

**AGREEMENT REGARDING THE CITY OF DRIPPING SPRINGS’
APPLICATION NO. WQ001448803 FOR A TPDES PERMIT**

The City of Dripping Springs, Texas (“the City”), Save Barton Creek Association (“SBCA”), Protect Our Water, Inc. (POW”), Richard Beggs (an individual), Sarah Beggs (an individual), Barton Springs Edwards Aquifer Conservation District (“BSEACD”), Hays Trinity Groundwater Conservation District (“HTGCD”), Alfredalbert, LLC (“Alfredalbert”), Umari Partners, LP. (“Umari”), Reed Burns (an individual), and RPC Investments, LLC (“RPC”), enter this Agreement concerning the City’s application for a Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0014488003 from the Texas Commission on Environmental Quality (“TCEQ”) (“Agreement”).

RECITALS

WHEREAS, on or about October 20, 2015, the City submitted an application, TPDES No. WQ0014488003, to the TCEQ requesting a permit to allow discharge of treated wastewater at a volume not to exceed 995,000 gallons per day (“gpd”) to the Onion Creek Watershed (“Application”); and

WHEREAS, on or about July 28, 2016, TCEQ issued a draft permit that would authorize the City to discharge up to 995,000 gallons per day of treated wastewater into a tributary known as Walnut Springs that feeds into Onion Creek; and

WHEREAS, On March 7, 2018, the TCEQ considered during its open meeting requests for hearing concerning the application by the City for TPDES Permit No. WQ0014488003 and referred the matter to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing, and

WHEREAS, the contested case hearing for TPDES Permit No. WQ0014488003 has been docketed as SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD; and

WHEREAS, the City intends to beneficially reuse the effluent generated from its wastewater treatment facility as evidenced by its contracts with surrounding developments, its ordinance that promotes beneficial reuse, and commitment to maintain irrigation fields as set-forth in this Agreement (“Reuse Program”); and

WHEREAS, the Parties agree that beneficial reuse of effluent promotes conservation of raw water resources and protects natural resources consistent with sustainable economic development; and

WHEREAS, the Parties agree that a Utilities Commission could assist the City to beneficially reuse treated effluent and promote conservation of raw water resources and protect natural resources consistent with sustainable economic development.

NOW, THEREFORE, for value received, including the mutual promises and covenants made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **Definitions.** The following terms shall be defined as follows for purposes of this Agreement:

“Beneficial Reuse”: The beneficial use of reclaimed water (treated effluent) from Dripping Springs’ Wastewater Plant which may be substituted for potable water and/or raw water (a) pursuant to Title 30 of the Texas Administrative Code Chapter 210, (b) as a direct potable reuse system, or (c) pursuant to any other legal method that does not result in the discharge of effluent from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs. The term “Beneficial Reuse” does not include any treated effluent from the Dripping Springs’ Wastewater Plant that is discharged from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs.

“Beneficial Reuse Infrastructure”: Infrastructure, including storage, that is fully constructed and operational and that allows for the Beneficial Reuse.

“Complete Operational Control”: The ability to make all decisions regarding the management of Beneficial Reuse. With respect to Effluent Storage, it means the ability to determine how much treated effluent will be stored in that facility and when effluent should be placed or removed from the facility. With respect to infrastructure on Irrigable Land, it means the ability to determine when to irrigate and how much to irrigate.

“Daily Average Flow”: This term has the same meaning as set forth in the Definitions and Standard Permit Conditions of the Draft Permit. In particular, “Daily Average Flow” means the arithmetic average of all determinations of daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

“Daily Average Process Flow”: This term applies to the treatment flow through the plant in the same manner as the Daily Average Flow applies to the discharge of wastewater from the plant under the Definitions and Standard Permit Conditions of the Draft Permit. In particular, “Daily Average Process Flow” means the arithmetic average of all determinations of daily treated flow through the plant within a period of one calendar month. The daily average process flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily process flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month.

“Dedicated Storage”: Storage space that is set-aside and dedicated for storage of treated effluent from the Dripping Springs’ Wastewater Treatment Plant.

“Discharge”: a point source discharge of treated effluent from a permitted outfall authorized by the Permit directly into waters of the State. The term Discharge does not include Beneficial Reuse.

“Draft Permit”: the proposed draft permit for the City of Dripping Springs, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014488003 issued on or about July 28, 2016.

“Irrigable Land”: Land, including land to be irrigated pursuant to a Chapter 210 authorization, that can be irrigated with treated effluent from Dripping Springs’ Wastewater Plant. The land need not be contiguous or a single parcel.

“Effective Date”: July 3, 2018.

“Effluent Storage”: ponds, storage tanks, or other facilities that store treated effluent from Dripping Springs’ Wastewater Plant for Beneficial Reuse. These may be comprised of multiple facilities.

“LCRA Agreement”: The Agreement with an effective date of November 3, 2017 between the City of Dripping Springs, Texas and the Lower Colorado River Authority concerning Dripping Springs’ application for a Texas Pollutant Discharge Elimination System (“TPDES”) permit No. WQ0014488003 from the Texas Commission on Environmental Quality (“TCEQ”), as amended. A copy of the LCRA Agreement is herein attached as Exhibit A.

“Non-City Parties”: Save Barton Creek Association (“SBCA”), Protect Our Water (POW”), Richard Beggs (an individual), Sarah Beggs (an individual), Barton Springs Edwards Aquifer Conservation District (“BSEACD”), Hays Trinity Groundwater Conservation District (“HTGCD”), Alfredalbert, LLC (“Alfredalbert”), Umari Partners, LP. (“Umari”), Reed Burns (an individual), and RPC Investments, LLC (“RPC”).

