

Control Number: 43769



Item Number: 5

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*

CCN/20967/CO

43769

RECEIVED

2015 JAN -8 AM 11:32

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
PUBLIC UTILITY COMMISSION  
FILING CLERK

*Protecting Texas by Reducing and Preventing Pollution*

May 27, 2010

TO: Persons on the attached mailing list.

RE: City of Dripping Springs  
TCEQ Docket No. 2009-1972-UCR

RECEIVED

JUL 01 2010

**Decision of the Commission on Petition.**

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced matter. Enclosed with this letter is a copy of the Commission's order. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

TCEQ  
CENTRAL FILE ROOM

**Deadline for Filing Motion for Rehearing.**

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this matter. A person is presumed to have been notified on the third day after the date that this order is mailed.

Motions may be filed with the chief clerk electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and 7 copies with the Chief Clerk at the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512/239-3311

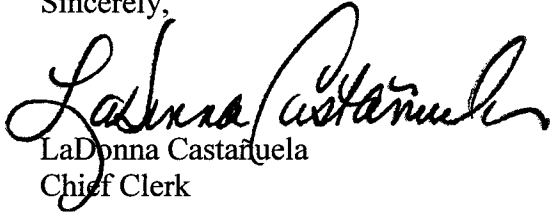
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion were sent to those on the mailing list must also be sent to the chief clerk. The procedures for filing and serving motions for rehearing and responses are located in 30 Texas Administrative Code (TAC) §80.272 and 30 TAC §1.10-1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h).

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this matter.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/ms

Enclosure

MAILING LIST  
City of Dripping Springs  
TCEQ Docket No. 2009-1972-UCR

FOR THE PETITIONER:

Susan G. Zachos  
Law Office of Susan G. Zachos  
901 South MoPac Expressway  
Barton Oaks Plaza One, Suite 300  
Austin, Texas 78746

FOR THE CHIEF CLERK

via electronic mail:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

INTERESTED PERSONS:

Philip S. Haag  
McGinnis, Lochridge & Kilgore, L.L.P.  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Dinniah Tadema, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Lisa Fuentes, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division MC-153  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** to compel Dripping Springs Water Supply Corporation to terminate water utility service to customers for nonpayment of sewer utility service provided by the City of Dripping Springs in Hays County, Texas; Docket No. 2009-1972-UCR

On May 19, 2010, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the petition of the City of Dripping Springs ("City") for an order to compel Dripping Springs Water Supply Corporation ("Dripping Springs WSC") to terminate water utility service for nonpayment of sewer utility service in Hays County in accordance with the requirements of 30 Texas Administrative Code Section 291.88(e).

The City is a retail public utility that supplies sewer service in Hays County and is authorized by the TCEQ to provide such service pursuant to the authority granted in Certificate of Convenience and Necessity ("CCN") No. 20967. The City has obtained funding through State government for the provision, expansion or upgrading of sewer service with a loan from the Texas Water Development Board.

Dripping Springs WSC provides retail water utility service in Hays County pursuant to CCN No. 10315. Dripping Springs WSC provides water utility service to the City's Sewer customers ("Affected Customers"). The provision of sanitary sewer service to the Affected Customers is integral to Dripping Springs WSC's separate provision of water service to those same customers. Dripping Springs WSC and the City executed a temporary 90 day agreement wherein Dripping Springs WSC and the City agreed that Dripping Springs WSC would terminate water service for nonpayment of sewer service charges.

The City provided documentation which indicates that it is experiencing losses due to uncollected revenue. The City requested that Dripping Springs WSC renew or extend the

agreement for termination of water service for nonpayment of sewer service charges. However, the parties have been unable to negotiate an agreement on this issue. An Order compelling a process for the termination of water utility service for nonpayment of sewer utility service by the Affected Customers is necessary to effectuate the purposes of the Texas Water Code.

WHEREAS, the Commission has jurisdiction to consider this petition and is authorized to make and enter this Order in accordance with Texas Water Code Sections 13.041(b) and 13.250(b).

WHEREAS, the Commission's findings are sufficient to allow the issuance of this Order under 30 Texas Administrative Code Section 291.88(e).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The City's petition for an order to compel Dripping Springs WSC to terminate water utility service for nonpayment of sewer utility service is hereby granted.
2. Delinquent Customers. This Order is valid for the purpose of compelling Dripping Springs WSC to terminate an Affected Customer's water utility service for nonpayment of sewer utility services owed to the City. 30 TEX. ADMIN. CODE § 291.88(a)(2).
3. Subject to the provisions of 30 Texas Administrative Code Section 291.88, the parties must use the following process in order to terminate water utility service for nonpayment of sewer utility service:
  - A. Notice to delinquent Customers. After proper notice to its delinquent customers, the City may initiate procedures for the disconnection of water service. The notice to delinquent customers must comply with 30 Texas Administrative Code Section 291.88(a)(1).
  - B. Disconnection. Prior to the intended date of disconnection described in 30 Texas Administrative Code Section 291.88(a)(1)(D), the City shall notify Dripping Springs WSC in writing of any customer account that requires disconnection of water service for nonpayment of sewer utility services by providing the address of the delinquent account and the intended date of disconnection. In order to avoid

unnecessary disconnection of water service, the City shall provide immediate notice to Dripping Springs WSC when a delinquent customer has paid all of its past-due charges prior to the intended date of disconnection and the City is no longer requesting disconnection. The Dripping Springs WSC shall disconnect the water service to a customer who has not paid the sewer charges on the intended date of disconnection if possible, but in any event within 5 business days after that date. The City shall reimburse Dripping Springs WSC the cost of disconnecting the water service in an amount not to exceed \$50.

- C. Reconnecting. If water service is disconnected for nonpayment of sanitary sewer service charges, except as otherwise required by law or as agreed to by the City, Dripping Springs WSC shall not provide water services to that customer until the City notifies Dripping Springs WSC that it has received payment of all delinquent sewer collection charges, plus any applicable charges which are then collectible in accordance with the City's tariff or other applicable law. Dripping Springs WSC may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. Dripping Springs WSC may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. Dripping Springs WSC must follow the service restoration procedures provided in 30 Texas Administrative Code Section 291.88(h).
- D. Effect on Provision of Water. This Order shall not affect or impair Dripping Springs WSC's rights and obligations with respect to its customers or the provision of water utility services, except as specifically set forth in this Order and as allowed by law.
- E. Purpose of Order. This Order is made for the purpose of facilitating the collection of fees for sanitary sewer services provided by the City. No partnership or joint venture is intended to be created hereby. Dripping Springs WSC's sole responsibility is that of the City's agent for disconnection of utility service, and this Order does not create or give rise to any responsibility by Dripping Springs WSC for:


- i. the construction, operation, maintenance, repair or existence of the sewer collection system;
  - ii. the provision of sewer collection service; and
  - iii. any act or omission relating to such services.
- F. Commencement. The effect of this order shall commence after the first billing date which includes service provided on the date that this Order is issued.
- G. Automatic Termination. If any provision of this Order is determined by any regulatory or judicial body to be invalid, or in violation of any law, the remainder of the Order shall continue to be valid.
- H. This Order shall remain in effect until either 1) the City and Dripping Springs WSC notify the Commission that the Order is no longer needed or 2) the City and Dripping Springs WSC enter into an agreement that specifically states that it supersedes the arrangement established by this Order.
- I. Notices. Any notice or communication required or permitted to be given under this Order shall be sufficiently given when received by any other party. It will also be deemed sufficient if it is delivered by hand delivery, mailed by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission to the addresses indicated below, or to other addresses furnished in writing by any party to all other parties.

