

**AGREEMENT CONCERNING CREATION AND OPERATION
OF
HEADWATERS MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Agreement Concerning Creation and Operation of Headwaters Municipal Utility District (the "Agreement") 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, acting herein by and through its undersigned duly authorized Mayor, as authorized by specific action of its City Council; Townes Family Trust (the "Trust") and Headwaters Development Company, a Texas Corporation (collectively, "Landowners"); and Headwaters Municipal Utility District, a municipal utility district to be created and operated pursuant to Chapters 49 and 54 of the Texas Water Code, who, after its creation and organization, will join in this Agreement for the purposes specified below; and is as follows:

RECITALS

- A. Landowners are the current owners of approximately 1509.68 acres, as described on Exhibit A (the "Property"). The Property lies entirely within the City's extraterritorial jurisdiction ("ETJ"). Landowners have petitioned to obtain the consent of the City for creation of a district to be known as the Headwaters Municipal Utility District over the Property. The resulting district, created with that name or such similar name as may be required by the Texas Commission on Environmental Quality ("Commission"), is referred to below as the "District."
- B. The City and Landowners have reached agreement concerning the creation of the District, including the terms under which the City will consent to creation of the District and to the inclusion of the Property within the District, and wish to set forth their agreement in writing herein.
- C. Pursuant to Section 42.042 of the Texas Local Government Code and Section 54.016, Texas Water Code, the City has consented, subject to the terms and conditions of this Agreement, to the creation of the District by Resolution adopted on January 11, 2005, in an open and duly posted public meeting of the City (the "Resolution").
- D. The District will be created by order of the Commission and will operate pursuant to Chapters 49 and 54, Texas Water Code; however, it is an essential element of the granting of the City's Consent that the contemplated District will approve this Agreement and become a party to it after creation of the District as provided herein.
- E. For and in consideration of the premises and the mutual agreements, covenants and conditions hereinafter set forth, the parties hereto hereby contract and agree as follows:

ARTICLE I

**CONSENT TO CREATION AND REORGANIZATION
OF DISTRICT BOUNDARIES**

The City consents to creation of the District over the boundaries described earlier as the Property.

ARTICLE II

THE DEVELOPMENT AGREEMENT

Landowners and City have entered into a separate agreement titled "The Headwaters at Barton Creek Development Agreement," Drippings Springs City Secretary Contract No. _____, (the "Development Agreement.") regarding the proposed development within the District (the "Project"), which provides for orderly development of the Project, which may include mixed use development, including but not limited to, single family residential homes and commercial development. A copy of the Development Agreement is attached hereto as **Exhibit B**.

ARTICLE III

ISSUANCE OF BONDS BY DISTRICTS

A. The District may issue bonds as permitted by law and as allowed by the City pursuant to this Agreement.

B. Pursuant to Section 54.016, the parties agree that the purposes for which the District's bonds, or other lawful obligations to be issued by the District, may be issued are limited to the purposes of purchase, conservation, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances, and associated professional and licensing or permitting fees and the refunding of such bonds, necessary.

1. To provide a water supply for municipal uses, domestic uses and commercial purposes;
2. To collect, transport, process, dispose of and control all domestic, commercial, industrial or communal wastes, whether in fluid, solid or composite state;
3. To gather, conduct, divert and control local storm water or other local harmful excesses of water in the District, related water quality facilities, and/or the payment of organization expenses, operation expenses during construction, and interest during construction;

4. To provide open space, conservation land, mitigation land, easements, parks and other recreational facilities as may be consistent with City ordinances and authorized pursuant to Chapters 49 and 54 of the Texas Water Code; and

5. To provide any other facilities, amenities and/or improvements that benefit the Property within the District, that are consistent with City ordinances, and that qualify for developer reimbursement pursuant to rules promulgated by the Commission.

C. The District agrees that it shall issue bonds only in the maximum amount of \$40,000,000 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 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 prior to issuance. However, all bonds shall be deemed approved unless the City Council acts to expressly disapprove of the bonds within sixty (60) days after submission of the complete bond application to the City. Such disapproval shall only be in the event that either 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.

D. The District further agrees to the following restrictions on the sale of, and on the terms and provisions of, District bonds, warrants or other obligations and notes (the "District Bonds") that are issued to provide service to the Property, so long as the restrictions do not generally render the bonds and notes unmarketable. The City may obtain the recommendation of the City's Financial Advisor, that the sale and amount of each particular bond issue is feasible and prudent based upon a number of considerations including, but not limited to any overlapping tax rates, the number of homes occupied, taxpayer concentrations and ratio of debt to assessed valuation within the District, and compliance with Commission rules. Further, unless the following conditions are waived by the City based on the advice of its Financial Advisor, the parties agree that the District Bonds:

1. are limited to a maximum maturity of 25 years;
2. may not have interest rates that exceed 2% above the weekly tax exempt Bond Buyer Index for 25 year revenue bonds;
3. may not be issued if the District's debt to certified taxable assessed valuation, as determined by the records of the Hays County Appraisal District, will exceed 25 percent upon issuance;
4. must have amortization that results in approximately level debt service payments considering all bond issues, except for an initial period of interest only payments; and
5. shall contain call redemption features.
6. may be refunded and additional bonds may be issued as refunding bonds.