“Parties”: The City of Dripping Springs, Texas (“the City”), Save Barton Creek Association (“SBCA”), Protect Our Water (“POW”), Richard Beggs (an individual), Sarah Beggs (an individual), Barton Springs Edwards Aquifer Groundwater Conservation District (“BSEACD”), Hays Trinity Groundwater Conservation District (“HTGCD”), Alfredalbert, LLC (“Alfredalbert”), Umari Partners, LP. (“Umari”), Reed Burns (an individual), and RPC Investments, LLC (“RPC”).

“Permit”: the permit that is ultimately issued by TCEQ as a result of the application filed by the City for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014488003 and adjudicated in SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD.

“Wastewater Plant”: the wastewater treatment plant proposed to be authorized by draft TPDES Permit No. WQ0014488003 under consideration in SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD.

B. Permit Discharge Limits. The City agrees to limit the Discharge limit for TCEQ Permit No. WQ0014488003 to 822,500 gpd as follows: the discharge of wastewater will not be allowed in the Interim I phase, will be a maximum of 0.4975 million gallons per day (MGD) in the Interim II phase, and will be a maximum of 0.8225 MGD in the Final phase. For certificate of conference purposes, the Non-City Parties herein agree that the City may represent to SOAH that they support a Motion to change the Discharge limits of the Permit to those specified herein. To the extent that a permit is ultimately issued that has higher Discharge amounts than those authorized by this paragraph, the City agrees that it may not exceed 0.8225 MGD of Discharge in the Final phase. The City will request that these Discharge limits become a condition of the Permit.

C. Discharge Restriction for Interim Phase I (Up to 399,000). The City agrees that it will not Discharge any treated effluent into Walnut Springs or Onion Creek up to 399,000 of the Wastewater Plant capacity.

D. Acreage/Storage.¹

1. The City covenants and agrees that prior to commencement of operation of its facilities pursuant to the Permit, the City will have access to 199 acres Irrigable Land with Beneficial Reuse Infrastructure. The City covenants and agrees that prior to the first day that the City’s Wastewater Plant has a Daily Average Process Flow of 300,000 gallons per day, the City will have access to 250 acres of Irrigable Land with Beneficial Reuse Infrastructure. The City covenants and agrees that prior to the first day that the City’s Wastewater Plant has a Daily Average Process Flow of 399,000 gallons the City will have access to 349 acres of Irrigable Land with Beneficial Reuse Infrastructure.
2. The City covenants and agrees that prior to commencement of operation of its facilities pursuant to the Permit, the City will have access to 12 million gallons of storage (which may be commingled with other water). The City covenants and agrees that prior to the first day that the City’s Wastewater Plant processes 399,000 gallons per day as a Daily Average Process Flow, the City will have access to a total of 15 million gallons Dedicated Storage.
3. The City covenants and agrees that prior to the first day that the City’s Wastewater Plant processes 497,500 gallons per day as a Daily Average Process Flow, the City will have access to a total Dedicated Storage in the amount of 20 million gallons.²

¹ “Storage” can be ponds or tanks or a combination.

² The Parties agree that for purposes of calculating storage for this sentence, if the 12 million gallons of commingled storage that is provided pursuant to paragraph D.2. of this Agreement is converted to Dedicated Storage, the 12 million gallons of commingled storage will not need to be replaced, and the converted Dedicated Storage will count towards the 20 million gallon requirement in paragraph D.3. of this Agreement.

4. The City covenants and agrees that prior to the first day that the City's Wastewater Plant processes 399,000 gallons per day as Daily Average Process Flow, the City will have access to 16 acres of specifically identified property (through leases, options to purchase, or purchased properties) that will be reserved for the construction of storage ponds, tanks or similar storage facilities.
5. The City covenants and agrees that that it will utilize Beneficial Reuse Infrastructure to the fullest extent possible.

E. Utility Commission

The City covenants and agrees that prior to obtaining the Permit, the City will organize a Utility Commission as follows:

1. The Utility Commission will comply with Open Meetings laws.
2. The Utility Commission will consist of a minimum of five voting members, with the City having full discretion as to the final appointments. Two seats will be reserved for members nominated by HTGCD for appointment by the City, with the City having full discretion as to the final appointments. If a nominee of HTGCD is rejected for appointment by the City, HTGCD will make alternate nomination(s) until an HTGCD nominee is accepted and appointed by the City. Like other commissions of the City, the remaining seats will have representation by the City and the ETJ. The Utility Commission will also have one or two non-voting members, who will be a member of council or a City employee from within Public Works or both.
3. Like other commissions of the City, the Utility Commission will meet monthly and will have the authority to schedule additional meetings at any time.
4. The following will be included among the stated objectives of the Utility Commission:
 - (a) To assist the City in its Wastewater Plant operations and reuse plans, including expansion.
 - (b) To assist the City in achieving its goal of 100% beneficial reuse.
 - (c) To assist the City in achieving its goal of not discharging effluent at any time.
5. The authority of the Utility Commission will include at least the following:
 - (a) To oversee utilities provide by the City, including wastewater.
 - (b) To review the City's wastewater reuse plans and operations systems.
 - (c) To review data related to wastewater operations, including total volume of effluent leaving the Wastewater Plant, storage levels of tanks or ponds over which Dripping Springs has complete operational control, volume of effluent provided to each customer, and volume and date of Discharge, if any.
 - (d) To recommend expansion or modification of storage/acreage and reuse customers including but not limited to, when the Wastewater Plant's flow reaches 90% of 497,500 gallons per day, to provide a recommendation of storage and irrigable area

needed for remaining gallons of effluent to be utilized in a reuse system without need for Discharge.