City of Dripping Springs  
P.O. Box 384  
Dripping Springs, Texas 78620

Dripping Springs Water Service Corporation  
P.O. Box 354  
Dripping Springs, Texas 78620

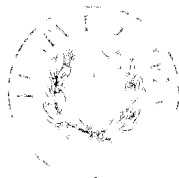
Issue Date: **MAY 26 2010**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Bryan W. Shaw, Ph.D., Chairman



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 30, 2010

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Docket No. 2009-1972-UCR  
An order requiring the disconnection of water service for nonpayment of sewer service charges

Dear Ms. Castañuela:

Enclosed, please find the original and 7 copies of the agenda backup for the above referenced matter which is set for the May 19, 2010 Commission agenda. The backup consists of 1) Applicant's Original Petition; 2) Response to Application No. 36498-C by the City of Dripping Springs to Compel Termination of Water Service; 3) the Executive Summary; and 5) a draft order.

Sincerely,

Dinniah C. Tadema  
Staff Attorney  
Environmental Law Division

cc: Mailing List

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2010 APR 30 AM 10:57  
CHIEF CLERKS OFFICE

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 30, 2010

Susan G. Zachos  
Law Office of Susan G. Zachos  
901 South Mopac Expressway  
Barton Oaks Plaza One, Suite 300  
Austin, Texas 78746

Philip S. Haag  
McGinnis, Lochridge & Kilgore, L.L.P.  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

Re: Docket No. 2009-1972-UCR  
An order requiring the disconnection of water service for non-payment of sewer charges

Dear Ms. Zachos and Mr. Haag:

This letter is to inform you that the above-referenced application has been set on the Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). This Agenda will occur on May 19, 2010, beginning at 9:30 a.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the Agenda backup materials to be considered by the Commission. Both of you will need to attend the Agenda to answer any questions the Commissioners may have.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing. If you have any questions about this matter, then you may contact Lisa Fuentes from the Water Supply Division at 1-512-239-4691 or me at 1-512-239-0617.

Sincerely,

A handwritten signature in cursive script that reads "Dinniah C. Tadema".

Dinniah C. Tadema  
Staff Attorney  
Environmental Law Division

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR 30 AM 10:57  
CHIEF CLERKS OFFICE

Mailing List  
Docket No. 2009-1972-UCR  
City of Dripping Springs  
Application No. 36498-C

FOR CITY OF DRIPPING SPRINGS

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Law Office of Susan G. Zachos  
901 South Mopac Expressway  
Barton Oaks Plaza One, Suite 300  
Austin, Texas 78746  
Phone: (512) 329-1930  
Fax: 1-866-614-6618

FOR DRIPPING SPRINGS WSC

Philip S. Haag  
McGinnis, Lochridge & Kilgore, L.L.P.  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
Phone: (512) 495-6008  
Fax: (512) 505-6308

FOR THE EXECUTIVE DIRECTOR

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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Environmental Law Division, MC 173  
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Dinniah C. Tadema, Staff Attorney  
Environmental Law Division, MC 173  
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Tammy Holguin-Benter, Section Manager  
Utilities & Districts Section, MC 153  
Phone: (512) 239-6136

Lisa Fuentes  
Utilities & Districts Section, MC 153  
Phone: (512) 239-6117

FOR THE CHIEF CLERK

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087  
Phone: (512) 239-3300  
Fax: (512) 239-3311

FOR PUBLIC INTEREST COUNSEL

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087

2010 APR 30 AM 10: 57  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TCEQ DOCKET NO. \_\_\_\_\_

2009 SEP -8 AM 10: 42

APPLICATION OF THE	§	BEFORE THE	
CITY OF DRIPPING SPRINGS	§		CHIEF CLERKS OFFICE
FOR A COMMISSION ORDER UNDER	§		
TEX. ADMIN. CODE § 291.88(e)(1)(D)	§	TEXAS COMMISSION ON	
REQUIRING THE DRIPPING SPRINGS	§		
WATER SUPPLY CORPORATION	§		
TO DISCONNECT WATER SERVICE	§	ENVIRONMENTAL QUALITY	
FOR NONPAYMENT OF	§		
CITY SEWER CHARGES	§		

**APPLICANT'S ORIGINAL PETITION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The City of Dripping Springs ("City") provides retail sewer service to customers who are also retail water customers of the Dripping Springs Water Supply Corporation (the "WSC"). The City files this petition to obtain an order from the Texas Commission on Environmental Quality ("TCEQ" or "Commission") requiring the WSC to disconnect water service to the WSC's water customers for nonpayment of City sewer charges, as authorized by 30 Tex. Admin. Code § 291.88(e)(1)(D).

**I. FACTS**

**A. The City funded its sewer system with a Texas Water Development Board ("TWDB") loan.**

The City constructed its "South Regional Wastewater Treatment System" ("System"), which is owned by the City and operated through agreements with contract service providers. The City holds the TCEQ permit for the facility's operations. The System consists of sewer collection lines, a treatment plant, and subsurface drip irrigation facilities. The System is

financed with a loan from the Texas Water Development Board. *See* Exhibit A. The City began System operations in June 2008.

**B. The City needs a water service disconnection agreement to collect unpaid sewer bills.**

The City's retail sewer customers are also retail water customers of the WSC. The City does not currently provide water service to any of its sewer service customers. Therefore, the City must have a water service disconnection agreement to enforce and collect its sewer bills, in order to meet its revenue requirements and repay its TWDB loan.

**C. The WSC refuses to contract with the City to disconnect water service for non-payment of sewer charges.**

In anticipation of its sewer service billing and collection needs, the City had hoped to negotiate with the WSC for both billing and water disconnection services. In fact, this was addressed in a 2002 settlement agreement between the City and the WSC (resolving earlier disputes), which stated:

DSWSC agrees that it will terminate water service to its customer who are also sewer customers of the City, as authorized by Section 13.250(b)(2) of the Texas Water Code, and under a joint billing agreement that will be written between DSWSC and the City.

