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Hays County Texas  
Liz Q. Gonzalez  
County Clerk

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Parties:

Direct- WFC HEADWATER OWNER VII LP  
Indirect- DRIPPING SPRINGS CITY OF

Receipt Number: 410167  
Processed By: Rose Robinson

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\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

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I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

A handwritten signature in cursive script that reads "Liz Q. Gonzalez".

Liz Q. Gonzalez, County Clerk

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

THIS SECOND AMENDMENT TO AGREEMENT CONCERNING CREATION AND OPERATION OF HEADWATERS MUNICIPAL UTILITY DISTRICT ("Second 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 registered to do business in Texas ("WFC"), (iii) Rathgeber Investment Company, Ltd. ("Rathgeber"), (iv) E.E. Townes Family Trust ("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, Trust 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"), and the District entered into that certain Agreement Concerning Creation and Operation of Headwaters Municipal Utility District ("Creation Agreement"), Trust and Headwaters being then owners of land in the District.

B. Effective June 10, 2008, the City, Trust, Headwaters and the District entered into that certain First Amendment to Agreement Concerning Creation and Operation of Headwaters Municipal Utility District (the "First Amendment"). The Creation Agreement, as amended by the First Amendment, is hereinafter referred to as the "Agreement."

C. In accordance with the terms of the Agreement, Headwaters previously assigned its rights and obligations under the Agreement to Rathgeber Investment Company, Ltd. ("RIC"), RIC subsequently assigned its rights and interests under the Agreement to HABC, Ltd., ("HABC") in connection with the conveyance of certain real property to HABC; HABC subsequently assigned its rights and interests under the Agreement to Robert Pittenger Company, Inc. ("Pittenger"); Pittenger assigned its rights and interests under the Agreement to Austin-Highway 290 LLC ("Austin-Highway 290"); and Austin-Highway 290 assigned its rights and interests under the Agreement to WFC.

D. The Parties desire to amend portions 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 \$80,000,000 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 in the event the District secures road district powers 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 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."

2. **Road District Powers.** The Agreement is hereby amended to include a new Article XV to read in its entirety as follows:

**"ARTICLE XV**

**ROAD DISTRICT POWERS**

A. The City hereby consents to the acquisition and exercise of road district powers by the District under Section 52, Article III, Texas Constitution. The City agrees that the District may secure such powers by application to TCEQ pursuant to Section 54.234 of the Texas Water Code or by special act of the Legislature.

B. Simultaneously with approval of this Second Amendment, the City shall adopt a Resolution substantially in the form attached hereto as **Exhibit "A"** supporting the passage of legislation granting road district powers to the District. Upon request of the District, the City agrees to otherwise reasonably cooperate with and support the acquisition of road district powers by the District."

3. **Capitalized Terms.** Except as otherwise defined herein, all capitalized terms shall have the meanings set forth in the Agreement.

4. **Effect on Agreement.** Except as specifically modified by this Second Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment effective as of July 28th, 2015.

WFC:

WFC HEADWATERS OWNER VII, L.P.,  
a Delaware limited partnership

By: WFC Headwaters Holdings 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: [Signature]  
Name: Jesse R Baker  
Title: Authorized Signatory

STATE OF Massachusetts §  
COUNTY OF Suffolk §

This instrument was acknowledged before me on February 3, 2015 by Jesse R. Baker, as Authorized Signatory of WFC Headwaters Holdings JV VII, L.L.C., a Delaware limited liability company, as Sole Member of WFC Headwaters GP VII, L.L.C., a Delaware limited liability company, as General Partner of WFC HEADWATERS OWNER VII, L.P., a Delaware limited partnership, on behalf of said entities.

My Commission Expires: 4/7/17 [Signature]  
Notary Public, State of

 **KIERSTEN P. JESTER**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 7, 2017

CITY:

CITY OF DRIPPING SPRINGS

Attest:

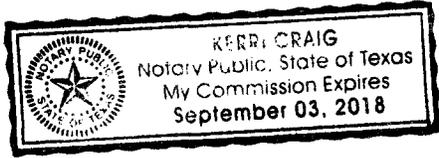
Keri Craig  
~~JoAnn Touchstone~~ Keri Craig  
City Secretary

By: Todd Purcell  
Todd Purcell, Mayor

STATE OF TEXAS §  
COUNTY OF HAYS §

This instrument was acknowledged before me on 9th, December, by Todd Purcell, Mayor of the City of Dripping Springs, Texas, a Texas municipality, on behalf of said city.

My Commission Expires: 9/3/18  
Keri Craig  
Notary Public, State of Texas



**DISTRICT:**

HEADWATERS MUNICIPAL UTILITY DISTRICT  
OF HAYS COUNTY:

By: Harvey Zinn, Jr. President  
President

[Handwritten Signature]

District Secretary

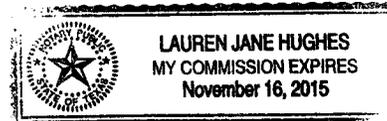
STATE OF TEXAS  
COUNTY OF Travis

§  
§

This instrument was acknowledged before me on February 9, 2015, by Harvey Zinn, Jr., President of the Headwaters Municipal Utility District of Hays County, on behalf of said District.