- (e) To recommend corrective measures related to reuse or operations systems.
 - (f) To recommend additional or modified wastewater treatment methods and systems.
 - (g) To review third-party complaints regarding the City's Wastewater Plant, operations, or reuse systems.
 - (h) To review Non-City Party recommendations regarding the City's Wastewater Plant, operations, or reuse systems, including any (i) recommendations for model contracts for operations of treatment facility and reuse systems that may be submitted by the settling parties or (ii) recommendations for a Class A Operator.
 - (i) Any recommendations made by the Utility Commission must include financial information identifying the anticipated cost of implementing the recommendations.
6. The Utility Commission will not have authority to replace or supersede commitments to irrigable area and storage as agreed under "Acreage/Storage."

F. City Agreements.

The City covenants and agrees as follows:

1. The City will prepare or have prepared an Emergency Spill & Discharge Prevention Plan to supplement Section 6 of LCRA Agreement. This Emergency Spill & Discharge Prevention Plan will require that during the term of this Agreement, the City shall:
 - a. Have a backup generator at the Wastewater Plant.
 - b. Have backup generators at raw sewage lift stations.
 - c. Equip the Wastewater Plant and lift stations associated with the Permit with auto dialers.
2. The Wastewater Plant will use UV disinfection.
3. The City will provide notification to the Non-City Parties as follows: (a) the City will provide 8 hours' notice prior to any planned Discharge; (b) The City will provide 12 hours' notice after an unplanned Discharge; (c) The City will provide notice promptly when total Dedicated Storage of treated effluent is at full capacity. Notice provided by this paragraph shall be provided via email to the e-mail addresses as specified in the Notice section of this Agreement.
4. The Non-City Parties may, at their cost, implement:
 - a. Water quality monitoring: Downstream water quality and quantity monitoring.
 - b. Baseline testing in soils and downstream creeks.
 - c. The City will provide reasonable access to City-owned property for the monitoring and testing provided for in this paragraph; however, nothing in this paragraph may be construed as conveying a right of entry on any property that is not owned by the City.

5. POW has a “first right of refusal”, at its sole cost, to accept treated effluent from the Wastewater Plant or prior to a planned Discharge. POW has a “first right of refusal”, at its sole cost, to accept treated effluent prior to an unplanned Discharge, as determined feasible by the City. Before POW may accept treated effluent pursuant to this paragraph, however, POW and its method of use must be approved by TCEQ pursuant to Title 30 of the Texas Administrative Code Chapter 210, and POW must demonstrate compliance with the requirements of Title 30 of the Texas Administrative Code Chapter 210. Nothing in this Agreement should be construed to give POW priority over 210 beneficial reuse customers of the City.
6. The City will use its best effort to have a loading station approved by TCEQ for Beneficial Reuse. Promptly upon TCEQ approval of a loading station, the City will provide a loading station for the community to access and use treated effluent (at a City designated location). Any user of the loading station must be approved by TCEQ, and the user must demonstrate compliance with Title 30 of the Texas Administrative Code Chapter 210.
7. The City will incorporate in its design for the Wastewater Plant features that will mitigate impacts to nearby landowners. Such features shall include covered headworks and maximum possible compliance with dark sky standards (as safety allows).
8. Within 3 business days of the Effective Date of this Agreement, the City will request that TCEQ incorporate the terms of this Agreement into the Permit to maximum extent possible without converting any part of the Permit into a land-application or TLAP permit. This Paragraph shall not be construed so as to request that TCEQ convert any part of the Permit into a Land Application Permit because to do so would be to defeat the purpose of this Agreement (which is to encourage Beneficial Reuse to the maximum extent possible). Within 3 business days of the TCEQ notifying Applicant which terms of this Agreement it believes should be incorporated the Permit, the City will file a Motion with SOAH to amend the draft permit to request that such terms be incorporated into the Permit.

G. Agreements by Non-City Parties.

Each of the Non-City Parties covenant and agree as follows:

1. Any recommendations made by any Non-City Parties to the Utility Commission referenced in Section E above will include financial information identifying the anticipated cost of implementing the recommendation(s).
2. Within three business days of the City’s filing of the Motion specified in F(8) of this Agreement, each of the Non-City Parties will withdraw as a party to SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD. This withdrawal is conditional upon the request by the City to incorporate the terms of this Agreement into the Permit, as set forth in paragraph F(8) above. Each of the Non-City Parties agrees not to contest

SOAH Docket No. 582-18-3000 or TCEQ Docket No. 2017-1749-MWD or appeal SOAH Docket No. 582-18-3000 or TCEQ Docket No. 2017-1749-MWD.

3. Each Non-City Party agrees that, in relation to SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD and any appeals of those matters, unless ordered to do so pursuant to subpoena or court order, neither the Non-City Party nor any of its employees or contractors will provide financial or technical support to any person or entity that is a party to SOAH Docket No. 582-18-3000 and TCEQ Docket No. 2017-1749-MWD, nor will it or any of its employees or contractors provide financial or technical support to any person or entity that indirectly or directly opposes the issuance of the Permit, nor will it or any of its employees or contractors provide financial or technical support to any person or entity that seeks to appeal the issuance of the Permit.