Initially, the parties attempted to write a joint billing/water termination agreement. *See* Exhibit B (March 9, 2007 Letter; in addition, the WSC and City exchanged numerous emails and drafts of the joint billing/water service termination agreement). But the WSC demanded billing agreement terms that were unacceptable to the City, including inflated set-up fees and monthly per-customer charges. Despite years of negotiations, all attempts to agree on terms for the contemplated "joint billing agreement that will be written" had failed. And, in May 2008, just a month before its System start-up, the City entered into a billing agreement with a third-party

service provider, for less than one-third the costs demanded by the WSC, with more transparency on the accounting, and with much stronger City oversight and control of the disposition of the sewer customers' payments to the City.<sup>1</sup>

However, the City still needed a termination agreement to enforce sewer bill collections.<sup>2</sup> In May 2009 – a year after the City's System started up, the WSC finally signed an agreed "Water Service Termination Agreement." Exhibit C. However, the WSC would only agree to a 90-day term for the Agreement. *Id.* at ¶ 8. For three months, the parties operated under the Agreement, with no adverse incidents. In compliance with the notice provisions in the Agreement, the City was able to collect past-due sewer charges, or enter into payment agreements with, all of its past-due customers. The WSC had to turn off only one water service customer, whose service was promptly restored upon making payment arrangements.

However, when the 90-day Agreement expired, the WSC refused to renew or extend it, despite repeated requests from the City. See Exhibit D (City's request for extension of the 90-day Termination Agreement), Exhibit E (WSC's letter notifying the City of the WSC Board's decision not to extend the 90-day Termination Agreement) and Exhibit F (the City's follow-up request after the Board meeting).

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<sup>1</sup> The City continued to negotiate a joint billing agreement with the WSC even after May 2008, open to the WSC becoming the City's billing agent when the third-party contract came up for renewal, if the WSC could agree to reasonable terms. See Exhibit B (July 22, 2008 Letter).

<sup>2</sup> In the course of these negotiations, the parties use the term "disconnect" and "terminate" interchangeably, to refer to temporary water service disconnection until arrangements have been made to pay outstanding sewer charges.

## II. LEGAL AUTHORITY

### A. TCEQ rules protect the City by requiring the requested order

The TCEQ's own rules protect the City under these circumstances by requiring a Commission-ordered arrangement to disconnect water service for nonpayment of sewer charges. TCEQ adopted this requirement in clear terms in 30 Tex. Admin Code § 291.88(e)(1)(C) & (D):

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission *may issue an order requiring disconnections under specified conditions.*

(D)The commission *will issue* an order requiring termination of service by the retail public utility providing water service if either:

(i) *the retail public utility providing sewer service has obtained funding through the State* or Federal government for the provision, expansion or upgrading of such sewer service; or

(ii) the commission finds that an order is necessary effectuate the purposes of the Texas Water Code.

(Like the WSC and the City, this rule uses the terms "disconnection" and "termination" interchangeably to refer to shutting off water service, either temporarily or permanently, for non-payment of sewer charges.)

Where a sewer provider has a state-funded sewer system, the Commission "will issue" the termination order described in this rule.

### B. Statutory authority supports the rule.

This rule was enacted under the authority of Tex. Water Code § 13.250(b), which provides for termination of water service for "nonpayment of charges for sewer service provided by another retail public utility . . . under a commission-ordered arrangement between the two service providers." The Commission has chosen to exercise that authority through the rule

quoted above. Because the City has obtained funding for its System through the Texas Water Development Board, the City has a right to the requested order, and the TCEQ's authority to issue it is well grounded in the law.

### **III. ARGUMENT FOR THE REQUESTED RELIEF**

#### **A. The City is entitled to the requested termination order.**

Under the TCEQ statutes and rules, and under the equities in this case, this petition should be granted. Because the City's System was funded with its outstanding TWDB loan, section 291.88(e)(1)(C) & (D) of the Commission's rules<sup>3</sup> entitles the City to TCEQ order requiring WSC termination of water service for nonpayment of the City's sewer charges.

As to the form of the order requested, the WSC and the City already have a workable form of agreement, in the bare-bones contract provided as Exhibit C. Under the legal authority presented above, the City respectfully requests that the TCEQ issue an order that incorporates the parties' agreements in paragraphs 1 through 6 and 14 of that Agreement, revised as necessary for incorporation into a Commission order. The WSC and the City negotiated those water service termination provisions for years, and both of their governing bodies approved them, effective May 29, 2009. No disputes arose in the performance of that Agreement. Because the WSC would only agree to a 90-day term, on July 1, 2009 the City sent the WSC a formal request for an extension. Exhibit D. But the WSC sent the City a letter on July 17, 2009 confirming that the WSC's board rejected the City's request for an extension. Exhibit E.

The City has been extremely patient, and has taken every reasonable step to negotiate with the WSC to obtain a termination agreement, without Commission intervention. The City

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<sup>3</sup> 30 Tex. Admin Code § 291.88(e)(1)(C) & (D).



regrets having to file this petition, at an expense ultimately borne by both of our customers.

However, the WSC gives the City no other viable option.

**B. The WSC has not defense to the TCEQ's issuance of an Order.**

The City is entitled to the order. The WSC has no legal defense to its issuance.

However, in anticipation of issues that the WSC will raise, we provide the following response to the July 17, 2009 letter, which raises 3 false issues.

1. **The WSC is not missing any "information."** The WSC's July 17th letter complains vaguely that "no one from the City was present at this [July 13th] meeting so the Board had very little information from the City on hand to consider when it discussed this request" to extend the 90-day Termination Agreement. First, the WSC never asked the City to attend the meeting. In fact, the WSC never even gave the City a courtesy call to say that the matter was being considered on July 13th (and the WSC does not post its agendas on-line). Second, the WSC never asked the City to provide any information – not even in response to the City's follow-up inquiry asking the Board President "what the issues are" and to try to "get this back on track." Exhibit F. Since the parties have negotiated this Agreement for years, and nothing noteworthy happened during its fleeting term of 90-days, there simply IS no such additional information.

2. **Customers are not "confused" and confusion is not a defense.**

Although the WSC's letter also vaguely alleges "confusion of our respective customers," the City is not aware of any such "confusion" among the customers. The WSC has raised this "confusion" issue repeatedly in the course of negotiations with the City, but the WSC's hoped-for confusion has never materialized, and we believe it has no basis in fact. However, even if some customers were confused, that provides no legal defense to this petition.

**3. The WSC is holding the termination agreement hostage.** The WSC's

July 17, 2009 says that the WSC will not renew or extend the water service termination agreement unless the City enters into a billing agreement. It is quite troubling that the WSC would seek to use the termination agreement as leverage in the WSC's bid to be the City's billing agent. After years of negotiating with the WSC, the City could never get the WSC to agree to cost effective joint billing terms and services, and already has billing services in place, under a third-party contract signed in May 2008. The WSC's proposed "Interlocal Joint Billing Agreement" attached to the July 17, 2009 letter (Exhibit E) is not acceptable to the City for reasons that need not be discussed in this case.