[Handwritten Signature]  
Notary Public, State of Texas

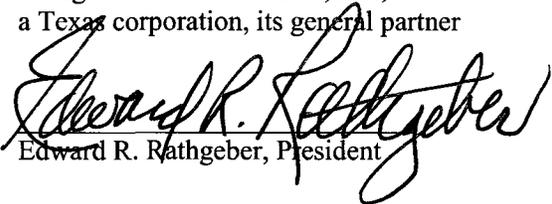
My Commission Expires: 11/16/2015



**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, President

STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 19th day of January,  
2015, 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.

  
\_\_\_\_\_  
Notary Public, State of TEXAS



TRUST:

E.E. TOWNES FAMILY TRUST

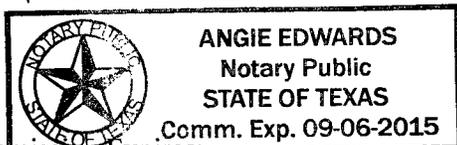
By: *Susan Townes Gesford*  
Susan Townes Gesford, Trustee

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

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

STATE OF TEXAS  
COUNTY OF Polk

This instrument was executed by Susan Townes Gesford before me on this the 23 day of July, 2015.



*Angie Edwards*  
Notary Public, State of Texas

My Commission Expires: 09-06-15

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was executed by Karen L. Aidman before me on this the 28th day of July, 2015.

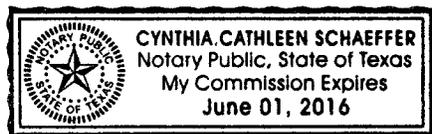


*[Signature]*  
Notary Public, State of Texas

My Commission Expires: 05-19-17

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was executed by Townes G. Pressler before me on this the 21<sup>st</sup> day of July.



*Cynthia C Schaeffer*  
Notary Public, State of Texas

My Commission Expires: 6/1/2016

**Exhibit A**  
**Form of Resolution**

**RESOLUTION NO. 2015-06**

**RESOLUTION EXPRESSING SUPPORT OF CITY OF DRIPPING SPRINGS  
FOR LEGISLATION GRANTING ROAD DISTRICT POWERS TO  
HEADWATERS MUNICIPAL UTILITY DISTRICT**

**WHEREAS**, Headwaters Municipal Utility District (the "District") is a Texas conservation and reclamation district created by Order of the Texas Commission on Environmental Quality dated August 8, 2007, and the District operates under the authority of Chapters 49 and 54 of the Texas Water Code;

**WHEREAS**, the City Council of the City of Dripping Springs has received a request to support the passage of legislation granting the District the authority of a road district under Section 52, Article III, Texas Constitution and specifically authorizing the District to construct and finance road projects, and to issue bonds and other obligations to finance road projects;

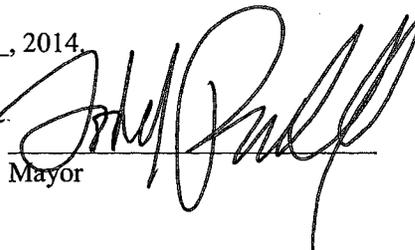
**WHEREAS**, the City Council of the City of Dripping Springs desires to adopt this Resolution to express its support for passage of legislation granting such authority to the District. **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS THAT:**

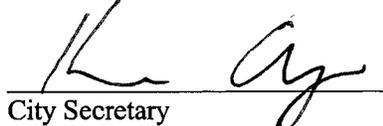
Section 1. The City Council of the City of Dripping Springs hereby expresses its support for passage of legislation granting road district authority to the District and authorizing the District to issue bonds or other obligations to finance road projects.

Section 2. This Resolution shall become effective from and after the date of its passage.

ADOPTED this 9<sup>th</sup> day December, 2014.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

## ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT is entered into on this 9th day of Dec., 2014 (“**Effective Date**”) by and between the City of Dripping Springs, Texas (the “**City**”); Headwaters Municipal Utility District (the “**District**”) and WFC Headwaters Owner VII, L.P., (“**WFC**” or “**Assignee**”). The City, District and WFC may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”. This Assignment Agreement is hereafter referred to herein as the “**Assignment**”).

### RECITALS

WHEREAS, the City, Headwaters Development Co., and the Townes Family Trust entered into that certain Development Agreement (the “**Agreement**”) on or about April 13, 2005, recorded at Volume 2675, Page 675, Official Public Records of Hays County, Texas setting forth certain terms and conditions relating to the development of approximately 1,509 acres of real property described therein (the “**Land**”);

WHEREAS, the Agreement was amended by the First Amendment to The Headwaters at Barton Creek Development Agreement on or about June 10, 2008 (“**First Amendment**”);

WHEREAS, the Agreement was further amended by a Second Amendment to The Headwaters at Barton Creek Development Agreement on or about \_\_\_\_\_, 2014 (the “**Second Amendment**”);

WHEREAS, WFC has acquired a portion of the Land that it desires to develop for single family residential purposes;