H. Miscellaneous.

1. **NON-CONFIDENTIALITY.** This agreement is not confidential.
2. **GOOD FAITH.** The Parties agree to cooperate with each other and act in good faith in the performance of this Agreement.
3. **SEVERABILITY.** Except as specifically set forth in this Agreement, the provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstances is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected thereby and this Agreement will be construed as if such invalid or unconstitutional portion had never been contained herein.
4. **NO ENDORSEMENT OF PERMIT OR APPLICATION.** This Agreement does not constitute an endorsement of the Permit, the Permit application or the issuance of the Permit.
5. **TERM.** This Agreement terminates upon the earlier of (1) termination of TPDES Permit No. WQ0014488003, (2) upon the issuance by TCEQ of a major amendment of TPDES Permit No. WQ0014488003 that increases the volume that is allowed to be Discharged, or (3) upon agreement by the parties.
6. **PRESERVATION OF APPLICABLE LAW.** Nothing in this agreement shall be construed to require or authorize a violation of local, state, or federal law or regulation.
7. **WAIVER OF GOVERNMENTAL IMMUNITY.** The City knowingly and expressly waives governmental immunities that could be asserted by it in any cause of action or

proceeding brought by the Non-City Parties to enforce the terms of or determine the Parties' rights under this agreement for specific performance. The City acknowledges that:

- a. The City is not entitled to assert governmental immunity in a contested case hearing before TCEQ or the State Office of Administrative Hearings ("SOAH") involving the application;
- b. The Non-City Parties were granted party status in the contested case hearing, SOAH Docket No. 582-18-3000 and are required by the City to forego participation in a contested case hearing as a term of this settlement;
- c. The Non-City Parties enter into this agreement based upon the representation and acknowledgment of, and inducement by the City that it waives governmental immunity as a defense to enforcement of this Agreement.

8. **OPPORTUNITY TO CURE.** In the event that there is a breach or alleged breach to this agreement, the non-breaching Party will send notice of such alleged breach to the alleged breaching Party via certified mail at the address specified in the notice paragraph of this Agreement. The alleged breaching Party will have 60 days to cure such breach. It is a condition precedent to filing suit for breach of this Agreement that the notice be provided and the opportunity for cure be allowed prior to filing a lawsuit. Failure to provide for this Notice and cure process shall constitute a breach of this Agreement.
9. **REMEDIES.** If any Party fails to comply with its obligations under this Agreement or fails to correct any default after notice and opportunity to cure, the other Party or Parties may exercise any remedy authorized at law or in equity, except for monetary damages, but including termination or filing suit in a court of competent jurisdiction to seek any available remedy, including by way of example only, injunctive relief, and/or specific performance. The prevailing Party or Parties to the litigation may recover costs of court, reasonable attorney's fees and expert consultant and witness fees incurred in enforcing or defending a claim under this Agreement.
10. **REMEDIES CUMULATIVE.** All remedies authorized and/or contemplated by this Agreement are intended to be cumulative, not exclusive, of any other remedy available to a Party either at law or in equity.
11. **EQUITABLE REMEDIES.** The Parties stipulate that the failure in the performance of the Parties' obligations hereunder cannot be adequately compensated in money damages alone, the Parties agree, in the event of any default on its part, that the other parties will have available to them equitable remedies, including specific performance, in addition to any other legal or equitable remedies which may also be available as specifically allowed by this Agreement.
12. **NOTICE.** Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

To the City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

and

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

To Save Barton Creek Association:

Save Barton Creek Association
P.O. Box 5923
Austin, TX 78763

To Protect Our Water, Inc.:

Protect Our Water, Inc.
c/o Rich Beggs
1794 Trebled Waters Trail
Driftwood, Texas 78619
protectourwaternow@gmail.com
1 (512) 299-3442

To Richard Beggs

1794 Trebled Waters Trail
Driftwood, Texas 78619
richardobeggs@hotmail.com
1 (512) 299-3442

To Sarah Beggs:

1794 Trebled Waters Trail
Driftwood, Texas 78619
beggsiv@hotmail.com
1 (512) 590-2734

To Barton Springs Edwards Aquifer Groundwater Conservation District:

Attn: General Manager
1124 Regal Row
Austin, Texas 78748
FAX: (512) 282-7016
e-mail: areinmund@bseacd.org

To Hays Trinity Groundwater Conservation District:
Hays Trinity Groundwater Conservation District
Center Lake Business Park
14101 Hwy 290 W
Bldg. 100, Suite 212
Austin, Texas 78737
e-mail: manager2@haysgroundwater.com

To Alfredalbert, LLC:
Valerie Vogler-Stipe
Keller Williams Realty International
1221 S. Mopac Expressway
Suite 400
Austin, Texas 78746

To Umari Partners, LP.:
Umari Partners, L.P. a Texas Limited Partnership
By: Umari I L.L.C., a Texas Limited Liability Corporation, general partner
Pamela M. Ryan, Manager
509A W. Lynn St.
Austin, TX 78703
Via email: mel@tingarigroup.com

To Reed Burns and RPC Investments, LLC:
Reed Burns
3716 Meredith Street
Austin, Texas 78703
e-mail: burnsreed@hotmail.com

13. APPLICABILITY TO SUCCESSORS.

- a. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors. The Parties agree any future owner, transferee, operator, or assignee of TPDES Permit No. WQ0014488003 and the facilities applied for and described in the Application will be required to comply with this Agreement.
- b. Non-City Parties may assign their rights and obligations under this Agreement only with City approval. In the event that a Non-City Party is an entity or organization that ceases to exist, through final termination that cannot be remedied through the Texas Secretary of State, the rights of that Non-City Party will extinguish and the obligations of the City to that Non-City Party will cease to exist.
- c. In the event the City transfers or changes control or ownership of facilities authorized in TPDES Permit No. WQ0014488003, it will notify Non-City Parties in writing within 10 days of the transfer or change. The City will not assign or transfer its rights and facilities authorized in TPDES Permit No. WQ0014488003

without assuring that the assignee agrees to accept the terms and conditions of this Agreement.