The City has moved on. Although the WSC apparently has not moved on, this dispute over the billing agreement is not legally relevant to the Commission's authority to issue the requested order, and does not need to take up TCEQ time or resources. Regardless of who does the City's billing, the City needs the termination order – to which it is justly entitled – as soon as possible.

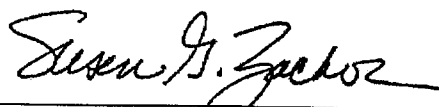
**IV. PRAYER FOR RELIEF**

Based on the facts and authorities set forth above and attached, the City respectfully requests that the Commission:

1. issue an order imposing a Commission-ordered arrangement between the City and the WSC requiring the WSC to discontinue water service to its customers under the terms set forth in paragraphs 1 through 6 and 14 of the "Water Service Termination Agreement" attached as Exhibit C, revised as necessary for incorporation into a Commission order; and

2. grant the City such other and further relief to which it may be justly entitled, in law and equity.

Respectfully submitted,



---

SUSAN G. ZACHOS  
State Bar No. 22237500

LAW OFFICES OF SUSAN G. ZACHOS  
901 South Mopac Expressway  
Barton Oaks Plaza One, Suite 300  
Austin, Texas 78746  
Phone: 512-329-1930  
Fax: 1-866-614-6618 (toll-free)  
eMail: [Zachos@ZachosLaw.com](mailto:Zachos@ZachosLaw.com)

## List of Exhibits

**Exhibit A. Documentation of Texas Water Development Board Financing of the City's Wastewater System:**

1. City of Dripping Springs Receipt for "Combination Tax and Junior Lien Revenue Certificates of Obligation , Series 2005" in the principal amount of \$9,430,000, delivered to the Texas Water Development Board, Initial Purchaser (April 7, 2005).
2. Resolution of the Texas Water Development Board Approving an Application for Financial Assistance through the Purchase of \$9,430,000 City of Dripping Springs, Texas, Combination Tax and Revenue Certifications of Obligation, Proposed Series 2003 (October 15, 2003).

**Exhibit B. Examples of Correspondence - City's Negotiations with the WSC**

1. Letter from Michelle Fischer, City Administrator to Doug Cones, General Manager (March 9, 2007).
2. Letter from Ginger Faught, Deputy City Administrator, to Phil Haag, Attorney for WSC (July 22, 2008).

**Exhibit C. Wastewater Service Termination Agreement between the City of Dripping Springs and the Dripping Springs Water Supply Corporation (May 29, 2009) (now expired).**

**Exhibit D. Letter from Ginger Faught, Deputy City Administrator, to Steve Harris, WSC Board Member (July 1, 2009) (requesting renewal of Water Service Termination Agreement).**

**Exhibit E. Letter from Steven Harris, WSC Board of Directors, to Ginger Faught, Deputy City Administrator (July 1, 2009) (denying request to extend the Water Service Termination Agreement unless the City enters into an interlocal billing agreement with the WSC).**

**Exhibit F. Email from Ginger Faught to Steven Harris (July 14, 2009) (requesting follow-up on request for extension of Water Service Termination Agreement).**

**EXHIBIT A**

**RECEIPT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF HAYS               §  
  §  
CITY OF DRIPPING SPRINGS   §

THE UNDERSIGNED HEREBY CERTIFIES that:

(1) This receipt is executed and delivered with respect to the "CITY OF DRIPPING SPRINGS, TEXAS COMBINATION TAX AND JUNIOR LIEN REVENUE CERTIFICATES OF OBLIGATION, SERIES 2005", dated October 1, 2004, in the aggregate principal amount of \$9,430,000 (the *Certificates*). The issuer of the *Certificates* is the City Council of the City of Dripping Springs, Texas (the *City*).

(2) On the date shown hereof, the *Certificates* were delivered to the initial purchaser:

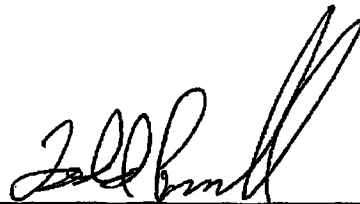
TEXAS WATER DEVELOPMENT BOARD (TWDB)  
(in the nominee name of Cede & Co.)

(3) All of the *Certificates* have been paid for in full by the initial purchasers concurrently with the delivery of this receipt, and the City has received the agreed purchase price for the *Certificates*, as follows:

Principal Amount .....	\$9,430,000.00
Accrued Interest .....	0.00
Less TWDB Fee .....	<u>( 171,286. )</u>
 Total Amount Received .....	 <u>\$9,258,714.00</u>

(4) The undersigned has executed this receipt in the capacity hereinafter shown for and on behalf of the City.

EXECUTED AND DELIVERED this APR 7 2005



\_\_\_\_\_  
Mayor  
City of Dripping Springs, Texas

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE  
THROUGH THE PURCHASE OF  
\$9,430,000 CITY OF DRIPPING SPRINGS, TEXAS  
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2003

(03-87)

WHEREAS, the City of Dripping Springs, Texas (the "City") has filed an application seeking financial assistance in the amount of \$9,430,000 from the Clean Water State Revolving Fund to finance wastewater system improvements; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "Board") through the Board's purchase of \$9,430,000 City of Dripping Springs, Texas Combination Tax and Revenue Certificates of Obligation, proposed Series 2003 (the "Obligations"), all as is more specifically set forth in the application and in recommendations of the Deputy Executive Administrator for the Office of Project Finance and Construction Assistance, to which documents express reference is made; and

WHEREAS, the Board hereby finds:

1. that in its opinion the tax and revenue pledged by the City will be sufficient to meet all the obligations assumed by the political subdivision;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.) and state law;
3. that the City has considered cost-effective innovative methods of treatment; and
4. that the City has submitted a proposed program of water conservation for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and rules of the Board.

NOW THEREFORE, based on said considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the Board to City of Dripping Springs, Texas for financial assistance in the amount of \$9,430,000 from the Clean Water State Revolving Fund to be evidenced by the Board's purchase of \$9,430,000 City of Dripping Springs, Texas Combination Tax and Revenue Certificates of Obligation, proposed Series 2003. This commitment will expire on October 21, 2005.