WHEREAS, in connection with its acquisition of real property, on June 5, 2014, the Texas Commission on Environmental Quality (“**TCEQ**”) transferred to WFC Waste Disposal Permit No. WQ0014587001 authorizing the treatment and disposal of wastewater generated within the Land by a wastewater treatment plant that would be owned and operated by the District (the “**District WWTP**”);

WHEREAS, the City currently owns and operates the City of Dripping Springs Regional Wastewater Treatment System, which it plans to expand and extend from time to time to allow the City to provide wastewater service to existing and future customers in the City’s wastewater service area, as that area may be revised from time to time (the “**City Regional System**”);

WHEREAS, future extensions of the City Regional System may allow the City to provide wastewater treatment and disposal services to the Land in lieu of the District WWTP, or in lieu of future expansions to the District WWTP;

WHEREAS, expansion and extension of the City Regional System may require the City to amend its existing or any future TCEQ water quality permits to increase treatment and disposal

capacity, and to authorize disposal, including but not limited to a surface water discharge or direct potable reuse of treated wastewater effluent (the “City Permit Amendment”); and

WHEREAS, the District desires to contribute to the costs of the City Permit Amendment to facilitate implementation of the City Regional System and in return for such contribution, the City desires to assign certain fees to which it is entitled under the Agreement, as amended.

THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties agree as follows:

**AGREEMENT**

1. Definitions. All capitalized terms used in this Assignment shall have the meanings ascribed to them in the Agreement, as amended, unless otherwise defined herein.
2. Payment to the City. Within ten business days of the execution of this Assignment by all Parties, WFC shall pay the City one million dollars (\$1,000,000) for and on behalf of the District (the “City Permit Contribution”). The City agrees that the City Permit Contribution shall be utilized only for funding costs and expenses relating to the City Permit Amendment, the City Regional System, or the City’s costs associated implementation of the “Agreement Concerning Creation and Operation of Headwaters Municipal Utility District” (effective January 11, 2005) as amended.
3. Assignment. The City hereby assigns, conveys, transfers and delivers to WFC, as Assignee, its successors and assigns, the first one million dollars (\$1,000,000) of the Facilities Expansion Fee to which the City is entitled under the Agreement, as amended (the “Assigned Interests”). Within ten (10) days of receipt of any such fees, the City shall provide payment thereof to WFC until such time as the City has provided payment of the Assigned Interests to WFC in full.

TO HAVE AND TO HOLD the Assigned Interests, together with all and singular the rights and appurtenances thereto in anywise belonging unto Assignee, its successors and assigns forever, and Assignor does hereby bind itself and its successors and assigns to WARRANT and FOREVER DEFEND all and singular the Assigned Interests unto Assignee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under the City, but not otherwise.

4. Limitation on Payment Obligation. Nothing in this Assignment addresses or affects the City’s right to Facilities Expansion Fees or Additional Facilities Expansion Fee beyond the first one million dollars (\$1,000,000) of Facilities Expansion Fees contemplated by the Agreement, as amended.
5. As Is — Where Is Transfer. THE CITY DOES NOT IN ANY WAY GUARANTEE THAT THE BOND REIMBURSEMENTS THAT GIVE RISE TO

THE FACILITIES EXPANSION FEES UNDER THE AGREEMENT WILL EVER BE COLLECTED OR THAT ASSIGNEE WILL OTHERWISE RECOUP THE MONEY IT AGREES TO PAY UNDER THIS ASSIGNMENT. ASSIGNEE UNDERSTANDS AND ACCEPTS THIS RISK. The property conveyed hereby is conveyed to the Assignee AS IS and WITH ALL FAULTS and no warranties are to be implied by this transaction.

6. District Reimbursement. The City agrees that the District may reimburse WFC for the City Permit Contribution with bond proceeds to the extent that the bonds are issued in accordance with the "Agreement Concerning Creation and Operation of Headwaters Municipal Utility District" (effective June 10, 2008) as amended, and the Texas Commission on Environmental Quality authorizes such reimbursement. This Assignment Agreement does not amend the Agreement or any other agreement previously entered into among the City, the District or owners of the Land.
7. Further Assurances. Each Party hereto agrees that it will, at any time and from time to time, upon the written request of the other, execute and deliver such further documents (in recordable form, if appropriate under the circumstances) and do such further acts and things, as the requesting party may reasonably request in order to effect the purposes of this Assignment.
8. Governing Law. The validity, interpretation and effect of this Assignment shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law doctrines.
9. Counterparts. This Assignment may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving the existence, validity or content of this Assignment.
10. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

[REMAINDER OF PAGE BLANK]

EXECUTED to be effective as of the Effective Date.

**CITY:**

CITY OF DRIPPING SPRINGS, TEXAS

By: *Todd Purcell*

Name: TODD Purcell

Title: Mayor

**ATTEST:**

By: *Kerri Craig*

Name: Kerri Craig

Title: City Secretary

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

This instrument was acknowledged before me on this 9<sup>th</sup> day of December, 2014, by Todd Purcell, as Mayor of the City of Dripping Springs, Texas, a Texas municipality, on behalf of said city.

*Kerri Craig*  
Notary Public, State of Texas