14. **NO THIRD-PARTY BENEFICIARIES.** The Parties agree that this Agreement is for the benefit of the signatories only. There are no third party beneficiaries. No Person other than the Parties themselves has any rights or remedies under this agreement.
15. **MULTIPLE ORIGINALS.** This Agreement may be executed in multiple originals any copy of which shall be considered an original.
16. **GOVERNING LAW.** This Agreement shall be governed by the law of the State of Texas.
17. **VENUE.** Venue for any suit arising under this Agreement is in Hays County.
18. **DEADLINE FOR EXECUTION.** This Agreement shall be null and void and of no effect if it is not fully executed by July 3, 2018.
19. **LCRA AGREEMENT.** Nothing in this Agreement should be construed as replacing the obligations undertaken by the City in the LCRA Agreement. Compliance with the LCRA Agreement is required (but this Agreement does not create third party beneficiaries in the LCRA Agreement).
20. **AUTHORITY TO EXECUTE.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of those for whom they sign.
21. **PRIVATE COVENANT.** To the extent that any provision of this Agreement is not incorporated into the Permit, that provision remains an enforceable private covenant as between the Parties.

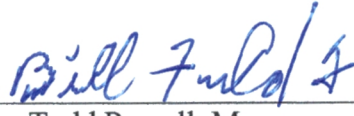
[SIGNATURE PAGES FOLLOW]

THE CITY OF DRIPPING SPRINGS, TEXAS

Attest:



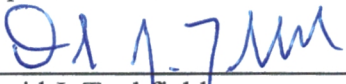
City Secretary

By: 

Todd Purcell, Mayor

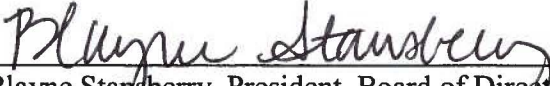
Date: July 3, 2018

Approved as to form:




David J. Tuckfield
Special Counsel for
The City of Dripping Springs


BARTON SPRINGS EDWARDS AQUIFER GROUNDWATER CONSERVATION DISTRICT


Blayne Stansberry, President, Board of Directors
Barton Springs/Edwards Aquifer Conservation District


ATTEST TO SIGNATUTRE OF
BLAYNE STANSBERRY:


Blake Dorsett
Board Secretary

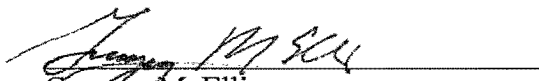
APPROVED AS TO FORM:


William D. Dugat III
Attorney for Barton Springs/Edwards
Aquifer Conservation District

HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT


Linda Kaye Rogers, President
Hays Trinity Groundwater Conservation District

APPROVED AS TO FORM:


Gregory M. Ellis
Attorney for Hays Trinity Groundwater Conservation District

SAVE BARTON CREEK ASSOCIATION



By: Clark Hancock
Title: SBCA President

Date: June 28, 2018

PROTECT OUR WATER, INC.

Richard O. Beggs[®]
By: Richard Beggs
Title: President

Date: 6-28-18

RICHARD BEGGS

Richard O. Beggs
Richard Beggs

Date: 6-28-18

SARAH BEGGS

Sarah Beggs
Sarah Beggs

Date: 6/28/18

ALFREDALBERT, LLC, A TEXAS LIMITED LIABILITY COMPANY

U.U.K.
By: Valerie Vogler-Stipe
Title: Vice President

Date: 06.29.18

UMARI PARTNERS, LP., A TEXAS LIMITED PARTNERSHIP



Date: 6/28/2018

By: Umari I L.L.C., a Texas Limited Liability Corporation,
general partner
Pamela M. Ryan, Manager

REED BURNS

Reed C. Burns
Reed Burns

Date: July 1st 2018

RPC INVESTMENTS, LLC

Reed C. Burns
By: Limited partner
Title:

Date: July 1st 2018.

EXHIBIT A

OPTION E

Participation by the Following:

The Lower Colorado River Authority

**AGREEMENT REGARDING THE CITY OF DRIPPING SPRINGS'
APPLICATION NO. WQ001448803 FOR A TPDES PERMIT**

The City of Dripping Springs, Texas ("Dripping Springs"), the Lower Colorado River Authority ("LCRA"), (collectively, Dripping Springs and LCRA are herein referred to as the "Parties") enter this Agreement concerning Dripping Springs' application for a Texas Pollutant Discharge Elimination System ("TPDES") permit No. WQ0014488003 from the Texas Commission on Environmental Quality ("TCEQ").

