, 2008 by Jeremy Martin, President of Headwaters Municipal Utility District, a Texas corporation, on behalf of said corporation.



Carolyn F. Gresham
Notary Public's Signature

HEADWATERS DEVELOPMENT CO.:

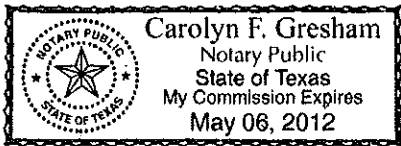
By: *Edward R. Rathgeber*
Edward R. Rathgeber, President

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this 12th day of July, 2008 by Edward R. Rathgeber, President of Headwaters Development Co., a Texas corporation, on behalf of said corporation.



Carolyn F. Gresham
Notary Public's Signature

**RATHGEBER INVESTMENT COMPANY,
LTD.**

By: **Rathgeber Investment G.P., Inc.,**
its general partner

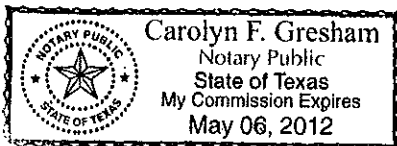
By: *Edward R. Rathgeber*
Edward R. Rathgeber, President

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this 12th day of July, 2008 by Edward R. Rathgeber, President of Rathgeber Investment Company, Ltd., a Texas corporation, on behalf of said corporation.



Carolyn F. Gresham
Notary Public's Signature

Jul 17 08 02:47p

Susan Gesford

936-365-2244

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JUL 17 2008 2:53PM HP LASERJET FAX

TOWNES FAMILY TRUST

By: *Susan Townes Gesford*
Name: **Susan Townes Gesford, Trustee**

STATE OF TEXAS

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COUNTY OF Harris

This instrument was executed before me by Susan Townes Gesford, as Trustee of the Townes Family Trust on this the 17th day of July, 2008.

Peggy Haymon
Notary Public, State of Texas



**SIGNATURE PAGE TO:
FIRST AMENDMENT TO AGREEMENT
CONCERNING CREATION AND OPERATION OF
HEADWATERS MUNICIPAL UTILITY DISTRICT**

TOWNES FAMILY TRUST

By: Karen L. Aidman, Trustee
Name: Karen L. Aidman, Trustee

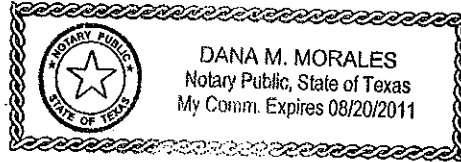
STATE OF TEXAS

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COUNTY OF Travis

This instrument was executed before me by Karen L. Aidman, as Trustee of the Townes Family Trust on this the 22 day of July, 2008.

Dana M. Morales
Notary Public, State of Texas



SIGNATURE PAGE TO:
FIRST AMENDMENT TO AGREEMENT
CONCERNING CREATION AND OPERATION OF
HEADWATERS MUNICIPAL UTILITY DISTRICT

TOWNES FAMILY TRUST

By: *Townes G. Pressler*
Name: Townes G. Pressler, Trustee

STATE OF TEXAS

COUNTY OF HARRIS

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This instrument was executed before me by Townes G. Pressler, as Trustee of the Townes Family Trust on this the 17th day of July, 2008.



Peggy Haymon
Notary Public, State of Texas

SIGNATURE PAGE TO:
FIRST AMENDMENT TO AGREEMENT
CONCERNING CREATION AND OPERATION OF
HEADWATERS MUNICIPAL UTILITY DISTRICT