Such commitment is conditioned as follows:

1. that the bond counsel opinion must include an opinion that the interest on the obligations is excludable from gross income or is exempt from Federal income taxation. Bond counsel may rely on covenants and representations of the issuer in rendering this opinion;
2. that the bond counsel opinion must include an opinion that the obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the issuer on rendering this opinion;
3. that the ordinance authorizing the issuance of the obligations must include that the proceeds of the obligations and the facilities financed with the proceeds of the obligations will not be used in a manner that would cause the obligations to be "private activity bonds";
4. that the ordinance authorizing the issuance of the obligations must include that the issuer will comply with the provisions of Section 148 of the Internal Revenue Code of 1986 (relating to arbitrage);
5. that the ordinance authorizing the issuance of the obligations must include that the issuer will make any required rebate to the United States of arbitrage earnings;
6. that the ordinance authorizing the issuance of the obligations must include that the issuer will take no action which would cause the interest on the obligations to be includable in gross income for Federal income tax purposes;
7. that the transcript must include a No Arbitrage Certificate or similar certificate setting forth the issuer's reasonable expectations regarding the use, expenditure and investment of the proceeds of the obligations;
8. that the transcript must include evidence that the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement is currently satisfied by filing IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form 8038 must be provided to the Executive Administrator of the Board prior to release of funds;
9. that the City will not cause or permit the obligations to be treated as "Federally Guaranteed" obligations within the meaning of section 149(b) of the Internal Revenue Code;
10. that this commitment is contingent on a future sale of bonds or on the availability of funds on hand;



11. that the ordinance authorizing the issuance of obligations will state that obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
12. that the City, or an obligated person for whom financial or operating data is presented either individually or in combination with other issuers of the City's obligations or obligated persons, will, at a minimum, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the City's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the City is an obligated person with respect to such bonds under rule 15c2-12;
13. that the bond ordinance will contain a provision that requires the City to at all times maintain sufficient rates and charges for the payment of system operations and in lieu of tax revenues for debt service requirements:
  - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
  - b. if surplus revenues are based upon budgeted amounts:
    - i. that the ordinance authorizing the issuance of the obligations must include a requirement that the City shall transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the obligations must include a requirement that the City shall not transfer any funds from the city utility fund to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund; and
    - ii. that the ordinance authorizing the issuance of the obligations must include a requirement that for each year that the Obligations are

outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus water or sewer system revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and

- iii. that the ordinance authorizing the issuance of the obligations must include a requirement that the City shall at all times maintain and collect sufficient water or sewer system rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the system, produce revenues in an amount not less than 1.10 times debt service requirements of all outstanding water or sewer system revenue bonds of the City and other obligations of the City which are secured in whole or in part by a pledge of revenues of the water or sewer system, for which the City is budgeting the repayment of such obligations from the revenues of the water or sewer system, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds except water or sewer system rates and charges, sufficient for the repayment of water or sewer system debt service requirements;
14. that prior to or at closing, the City shall pay to the Board a 1.85 percent origination charge calculated pursuant to Board rules;
15. that the loan is approved for funding under the Board's pre-design funding option as specified in Board rule 31 TAC §375.39, and initial and future releases of funds are subject to all rules of the Board relating to such funding option;
16. that prior to closing, the City will provide evidence that the City has obtained a Certificate of Convenience and Necessity for the area to be served by the wastewater project, which is satisfactory to the Executive Administrator of the Board; and
17. that prior to closing, the City shall adopt and implement the program of water conservation as approved by the Board.

PROVIDED, HOWEVER, the foregoing resolution is subject to the following additional requirements prior to funding of the loan:


1. issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said obligations

were issued have been complied with; that said obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said obligations are valid and binding obligations of the issuer; and

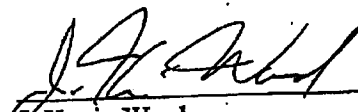
2. compliance with all applicable requirements contained in the Rules, Regulations, and Policies of the Texas Water Development Board.

APPROVED and ordered of record this the 15th day of October 2003.

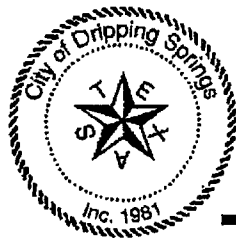
TEXAS WATER DEVELOPMENT BOARD

  
\_\_\_\_\_  
E.G. Rod Pittman, Chairman

ATTEST:

  
\_\_\_\_\_  
J. Kevin Ward  
Executive Administrator

**EXHIBIT B**



# City of Dripping Springs

P.O. Box 384  
Dripping Springs, Texas 78620

(512) 858-4725

(512) 858-5646 Fax

March 9, 2007

Mr. Doug Cones  
General Manager  
Dripping Springs Water Supply Corporation  
P.O. Box 354  
Dripping Springs, TX 78620

Re: Request for Meeting

Dear Mr. Cones:

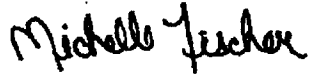
The City of Dripping Springs requests a meeting with representatives of the Dripping Springs Water Supply Corporation in order to discuss matters related to our May 28, 2002 Settlement Agreement. We would like to discuss the following matters:

- 1) execution of a Joint Billing Agreement at your earliest convenience;
- 2) assignment and transfer of the \$100.00 Indication of Interest deposits, plus accrued interest, for sewer customers, as soon as possible;
- 3) cooperation on water service areas;
- 4) concerns regarding the WSC's express contractual obligation not to "enter into any agreement with any other entity that has the effect of making the provision of water service [by the City] to a potential customer in [the City's] Water Service Area impractical or infeasible," either economically or physically;
- 5) the City's provision of water service to commercial or industrial property within the Ranch Road 12 corridor; and
- 6) cooperation on developer requests for water service for proposed developments.

The proposed Joint Billing Agreement, as well as our requests for the assignment and transfer of the \$100.00 Indication of Interest deposits plus accrued interest for sewer customers, were previously submitted to you. However, we have never received any response.

Please contact Ginger Faught, Deputy City Administrator, or me at your earliest convenience to arrange a meeting. We renew our request that you choose to work in mutual cooperation with the City, in the spirit as well as the law of our settlement agreement, and within the lawful non-profit purposes for which your WSC was formed, all to best serve the Dripping Springs community.

Sincerely,



Michelle Fischer, City Administrator

cc. **City of Dripping Springs:**  
Mayor Todd Purcell  
Mayor Pro Tem Bill Foulds  
Susan Zachos, Special Counsel

**Dripping Springs Water Supply Corporation:**  
Steve Harris, President  
Travis Garnett, Vice President  
Gilbert Wolf, Secretary Treasurer  
Jim Walden, Board Member  
Larry Brewer, Board Member  
Phil Haag, Winstead, Sechrest & Minick



# City of Dripping Springs

P.O. Box 384  
Dripping Springs, Texas 78620

(512) 858-4725

(512) 858-5646 Fax

July 22, 2008

Phil Haag  
Winstead  
401 Congress Avenue  
Suite 2100  
Austin, TX 78701

Re: Joint Billing Agreement

Dear Mr. Haag,

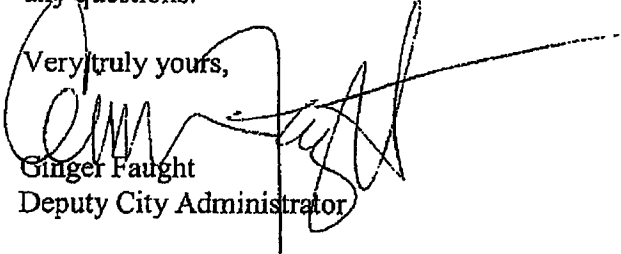
I write to follow up on our meeting last week with the Dripping Springs Water Supply Corporation (WSC). Thank you, and the WSC Board members and staff, for attending. As we agreed to do in that meeting, the City immediately started the process to seek bids from other companies for wastewater billing services, in part to see what other companies are charging. As we touched on briefly, the City will also need the WSC to be available to terminate water service, should a City wastewater account become delinquent. Upon further internal discussions of the status of the City's wastewater services, we are writing to ask for the WSC's cooperation in providing that service now.

