

TRANSPORTATION IMPROVEMENT CONSTRUCTION AND CONTRIBUTION AGREEMENT

This Three-Party Transportation Improvement Construction and Contribution Agreement (this **Agreement**) is entered into by and among the **City of Dripping Springs, Texas** (the “**City**”), **Hays County, Texas** (the “**County**”), and **ME Headwaters REG, LP** (the “**Developer**”). The City, the County, and the Developer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

Recitals

- A. The Developer is developing certain property northwest of the intersection of US 290 and Canyonwood Drive in Dripping Springs, Hays County, Texas, commonly referred to as the Headwaters project.
- B. The traffic impact analysis review for the project identified, among other recommended transportation improvements, the construction at US 290 and Canyonwood Drive of a 250-foot southbound right-turn lane with a 50-foot taper and a right-turn signal head (collectively, the Canyonwood Improvement).
- C. The City has identified the Developer's proportionate share of the Canyonwood Improvement as approximately 79.9% of the estimated cost, and the remaining 20.1% as the portion to be contributed from public funds.
- D. The current planning-level estimate for the Canyonwood Improvement is \$160,000.00, and the County is willing to contribute an amount not to exceed 20.1% of that estimated cost, or \$32,160.00.
- E. The Parties desire to memorialize their respective obligations concerning construction of the Canyonwood Improvement and the County's contribution toward the cost of that improvement.

For and in consideration of the mutual covenants contained herein, the Parties agree as follows.

1. **Definitions.** For purposes of this Agreement:

- (a) “**Canyonwood Improvement**” means the transportation improvement at US 290 and Canyonwood Drive consisting of signal timing adjustments, construction of a 250-foot southbound right-turn lane with a 50-foot taper, and addition of a right-turn signal head, together with associated engineering, permitting, traffic control, striping, signage, inspection, testing, utility coordination, and related work reasonably necessary to place the improvement into service.
- (b) “**County Contribution**” means the reimbursement amount payable by the County under this Agreement, in an amount not to exceed \$32,160.00.
- (c) “**Estimated Cost**” means \$160,000.00.

- (d) **“Final Completion”** means completion of the Canyonwood Improvement in accordance with applicable plans, permits, and governmental requirements, and acceptance or approval for use by the applicable governmental authority or authorities to the extent required.
- (e) **“Project”** means the Headwaters development located northwest of the intersection of US 290 and Canyonwood Drive.

2. **Developer Construction Obligations**

- (a) The Developer shall be solely responsible for the design, permitting, procurement, coordination, and construction of the Canyonwood Improvement at its sole cost and risk, subject only to the County Contribution expressly described in this Agreement.
- (b) The Developer shall cause the Canyonwood Improvement to be designed and constructed in compliance with all applicable laws, regulations, permits, TxDOT requirements, City requirements, County requirements to the extent applicable, and any other standards imposed by a governmental authority having jurisdiction.
- (c) The Developer shall obtain or cause to be obtained all permits, approvals, and authorizations necessary for the Canyonwood Improvement.
- (d) The Developer shall be responsible for all contractors, subcontractors, consultants, materials, labor, equipment, traffic control, testing, and incidental work necessary for completion of the Canyonwood Improvement.
- (e) Except for the County Contribution and any separate reimbursement obligation expressly assumed by the City in a written agreement, the Developer shall have no right to additional reimbursement, offset, credit, or contribution from the City or the County for the Canyonwood Improvement.

3. **County Contribution**

- (a) Subject to the terms of this Agreement, the County shall contribute to the Developer an amount equal to 20.1% of the actual eligible cost of the Canyonwood Improvement, but in no event more than \$32,160.00.
- (b) The Parties acknowledge that the County Contribution is based on the Estimated Cost of \$160,000.00 and represents the public share presently contemplated for the Canyonwood Improvement.
- (c) The County shall have no obligation to contribute toward any amount in excess of the County Contribution cap, whether caused by increased construction costs, change orders, delays, differing site conditions, inflation, utility conflicts, or any other reason.

- (d) The County Contribution shall be payable only from lawfully available funds that have been duly budgeted and appropriated for that purpose, and nothing in this Agreement shall be construed as creating a debt in violation of applicable law.

4. Rough Proportionality Stipulation; Waiver and Release

- (a) The Parties stipulate and agree, solely for purposes of the Canyonwood Improvement described in this Agreement, that the City has identified the Developer's roughly proportionate share of the Canyonwood Improvement as approximately 79.9% of the Estimated Cost, and that the remaining 20.1% is the portion to be contributed from public funds through the County Contribution described in this Agreement.
- (b) The Developer acknowledges that, notwithstanding the foregoing allocation, the Developer is electing, for its own reasons and benefits, including schedule, coordination, and other business considerations, to undertake and complete construction of one hundred percent (100%) of the Canyonwood Improvement in the first instance, subject only to the County Contribution reimbursement rights expressly stated in this Agreement.
- (c) The Developer expressly, knowingly, voluntarily, and irrevocably waives, releases, and disclaims any and all claims, causes of action, challenges, or defenses, whether legal, equitable, constitutional, statutory, or otherwise, alleging that the Developer's agreement to design, permit, fund in the first instance, and construct one hundred percent (100%) of the Canyonwood Improvement exceeds the roughly proportionate impact of the Project or constitutes an unlawful condition, exaction, dedication, fee, taking, or monetary exaction.
- (d) The waiver and release in paragraph (c) above is limited solely to the Canyonwood Improvement expressly described in this Agreement and does not apply to any other improvement, fee, dedication, condition, exaction, or requirement not expressly identified herein.
- (e) The Developer acknowledges that it has had the opportunity to consult with legal counsel regarding the matters addressed in this Section.