RECITALS

WHEREAS, on October 20, 2015, Dripping Springs submitted an application, TPDES No. WQ0014488003, to the TCEQ requesting a permit to allow discharge of treated wastewater at a volume not to exceed 995,000 gallons per day to the Onion Creek Watershed ("Application"); and

WHEREAS, in 2016, TECQ issued a draft permit that would authorize Dripping Springs to discharge up to 995,000 gallons per day of treated wastewater into a tributary known as Walnut Springs that feeds into Onion Creek; and

WHEREAS, Dripping Springs intends to beneficially reuse the effluent generated from its wastewater treatment facility as evidenced by its contracts with surrounding developments, its ordinance that promotes beneficial reuse, and commitment to maintain irrigation fields as set-forth in this Agreement ("Reuse Program"); and

WHEREAS, the Parties agree that beneficial reuse of effluent promotes conservation of raw water resources and protects natural resources consistent with sustainable economic development; and **NOW, THEREFORE**,

AGREEMENT

The Parties agree as follows

1. Definitions. The following terms shall be defined as follows for purposes of this Agreement:

"Beneficial Reuse": The beneficial use of reclaimed water (treated effluent) from Dripping Springs' Wastewater Treatment Plant which may be substituted for potable water and/or raw water (a) pursuant to Chapter 210 of Title 30 of the Texas Administrative Code, (b) as a direct potable reuse system, or (c) pursuant to any other legal method that does not result in the discharge of effluent from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs. The term "Beneficial Reuse" does not include any treated effluent from the Dripping Springs' wastewater plant that is discharged from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs.

"Beneficial Reuse Infrastructure": Infrastructure that is fully constructed and operational and that allows for the Beneficial Reuse.

“Complete Operational Control”: The ability to make all decisions regarding the management of Beneficial Reuse. With respect to Effluent Storage, it means the ability to determine how much treated effluent will be stored in that facility and when effluent should be placed or removed from the facility. With respect to infrastructure on Irrigable Land, it means the ability to determine when to irrigate and how much to irrigate.

“Dripping Springs’ Wastewater Treatment Plant”: the wastewater plant that processes wastewater pursuant to TPDES No. WQ0014488003.

“Irrigable Land”: Land, including land to be irrigated pursuant to a Chapter 210 authorization, that can be irrigated with treated effluent from Dripping Springs’ Wastewater Treatment Plant. The land need not be contiguous or a single parcel.

“Effluent Storage”: ponds, storage tanks, or other facilities that store treated effluent from Dripping Springs’ Wastewater Treatment Plant for Beneficial Reuse. These may be comprised of multiple facilities.

“Stage 1A”: The time period between when Dripping Springs begins operation of Dripping Springs’ Wastewater Treatment Plant under authority of TPDES No. WQ0014488003 until Dripping Springs’ Wastewater Treatment Plant processes 200,000 gallons of wastewater per day as a three-month average rate.

“Stage 1A Beneficial Reuse Infrastructure”: Beneficial Reuse Infrastructure consisting of (1) infrastructure on at least 25 acres of Irrigable Land that are under the City’s Complete Operational Control, (2) at least 174 acres of Irrigable Land controlled by others, and (3) Effluent Storage with a total capacity of 12 million gallons that are under the City’s Complete Operational Control.

“Stage 1B”: The time period between the end of Stage 1A until Dripping Springs’ wastewater plant processes 399,000 gallons per day as a three-month average rate.

“Stage 2”: The time period between the end of Stage 1B until the first day that Dripping Springs’ wastewater plant processes 497,500 gallons per day as a three-month average rate.

“Stage 3”: The time period between the end of Stage 2 (497,500 gallons per day as a three-month average rate) until the first day that Dripping Springs’ wastewater plant processes 995,000 gallons per day as a three-month average rate.

“Unavoidable Discharge”: a discharge from the Dripping Springs’ Wastewater Plant from a permitted outfall into Walnut Springs that occurred because

- (a) Irrigable Land is frozen or saturated due to chronic wet weather conditions or frozen soil;

- (b) Reasonably unplanned and unforeseen operational or maintenance issues associated with the beneficial reuse system or the wastewater system requires discharge of the treated effluent; or
- (c) the actions or omissions of parties who do not have Complete Operational Control of the Beneficial Reuse Infrastructure or an act of God requires discharge of the treated effluent;¹ or
- (d) a reasonably unexpected or unanticipated occurrence requires discharge of the treated effluent.

In any of these cases, the discharge is considered “unavoidable” only for the time period in which Dripping Springs uses its best efforts to cease the discharge in a reasonably prudent manner.

“Avoidable Discharge”: a discharge from a permitted outfall of the Dripping Springs’ Wastewater Treatment Plant into Walnut Springs that was not an Unavoidable Discharge.

“Unacceptable Discharge Percentage”: the percentage calculated by dividing the amount of Avoidable Discharges (as measured by gallons) by the Amount of Beneficial Reuse (as measured by gallons) during the same time period. By way of example, if there were 7 gallons of Avoidable Discharges and 100 gallons of Beneficial Reuse during the same time period, the Unacceptable Discharge Percentage would be 7%. The word “unacceptable” does not signify a breach of this Agreement, but is merely descriptive of a percentage calculation that will be used to require additional actions as set-forth herein.

2. Purpose and Goal of the Agreement: The purpose and goal of this Agreement is to protect the water quality of Onion Creek and the Barton Segment of the Edwards Aquifer and the Trinity Aquifer, if any, from adverse impacts due to Dripping Springs’ discharge of treated wastewater effluent and to minimize or eliminate the need to discharge effluent into Walnut Springs and Onion Creek. Dripping Springs will construct or have access to beneficial reuse systems as set-forth herein and will discharge to Walnut Springs only after its beneficial reuse options are exhausted.
3. Beneficial Reuse of Effluent:
 - a. Dripping Springs will maximize its beneficial use of effluent by constructing or having constructed infrastructure as described in this Section 3, and by utilizing Chapter 210 Beneficial Reuse Authorizations and, if constructed, utilizing a direct potable reuse system to minimize discharge of its treated wastewater effluent into Walnut Springs.