E. One of the purposes of this Agreement is to authorize the District and the City, pursuant to the provisions of Section 54.016 of the Texas Water Code that allow a district and a city to contract regarding annexation, to enter into a binding contract regarding the terms and conditions of annexation of areas within the District by the City. The parties acknowledge that the City may annex area within the District in the future and the terms and conditions of the parties' agreement regarding annexation are contained within the Development Agreement. Accordingly, the Parties agree as follows:

1. If the City annexes the entire area in the District, the City will succeed to all the powers, duties, assets and obligations of the District, including but not limited to any rights and obligations under valid and duly-authorized contracts entered into by the District prior to the first notice of annexation (e.g., developer reimbursement agreement). The District will not enter into any developer reimbursement agreements or agreements for new projects or extraordinary expenses, except as necessary for continued operation and maintenance of existing District Facilities, after publication of the first notice of proposed annexation. The District further agrees that any agreements with the District in violation of this requirement shall be void.

2. Alternatively, subject to the terms of the Development Agreement, the City may exercise any options available under Chapter 43 of the Texas Local Government Code, or similar annexation laws of the State of Texas, that are in effect with regard to the provision of water and/or sewer service to areas within Municipal Utility Districts that are annexed by cities.

3. After annexation, the City may set rates for water and/or sewer services for property that was within the District at the time of annexation which may include a surcharge in addition to the rates charged to other ratepayers of the City for the purpose of wholly or partially compensating the City for the assumption of the District's obligations. Such additional surcharges shall be calculated solely to recover those District debts and other obligations assumed by the City upon annexation which are not covered by any increase in the City's ad valorem tax revenue arising out of the annexation. The surcharge may continue for thirty (30) years after the initial District debt is issued or until the bonded indebtedness of the District has been retired, whichever occurs last, but in no case for a longer period of time than is necessary to wholly compensate the City for its assumption of the obligations of the District. The District shall comply with all of the requirements of Section 54.016(h), or such similar laws as may be in effect, regarding filing with the county clerk a duly affirmed and acknowledged statement which includes certain notice information to purchasers of property regarding the City's right to collect this surcharge.

F. The District may negotiate and enter into developer reimbursement agreements, provided that the District will give the City the opportunity to review and provide comments to the District on such developer reimbursement agreements.

G. The District, after its creation, shall proceed to obtain the necessary authorization for and to issue District bonds for the financing of the acquisition or construction of the Facilities

to the extent and as permitted by laws applicable to the District. The City hereby consents to the issuance of the District's bonds to the extent, for the purposes, and in the manner described in this Agreement.

ARTICLE IV

CONSTRUCTION AND ACQUISITION OF FACILITIES

A. Landowners and the District shall cause the Facilities to be designed and constructed or acquired within or for the District in accordance with the plans prepared by the engineer for Landowners or the District, and approved as hereinafter provided.

B. The City has applied for and intends to obtain a Certificate of Convenience and Necessity ("CCN") from the Commission to become the retail provider of potable water to the Project. As allowed by law, including section 402.014 of the Local Government Code, the District will construct the water distribution system for the City to serve the District. The City and the District will set forth the terms under which the District will be the City's operations and maintenance contractor related to the City's provision of retail water service to the Property pursuant to the CCN in a separate interlocal agreement, to be attached hereto as **Exhibit B** (the "O&M Agreement").

C. *The Landowners and the District will construct all facilities and infrastructure to serve the land within the District in accordance with plans and specifications that have been approved by the City, pursuant to City ordinance, as amended from time to time including those pertaining to utility design, construction and installation requirements. The City shall have the right to inspect, at reasonable times, all facilities being constructed by the Landowners or the District. The City agrees to timely review all plans and specifications provided by the Landowners or the District in a timely manner and pursuant to the procedures set forth in City ordinances and guidelines; not to unreasonably withhold its approval of such plans and specifications; and to conduct its inspections of ongoing construction in a manner that minimizes interference with such construction. Construction or acquisition of any of the Facilities within or for the District shall not commence unless the plans and specifications for them have been reviewed and approved by the City and any other governmental entities having governmental jurisdiction or contractual rights to do so. No additional fees for the foregoing inspections and reviews by the City will be charged pursuant to this Agreement; the parties intend that all such fees are to be assessed and paid pursuant to the Development Agreement and the O&M Agreement.*

ARTICLE V

OPERATION AND MAINTENANCE OF THE DISTRICT FACILITIES

A. Subject to the terms of the O&M Agreement, the District may operate and maintain the Facilities serving the District or the District may contract in any manner allowed by law for the operation and maintenance of same. All water and sanitary sewer connections within the District shall be inspected by the District for compliance with the requirements of the Uniform Plumbing Code or its successor regulations and the City's local amendments thereto,

the water and sanitary sewer service detail promulgated by the City and the requirements of the Commission.

B. Every year, the District shall file with the City Administrator a copy of its annual audit and a copy of its proposed budget for the following year showing expenses, income and revenue.