5. Conditions to Payment

- (a) The County shall not be required to make any payment unless and until the Developer has:
 - (i) completed construction of the Canyonwood Improvement;
 - (ii) submitted a written reimbursement request to the County, with a copy to the City;

- (iii) provided reasonably sufficient supporting documentation of actual eligible costs, including invoices, pay applications, proof of payment, and any other backup reasonably requested by the County;
 - (iv) provided final record information reasonably requested by the City or County regarding the completed work; and
 - (v) satisfied all material obligations under this Agreement.
- (b) Eligible costs are limited to direct, reasonable, and documented costs attributable to the Canyonwood Improvement. Internal overhead, financing costs, legal fees, and costs unrelated to the Canyonwood Improvement are not eligible unless expressly approved in writing by the County.
 - (c) Within a reasonable time after receipt of a complete reimbursement request, the County shall review the request and either approve payment, approve payment in a reduced amount supported by the documentation, or notify the Developer in writing of deficiencies in the submission.
 - (d) Payment by the County is intended as a reimbursement after completion and shall not be construed as an obligation to advance funds before completion unless the Parties later agree otherwise in a written amendment.

6. City Role and Coordination

- (a) The City acknowledges the Project background and the City's prior identification of approximately 79.9% as the Developer's share of the Canyonwood Improvement and approximately 20.1% as the portion to be publicly contributed for that improvement.
- (b) The City shall cooperate in good faith in reviewing submittals within its authority and coordinating with the Developer and the County regarding the Canyonwood Improvement.
- (c) The City is not assuming responsibility to construct the Canyonwood Improvement or to fund the County Contribution by entering into this Agreement.
- (d) Nothing in this Agreement limits the authority of the City, TxDOT, or any other governmental authority to require revisions to plans, permits, scheduling, traffic control, or construction details.

7. Inspection, Acceptance, and No Warranty by Governmental Parties

- (a) Any review, inspection, comment, approval, or acceptance by the City or the County shall be solely for governmental purposes and shall not relieve the Developer of responsibility for the adequacy of design or construction.

- (b) Neither the City nor the County makes any representation or warranty regarding the design, constructability, safety, or fitness of the Canyonwood Improvement.
- (c) The Developer remains responsible for correcting defective work in accordance with applicable contracts, permits, and law.

8. Default and Remedies

- (a) If the Developer fails to perform a material obligation under this Agreement, the County may withhold reimbursement unless and until the default is cured.
- (b) If the County fails to pay an approved reimbursement amount required under this Agreement, the Developer's remedy shall be limited to an action for recovery of the unpaid approved amount, subject to applicable law and defenses.
- (c) Before exercising formal remedies, a Party alleging default shall provide written notice describing the default in reasonable detail and allow thirty (30) days to cure, or such longer period as may be reasonably necessary if the default cannot be cured within thirty (30) days and the defaulting Party commences cure within that period and diligently pursues completion.

9. Indemnity; Immunities

- (a) To the extent permitted by Texas law, the Developer shall indemnify, defend, and hold harmless the City and the County, and their respective officers, employees, and agents, from third-party claims, damages, losses, and liabilities for bodily injury, death, or tangible property damage to the extent caused by the negligent acts or omissions or willful misconduct of the Developer or its contractors, subcontractors, or agents in connection with the Canyonwood Improvement.
- (b) Nothing in this Agreement waives or shall be construed to waive any immunity, defense, limitation of liability, or other protection available to the City or the County under Texas law.

10. Miscellaneous

- (a) **Term.** This Agreement becomes effective on the date of the last signature and remains in effect until the later of (i) payment or denial of the reimbursement request in accordance with this Agreement, or (ii) satisfaction of all surviving obligations.
- (b) **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and creates no rights in any third party.
- (c) **Assignment.** The Developer may not assign this Agreement or any right to reimbursement without the prior written consent of the City and the County.

- (d) **Notices.** Any notice required under this Agreement must be in writing and delivered by personal delivery, certified mail, nationally recognized overnight courier, or email with confirmation of transmission, to the addresses designated by the Parties.
- (e) **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties concerning the subject matter herein and supersedes prior discussions or writings on that subject.
- (f) **Amendment.** This Agreement may be amended only by a written instrument executed by all Parties.
- (g) **Severability.** If any provision of this Agreement is held unenforceable, the remaining provisions shall remain in effect to the fullest extent permitted by law.
- (h) **Governing Law and Venue.** This Agreement is governed by the laws of the State of Texas, and venue for any action arising from this Agreement shall lie in a court of competent jurisdiction in Hays County, Texas.
- (i) **Public Information.** The Parties acknowledge that the City and the County are subject to the Texas Public Information Act and other applicable record-retention and disclosure laws.
- (j) **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, and electronic signatures shall be effective to the same extent as original signatures, to the extent permitted by law.

CITY OF DRIPPING SPRINGS

ME HEADWATERS REG, LP, a Texas limited partnership

By: **ME HEADWATERS REG GP, LLC**, a Texas limited liability company, its general partner

Bill Foulds, Jr.
Mayor

Daniel Campbell
Executive Vice President

Date

Date

HAYS COUNTY

Walt Smith
Commissioner, Precinct 4

Date