¹ For purposes of this subsection, the refusal to accept Beneficial Reuse reclaimed water by a person, including a user under a Chapter 210 authorization, who has Complete Operational Control over Beneficial Reuse Infrastructure, Irrigable Land, or Effluent Storage does not constitute an act or omission of a third party that makes a discharge “unavoidable.”

- b. Dripping Springs will reuse the effluent that results from its treatment of wastewater as set out below:
- i. Dripping Springs will sell or otherwise provide wastewater to surrounding residential and commercial developments consistent with their stated Reuse Program including, but not limited to: Caliterra and Howard Ranch;
 - ii. **Stage 1A:** Dripping Springs will not begin processing wastewater pursuant to TPDES No. WQ0014488003 until Stage 1A Beneficial Reuse Infrastructure has been designed, constructed, and is operational. Throughout Stage 1A and the life of TPDES Permit No. WQ0014488003, Dripping Springs will maintain and operate the Stage 1A Beneficial Reuse Infrastructure. The Parties understand and acknowledge that during Stage 1A, Dripping Springs will convert the Irrigable Land that under its Complete Operation Control from drip irrigation to spray irrigation. It will not be a violation of this Agreement for Dripping Springs to take this Irrigable Land off-line during this conversion process, but Dripping Springs will do so at its own risk and taking such action will not justify an Avoidable Discharge.
 - iii. **Stage 1B:** Prior to processing any wastewater during Stage 1B, Dripping Springs will calculate the Unacceptable Discharge Percentage that occurred during Stage 1A. Within 365 days of beginning Stage 1B, Dripping Springs shall acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage during Stage 1A. By way of example, if the Unacceptable Discharge Amount is 10% during Stage 1A, then Dripping Springs will increase its Beneficial Reuse Infrastructure during Stage 1B for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control by 10% (increasing the Stage 1A Beneficial Reuse Infrastructure for Effluent Storage to 13,200,000 gallons or the Irrigable Land to 27.5 acres), Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
 - iv. **Stage 2:** When daily average flows for three consecutive months exceeds 447,750 gallons, Dripping Springs will calculate the Unacceptable Discharge Percentage that has occurred within Stage 2. Within 365 days of the date the Unacceptable Discharge Percentage is calculated, Dripping Springs shall, in addition to the Complete Operational Control over the Stage 1A Beneficial Reuse Infrastructure and any additional Beneficial Reuse Infrastructure resulting from the Stage 1A and 1B Unacceptable Discharge Percentage calculations, acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage during Stage

2. Dripping Springs will calculate the Unacceptable Discharge Percentage every four years thereafter and, if necessary, within 365 days acquire and maintain additional Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage calculations during this stage Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
- v. **Stage 3:** When the City enters Stage 3 (i.e. when average flows for three consecutive months are greater than 497,500), Dripping Springs will calculate the Unacceptable Discharge Percentage every four years from the date that average flows for three consecutive months are greater than 497,500. Within 365 days of finishing each calculation of the Unacceptable Discharge Percentage, Dripping Springs shall, in addition to the Complete Operational Control over the Stage 1A Beneficial Reuse Infrastructure and any additional Beneficial Reuse Infrastructure resulting from the Stage 1A, Stage 1B, and Stage 2 Unacceptable Discharge Percentage calculations, acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the respective Unacceptable Discharge Percentage during the prior four years. Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
 - vi. Dripping Springs will maintain documentation to demonstrate and support the available Irrigable Land and Effluent Storage in each phase of the Permit. Dripping Springs will make such documentation available to the Parties upon request.
- c. Dripping Springs will encourage Beneficial Reuse of its effluent by its utility customers and citizens.
 - d. Dripping Springs will utilize its ordinance that requires development to reuse its effluent or pay a fee for reuse projects.
4. Phasing of Beneficial Reuse Infrastructure :
- a. When daily average flows for three consecutive months exceeds 75 percent of the capacity of the current Stage, Dripping Springs will initiate planning to increase the available Beneficial Reuse Infrastructure.

5. TPDES Permit Requirements: Dripping Springs agrees to comply with the following requirements and to add to Permit No. WQ001448803 as additional permit terms and conditions.

- a. All permit phases shall include a daily average total nitrogen limit that is the lesser of 10.0 mg/L or the limit determined by TCEQ and a total phosphorous limit that is the lesser of .15 mg/L or the limit determined by TCEQ. The total nitrogen and phosphorous limit shall only apply when there is a discharge to the waters of the State;
- b. Dripping Springs shall use ultraviolet light disinfection in accordance with TCEQ requirements or will dechlorinate prior to discharge.
- c. The wastewater treatment plant shall be operated at all times by an operator holding a "Category A" wastewater operator license.
- d. If any of the provisions in this paragraph cannot be included in the Permit due to TCEQ limitations, Dripping Springs still agrees to abide by those provisions and all terms in this Agreement. Any of the provisions in this Agreement that is included in the Permit shall be subject to enforcement by TCEQ only and not any Party to this Agreement.

6. Operations

Dripping Springs will use its best efforts to minimize occurrence of discharge to Walnut Springs. Discharge of treated effluent to Walnut Springs will occur only when:

- i. (a) Irrigable Land under the Dripping Springs' Complete Operational Control are frozen or saturated; and (b) other beneficial use options that have been established by Dripping Springs are exhausted; and (3) Effluent Storage under Dripping Springs' Complete Operational Control are filled to their designed capacity; or
- ii. (a) Unplanned operational or maintenance issues associated with the beneficial reuse system or the wastewater system requires discharge of the treated effluent, or (b) the actions or omissions of third parties or an act of God requires discharge of the treated effluent, or (c) an unexpected or unanticipated occurrence requires discharge of the treated effluent.