ARTICLE VI

AREA OF, AND LIMITATIONS ON, SERVICE

Unless the prior approval of the City Council of the City is obtained, the District shall not: (1) construct, acquire or install Facilities to serve areas outside the District; (2) sell or deliver water or wastewater service to areas outside the District; or (3) annex any additional lands to the District. Any land for which annexation to the District or out-of-district service is hereafter requested and approved shall be subject to the terms of this Agreement.

ARTICLE VII

ANNEXATION OF THE DISTRICT BY THE CITY

A. The parties hereto acknowledge and agree that 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 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.

B. In furtherance of the purposes of this Agreement, the District and Landowners, and their respective successors and assigns, covenant and agree to the extent allowed by law that, except upon written consent of the City Council of the City or as otherwise set forth in Subsection C. below they will not: (1) seek or support any effort to incorporate any of the Property, or any part thereof; or (2) sign, join in, associate with or direct to be signed any petition seeking to incorporate any of the Property or to include any of the Property within the boundaries of any other district, incorporated entity, or political subdivision of the State of Texas.

ARTICLE XI

SEVERABILITY AND ENFORCEABILITY

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, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby.

ARTICLE XII

ASSIGNMENT OF AGREEMENT

Neither the District nor the City shall assign this Agreement without written consent of each of the other parties hereto. Landowners shall not assign this Agreement without written consent of the City, except that Landowners are specifically authorized to assign this Agreement to the District upon its creation; provided, however, that such assignment shall not relieve Landowners or any successors or assigns from their obligations hereunder. It is specifically intended that this Agreement and all terms, conditions and covenants herein shall survive a transfer, conveyance or assignment occasioned by the exercise of foreclosure of lien rights by a creditor or a party hereto, whether judicial or non-judicial.

ARTICLE XIII

TERM OF AGREEMENT

This Agreement shall be effective from the date of execution hereof by the City and Landowners, and shall continue in effect until the District is annexed and dissolved by the City.

ARTICLE XIV

BENEFITS OF AGREEMENT

This Agreement is for the benefit of the City, the District and the Landowners, their successors and assigns, and shall not be construed to confer any benefit on any other party except as expressly provided herein.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Dated effective January 11, 2005.

CITY OF DRIPPING SPRINGS

By: Todd Purcell
Name: Todd Purcell
Its: Mayor

ATTEST:

By: Amanda Craig
Name: Amanda Craig
Its: City Secretary

HEADWATERS DEVELOPMENT COMPANY

By: _____
Name: Edward R. Rathgeber
Its: President

TOWNES FAMILY TRUST

By: _____
Name: Susan Townes Gesford

By: _____
Name: Goss Townes

By: _____
Name: Townes G. Pressler

EXHIBIT "A"

**TO THE RESOLUTION GRANTING THE CONSENT OF
THE CITY OF DRIPPING SPRINGS TO THE CREATION OF
HEADWATERS MUNICIPAL UTILITY DISTRICT,
SUBJECT TO VARIOUS TERMS AND CONDITIONS**

Description of the Land to be Included in the District

The land to be included in the District, which also is described in the Petition, consists of:

1539.46 acres of land, more or less, located in Hays County, Texas, being more fully described in the attached metes and bounds description;

SAVE AND EXCEPT 29.78 acres of land, more or less, located in Hays County, Texas, and also more fully described in the attached metes and bounds description;

Comprising a total of 1509.68 Acres of land, more or less, situated in Hays County, Texas.

EXHIBIT "B"
Development Agreement

(attach City Secretary Contract No. titled "The Headwaters at Barton Creek Development Agreement between City of Dripping Springs and Townes Family Trust and Headwaters Development Co., dated January 11, 2005)

**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

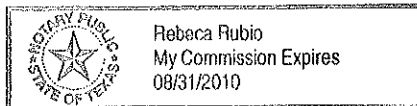
STATE OF TEXAS

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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:

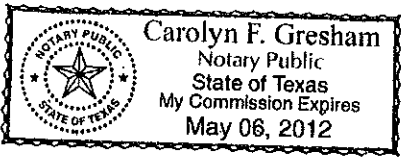
By: *Jeremy Martin*
Jeremy Martin, President

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.:

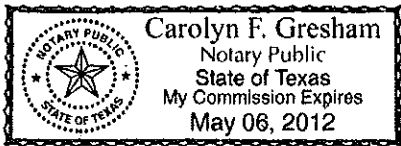
By: *Edward R. Rathgeber*
Edward R. Rathgeber, President

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

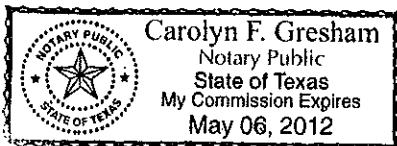
By: *Edward R. Rathgeber*
Edward R. Rathgeber, President

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

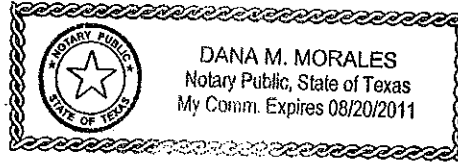
STATE OF TEXAS

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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