Because wastewater service has begun, and bills will soon be sent, the City would like to secure the water termination services as soon as possible. As you know, the City has a State Revolving Fund loan, on favorable terms, through the Texas Water Development Board. The City wishes to have procedures in place to protect the revenue stream that will be used to repay its loan. Termination services are one of the recognized tools for protecting the State's and the City's investment in the wastewater system that serves both of our customers.

Under Section 13.250 of the Water Code, the City has several options for securing water termination service. One option is to reach agreement with the WSC. While we awaits the bids and their evaluation, and further negotiate the joint billing terms, the City's would like the WSC to agree to a simple contract for water termination service, to become effective as soon as possible. We hope that the WSC is receptive to this request. The WSC's and City's ability to cooperate on this service would show, not only the parties' good faith in serving the community, but also how the parties can cooperate as we move forward.

Please let me know as soon as possible if the WSC will agree to enter into such a contract with the City, and whether you would like to provide the first draft. If we cannot reach agreement promptly, or if the WSC does not want to proceed in this manner, then the City could pursue its other options, but would prefer to work together voluntarily. Please contact me with any questions.

Very truly yours,



Ginger Faught  
Deputy City Administrator

cc: Susan Zachos



**EXHIBIT C**

## WATER SERVICE TERMINATION AGREEMENT

This Water Service Termination Agreement ("Agreement") is made and entered into by and between the CITY OF DRIPPING SPRINGS, TEXAS (the "City") and the DRIPPING SPRINGS WATER SUPPLY CORPORATION (the "WSC").

### Background

- A. The City operates a wastewater collection, treatment and disposal system under TCEQ Permit No. Permit No. WQ0014488001 (the "City's System").
- B. The City has obtained funding through the Texas Water Development Board for the construction of the City's System and the provision of such sewer service.
- C. The City provides retail sewer service to some existing retail water customers of the WSC (herein referred to as "Joint Customers") and charges the Joint Customers for sewer service.
- D. Section 13.250 of the Texas Water Code and Section 291.88 of Title 30 of the Texas Administrative Code authorize the WSC to discontinue water service for "nonpayment of charges for sewer service" provided by the City under an agreement between the WSC and the City."
- E. The City has asked the WSC to enter into this Agreement to terminate WSC water service to customers of the City's Wastewater System due to nonpayment of sewer charges in order to, among other things, secure the revenues owed to the City and repayment of state funding of the City's System.

In consideration of the mutual promises in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the WSC agree as follows:

### A G R E E M E N T

- 1. City Notice of "nonpayment of charges for sewer service". If a Joint Customer's monthly wastewater bill is past due, the City will send the WSC a notice to discontinue water service. The notice must contain the following current and accurate information:
  - a) the amount of the delinquent customer's most recent wastewater statement or bill showing the customer name and service address and the amount of the undisputed past-due sewer charges;
  - b) a copy of the "termination notice" that was sent to the customer in compliance with the requirements of 30 Tex. Admin Code Section 291.88 (a) along with documentation that the customer received the notice; and
  - c) the earliest possible disconnection date, at least 10 days from the date of the "termination notice."
- 2. Disconnection by the WSC. On the disconnection date stated in the Paragraph 1(c) notice or within a reasonable time thereafter, the WSC will disconnect water service to the Joint

Customer for which it receives a Notice from the City in compliance with Paragraph 1 of this Agreement provided that such Notice is received by the WSC more than two weeks before the termination date of this Agreement. If the disconnection date falls on a weekend or holiday, then the WSC may extend the time for disconnection to occur during its normal business hours.

3. Reconnection. When the City notifies the WSC that the Joint Customer has paid, or made arrangements satisfactory to the City to pay, all past-due charges and applicable reconnect fees, then the WSC must restore water service within 30 hours. The WSC will not reconnect service to any Joint Customer that has been disconnected pursuant to this Agreement until it receives a this Paragraph 3 notice from the City.
4. Compensation. To compensate the WSC for its services under this Agreement, the City will reimburse the WSC in the following amounts:
  - a) \$25 service trip fee for each disconnection and each reconnection of water service during normal working hours (8:00 a.m. to 5 p.m. Monday-Friday). The WSC shall strive to perform each disconnection and each reconnection during normal working hours.
  - b) \$50 service trip fee for each disconnection and each reconnection of water service after 5:00 p.m. but before 8:00 a.m. or on a holiday or weekend
  - c) City will post and WSC will hold in escrow \$250.00 to secure payment of each respective disconnection and reconnection charge as they accrue.
5. Compliance with Applicable Laws. In the performance of this Agreement, the City and the WSC will comply with the applicable laws governing the disconnection and reconnection of water service for nonpayment of sewer service, including the requirements of 30 Tex. Admin Code Section 291.88.
6. Payment and Billing Terms. Each month, the WSC will send the City a statement reflecting any connection or reconnection services that the WSC performed pursuant to this Agreement during the preceding month. The City shall renew the escrow when depleted. The WSC shall release the remaining escrow to the City at the termination of this Agreement.
7. Breach of Agreement. If either party breaches any term of this Agreement, the non-breaching party will send the breaching party a written notice of the breach within thirty (30) days of discovery of the breach by the non-breaching party. Upon receipt of the written notice of the alleged breach, the alleged breaching party will have ten (10) days to remedy the alleged breach. The non-breaching party will have the right to enforce specific performance of this Agreement by the alleged breaching party. The rights and remedies of the Parties provided in this Agreement will not be exclusive and are in addition to any other rights and remedies provided by law and under this Agreement. If any action at law or in equity is necessary to enforce the terms of this Agreement, then the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled; this recovery of attorneys' fees is expressly authorized by Section 271.159 of the Local Government Code.