7. Dripping Springs agrees it will not adopt an ordinance, resolution or other local law contradicting the terms of this Agreement or allowing it to breach or violate the terms of this Agreement.
8. Reports. Dripping Springs will maintain documentation to show compliance with the agreements set-forth in paragraph 3 of this Agreement and make such documentation available to any of the Parties upon request.

9. Records. Dripping Springs will maintain the following records during each Stage and for at least three years after that Stage:
 - a. Records showing whether discharges from a permitted outfall of the Dripping Springs' Wastewater Treatment Plant into Walnut Springs was an Avoidable Discharge or an Unavoidable Discharge. To the extent that a discharge was an Unavoidable Discharge, Dripping Springs shall identify facts in writing to support its conclusion.
 - b. Records showing the amount of treated effluent that is discharged from a permitted outfall of the Dripping Springs' Wastewater Treatment Plant into Walnut Springs on a daily basis.
 - c. Records showing the amount of Beneficial Reuse on a daily basis.
 - d. Records showing Unacceptable Discharge Percentage for the prior Stage (or, in the case of Stage 3B for the previous two-year period).
 - e. Records showing the amount of Irrigable Land and Effluent Storage over which Dripping Springs was required to maintain Complete Operational Control for the prior Stage (or, in the case of Stage 3B for the previous two-year period).
10. Contested Case Hearing. Because of Dripping Springs' commitments and agreements to beneficially reuse the effluent that results from its treatment of wastewater, the Parties agree not to protest or otherwise oppose the Dripping Springs application, filed with the TCEQ on October 20, 2015, for TPDES permit No. WQ0014488003 described in this Agreement in a contested case hearing or other proceeding related to the permit sought by the October 20, 2015 application.
11. The Parties agree that, unless ordered to do so pursuant to subpoena or court order, they and any of their employees and contractors shall not provide financial or technical support to any person or entity that obtains standing to contest Dripping Springs' request for the TPDES permit described in this Agreement, nor will it provide financial or technical support to any person or entity that indirectly or directly supports or provides information to any person or entity that obtains standing to contest Dripping Springs' request for the TPDES permit described in this Agreement.
12. Nothing in this agreement shall be construed to require or authorize a violation of local, state, or federal law or regulation.
13. Sovereign Immunity: Dripping Springs knowingly and expressly waives governmental immunities that could be asserted by it in any cause of action or proceeding brought by the Settling Parties to enforce the terms of or determine the Settling Parties' rights under this Agreement. Dripping Springs acknowledges that:

- a. Dripping Springs' is not entitled to assert governmental immunity in a contested case hearing before the TCEQ or the State Office of Administrative Hearings ("SOAH") involving the Application;
- b. The Settling Parties are required by Dripping Springs to forego participation in a contested case hearing as a term of this settlement; and
- c. The Settling Parties enter into this agreement based upon the representation and acknowledgement of, and inducement by Dripping Springs that it waives governmental immunity as a defense to enforcement of this Agreement.

14. NOTICE. Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

To the City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

and

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

To LCRA:

Lower Colorado River Authority
Attn: Bryan Cook
P.O. Box 0220
Austin, Texas 78767-0220

15. TERM. This Agreement shall remain effective while TPDES Permit No. WQ0014488003 is in effect. This Agreement shall terminate upon the termination of TPDES Permit No. WQ0014488003 or upon agreement by the Parties.

16. Assignment.

- a. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. The Parties agree any future owner, transferee, operator, or assignee of TPDES Permit No. WQ0014488003 and the facilities

applied for and described in the Application will be required to comply with this Agreement.

- b. In the event Dripping Springs transfers or changes control or ownership of facilities authorized in TPDES Permit No. WQ0014488003, it will notify LCRA in writing within 10 days of the transfer or change.

17. MISCELLANEOUS.

- a. The Parties agree that this Agreement is for the benefit of the signatories only. There are no third party beneficiaries. No Person other than the Parties themselves has any rights or remedies under this agreement.
- b. This Agreement may be executed in multiple originals any copy of which shall be considered an original.
- c. This Agreement shall be governed by the law of the State of Texas.
- d. Venue for any suit arising under this Agreement is in Hays County.
- e. This agreement shall become effective immediately upon signature by both parties and immediately after ratification by the City Council of the City of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

Linda G. Lents
City Secretary

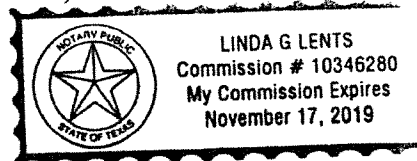
By: Bill Fowles
~~Todd Purcell~~ Mayor - pro-tem
Bill Fowles

Date: November 3, 2017

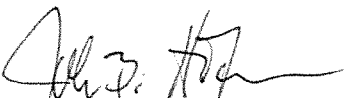
STATE OF TEXAS
COUNTY OF TREVISO

This instrument was executed by ~~Todd Purcell~~ ^{Bill Fowles} before me on this the 3 day of November, 2017.

Linda G. Lents
Notary Public, State of Texas



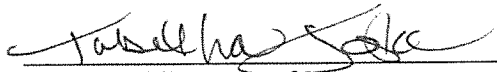
LOWER COLORADO RIVER AUTHORITY

By: 
John Hofmann, Exec. VP, Water

Date: 10/27/2017

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was executed by **John Hofmann** before me on this the 27th day of October, 2017.


Notary Public, State of Texas