8. Term. This Agreement shall run for a term of ninety (90) days after the Effective Date. The termination of this Agreement shall not affect in any way the parties obligations under the May 28, 2003 "Settlement Agreement and Water and Wastewater Service Agreement between the City of Dripping Springs and the Dripping Springs Water Supply Corporation."
9. Section 13.250 Agreement. This Agreement is a contract between two service providers – the WSC (retail public utility) and the City (the certificate holder and one who possesses facilities for the provision of sewer utility service), providing for and authorizing the discontinuation of water service for the non-payment of charges for sewer service, as authorized by Section 13.250(b) of the Texas Water Code.
10. No Third party Beneficiaries. This Agreement between the Parties shall not confer any rights on third parties with respect to utility service, and in particular shall not independently create any rights in third parties to water or sewer utility service.
11. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part thereof, and the remaining provisions thereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision therein, there will be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
12. Construction. This Agreement was prepared and drafted jointly by legal counsel representing the City and the WSC. Each party and its counsel have reviewed and revised this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.
13. Successors and Assigns. This Agreement shall be binding on the City and the WSC and their successors and assigns. This Agreement may not be assigned in whole or in part without the express written consent of the non-assigning party.
14. Notices. Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and the same shall be deemed to have been served and given if (1) delivered in person to the address set forth below in exchange for a signed receipt, (2) sent by facsimile with a printed receipt retained by the sender to the fax number below or (3) placed in the United States mail by certified mail, postage prepaid and return receipt requested, addressed to the address set forth below. Notice shall be effective when received.

CITY:

City Administrator  
City of Dripping Springs  
511 Mercer St,  
Dripping Springs, Texas 78620  
Facsimile Number: (512) 858-5646

WATER SUPPLY CORPORATION:

General Manager  
Dripping Springs Water Supply Corporation  
Dripping Springs, Texas 78620  
Fax number: \_\_\_\_\_

From time to time either party may designate another fax number or a physical address (not a P.O. Box) within Hays County for all purposes of this Agreement, by giving the other party not less than ten (10) days advance written notice of such change of address in accordance with these provisions for providing notice.

15. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY. ANY ACTION AT LAW OR IN EQUITY BROUGHT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL BE BROUGHT IN A STATE COURT OF COMPETENT JURISDICTION WITH VENUE IN HAYS COUNTY, TEXAS, UNLESS STATUTES PROVIDE FOR ANOTHER MANDATORY VENUE.

16. Effective Date and Execution. This Agreement may be executed in multiple originals, either of which shall be considered to be an original. The signatories represent and affirm that they have the authority to execute and bind the party on whose behalf they sign below. The Effective Date of this Agreement is 29 MAY, 2009.

**DRIPPING SPRINGS WATER SUPPLY CORPORATION, a Texas Nonprofit Water Supply Corporation**

Attest:

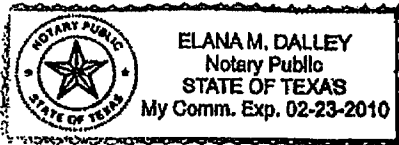
By: [Signature]

Name: STEVEN HARRIS  
(print name)

Title: PRESIDENT

Date: 29 MAY 2009

[Signature]  
Elana M. Dalley, DSWSC Sec.



**CITY OF DRIPPING SPRINGS, TEXAS**

By: [Signature]

Name: TODD PARCELL  
(print name)

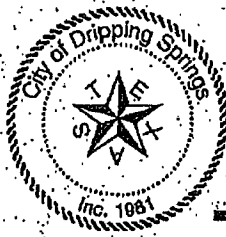
Title: Mayor

Date: 5/27/09

Attest:

[Signature]  
Jo Anni Touchstone, City Secretary

**EXHIBIT D**



# City of Dripping Springs

P.O. Box 384  
Dripping Springs, Texas 78620

(512) 858-4725

(512) 858-5646 Fax

July 1, 2009

Steven Harris, President  
Board of Directors  
Dripping Springs Water Supply Corporation  
VIA HAND DELIVERY

RE: Extension of Water Service Termination Agreement

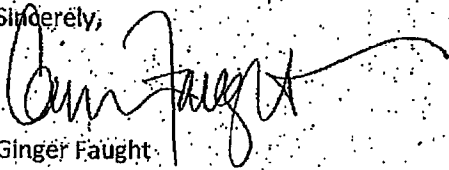
Dear Mr. Harris:

At this time, we would like to request a renewal of the Water Service Termination Agreement ("Agreement") executed on May 29, 2009 and set to expire on August 29, 2009. We would like to renew this Agreement, and also amend it to extend the term to a multi-year long-term agreement. If the WSC cannot agree to such an extension then, at a minimum we would like a term of 6 months, to be automatically renewed unless either party provides 60-day advance written notice of termination. We make this request to give the City some much-needed longer term collection stability.

I request that you consider and take action on these requests at your Board Meeting on July 13, 2009. The City Council will consider the Agreement at their meeting on July 14<sup>th</sup>.

Feel free to contact me should you have any questions.

Sincerely,

  
Ginger Faught  
Deputy City Administrator



**EXHIBIT E**



Steve Harris, *President*  
Travis Garnett, *Vice President*  
Gilbert Wolf, *Secretary-Treasurer*



Jim Walden, *Board Member*  
Larry Brewer, *Board Member*  
Doug Cones, *General Manager*

July 17, 2009



RECEIVED  
City of Dripping Springs

JUL 23 2009

Ms. Ginger Faught, Deputy City Administrator  
City of Dripping Springs  
P.O. Box 384  
Dripping Springs, TX 78620

Re: Water Termination Agreement

Dear Ms. Faught:

This letter is in response to your July 1 letter in which the City of Dripping Springs (the "City") requested that the Dripping Springs Water Supply Corporation ("DSWSC") extend the May 29, 2009 Water Service Termination Agreement. As you requested in the letter, the Board of Directors of the DSWSC considered this request at its July 13, 2009 meeting. Unfortunately, no one from the City was present at this meeting so the Board had very little information from the City on hand to consider when it discussed this request.

As you recall, the main reason the City and the DSWSC agreed to make this agreement a short-term agreement was so both parties could evaluate how it would work and how a long-term agreement could be structured. Based upon its experience over the past couple months, the DSWSC believes that it would make the most sense for this agreement to terminate and for the City and DSWSC to enter into an inter-local agreement providing for the DSWSC to bill and collect on behalf of the City. We find that this will reduce the considerable confusion experienced by our respective customers and result in better efficiency. Further, we believe that this type of agreement will fulfill the terms of the May 29, 2003 "Settlement Agreement and Water and Wastewater Service Agreement." To this end, we enclose a proposed billing agreement for your review.

Please let us know how you would like to proceed and if we can provide you with any additional information.

Yours truly,

Steven Harris, President  
Board of Directors  
Dripping Springs Water Supply Corporation

SH/emd

## INTERLOCAL JOINT BILLING AGREEMENT

This Interlocal Joint Billing Agreement ("Agreement") is made and entered into as of this day of \_\_\_\_\_, 2009, between the CITY OF DRIPPING SPRINGS, TEXAS (the "City") and the DRIPPING SPRINGS WATER SUPPLY CORPORATION (the "WSC").

WHEREAS, the City is the holder of Certificate of Convenience and Necessity (CCN) No. \_\_\_\_\_ issued by the Texas Commission on Environmental Quality ("TCEQ") to provide retail sewer service to areas within the City's corporate limits and extra-territorial jurisdiction (the "City's Sewer Service Area"); and

WHEREAS, The City owns and operates a wastewater treatment and irrigation facility, and is the holder of Texas Pollutant Discharge Elimination System ("TPDES") permit (Permit No. WQ 14488-001) to authorize construction and operation of a municipal wastewater utility system serving customers within the City's Sewer Service Area; and

WHEREAS, the City provides retail wastewater service to existing retail water customers of the WSC (herein referred to as "Joint Customers"); and

WHEREAS, the City intends to connect additional retail wastewater service customers to its wastewater treatment system from time to time; and

WHEREAS, the May 28, 2003 "Settlement Agreement and Water and Wastewater Service Agreement" provides that the WSC will bill the Joint Customers for wastewater service provided by the City pursuant to a joint billing agreement to be entered into by the WSC and the City; and

WHEREAS, this Agreement is entered into as provided above and pursuant to Section 13.230(b)(2) of the Texas Water Code.

NOW, THEREFORE, in consideration of the mutual promises, covenants and releases contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the WSC agree as follows:

1. City Billing Information. The City will notify the WSC of any changes to the list of Joint Customers or rates within five (5) days of such changes.
2. Joint Customer and Rate Information. The WSC will provide all necessary and appropriate wastewater billing and collection services for and on behalf of the City for all Joint Customers.
3. Billing Services. The WSC will calculate and bill the Joint Customer for the wastewater

service provided them by the City in the same manner as it bills the Joint Customers for water service.

4. Deposit of Wastewater Fees. The WSC shall transfer the amount of all wastewater fees it collects from Joint Customers into an account of the City maintained at a banking or financial institution designated by the City. The City shall provide instructions to the WSC for the deposit of such funds at least 30 days prior to commencement of the City's wastewater service. The WSC shall provide the City a monthly report of the Joint Customers' billing information.
5. Cooperation with City in collection activities on delinquent accounts. The City will be primarily responsible for the collection of delinquent wastewater fees. The WSC will cooperate with the City in all such collection efforts by (i) providing the City with updated information on the collection status of all delinquent wastewater customers; (ii) notifying delinquent Joint Customers with notice of their delinquency in the same manner as it notifies water customers of billing delinquencies; and (iii) by taking other action as it deems reasonable and necessary.
6. Shut-Off of Water Service for Delinquent Accounts. Subject to the water and sewer customer service rules of TCEQ and the WSC's tariff, the WSC agrees to terminate water service for non-payment of wastewater fees by any Joint Customer. For purposes of this Agreement, a Joint Customer shall be deemed to be delinquent in payment of wastewater fees to the extent the full amount of the monthly bill for combined water and wastewater service fees is not paid in a timely manner. The City agrees to include in its wastewater tariff and wastewater ordinance the same terms and conditions relating to delinquent wastewater accounts (including but not limited to the due date for payment of bill, any grace period, late fees, interest on delinquent amounts, timing of service cutoffs and re-connections for delinquent customers) as prescribed by the WSC under its retail water service CCN.
7. Service Charge Paid by City. Upon execution of this Agreement, the City will pay the WSC a one-time fee of \$1,500.00 to compensate the WSC for setting up this billing service. In addition, as compensation for the billing and collection services provided herein by the WSC, the City will pay the WSC a monthly service fee of \$7.50 per residential Joint Customer and \$8.50 per commercial Joint Customer. The WSC may collect such service fee by deducting and retaining for itself such fees from the payments made by the Joint Customers.
8. Breach of Agreement. If either party breaches any term of this Agreement, the non-breaching party must provide the breaching party with a written notice of the breach within thirty (30) days of discovery of the breach by the non-breaching party. Upon receiving written notice of the alleged breach, the alleged breaching party will have ten

(10) days to remedy the alleged breach. The non-breaching party will have the right to enforce specific performance of this Agreement by the alleged breaching party. The rights and remedies of the Parties provided in this Agreement will not be exclusive and are in addition to any other rights and remedies provided by law and under this Agreement.

9. Effective Date and Term. This Agreement shall be effective on the last date of execution by all Parties hereto and shall run for a term of one (1) year.
10. Section 13.248 Agreement. This Agreement is a contract between retail public utilities designating areas to be served and customers to be served by those retail public utilities pursuant to Section 13.248 of the Texas Water Code ("Section 13.248"). The Parties further agree that each of them may file a copy of this Agreement with the TCEQ in support of applications and other filings provided for in, or consistent with, this Agreement and may request that the TCEQ honor the terms of this Agreement as a contract between retail public utilities pursuant to Section 13.248 service.
11. No Third Party Beneficiaries. This Agreement between the Parties shall not confer any rights on third parties with respect to utility service, and in particular shall not independently create any rights in third parties to water or sewer utility service.
12. Severability. If any provision of this Agreement is hold to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part thereof, and the remaining provisions thereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision therein, there will be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter. By affixing their authorized signatures below, the Parties attest that they: (a) fully understand the Agreement, (b) enter into it voluntarily and without coercion, (c) agree to be bound by the terms thereof, and (d) have all authorizations required by law to so bind themselves. This Agreement may be modified or amended only in writing signed by both Parties. This Agreement was prepared and drafted jointly by legal counsel representing the City and the WSC. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments thereto.

14. Successors and Assigns. This Agreement shall be binding on the City and the WSC and their successors and assigns. This Agreement may not be assigned in whole or in part without the express written consent of the non-assigning party.
15. Notices. Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and the same shall be deemed to have been served and given if (i) delivered in person to the address set forth below for the party to whom the notice is given in exchange for a signed receipt, or (ii) placed in the United States mail by certified mail, postage prepaid and return receipt requested, addressed to the party to whom the notice is given at the address set for below. Notice shall be effective when received. The address for the City for all purposes under the Agreement and for all notices herein shall be:

City Administrator  
City of Dripping Springs  
P.O. Box 384  
Dripping Springs, TX 78620

The address for the WSC for all purposes under this Agreement kind for all notices herein shall be:

General Manager  
Dripping Springs Water Supply Corporation  
P.O. Box 354  
Dripping Springs, TX 78620

From time to time either party may designate another address within the United States for all purposes of this Agreement by giving the other party not less than ten (10) days advance written notice of such change of address in accordance with the provisions hereof.

16. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas, any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a State court of competent jurisdiction with venue in Hays County, Texas, unless statues provide for another mandatory venue.
17. Dispute Resolution. The parties agree to attempt informal resolution of any disputes regarding this Agreement. If informal resolution of disputes is unsuccessful, the Parties agree to utilize alternative dispute resolution (ADR) techniques such as non-binding mediation and/or non-binding arbitration to resolve the dispute. If ADR is unsuccessful, the Parties reserve their rights to sack enforcement of this Agreement in a court of competent jurisdiction.

18. Further Assurances. The Parties hereto covenant and agree that they shall execute and deliver such other and further assurances, instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.
19. Miscellaneous. This Agreement may be executed in multiple originals, either copy of which shall be considered an original. The signatories hereto represent and affirm that they have the authority to execute and bind the party on whose behalf they sign below. Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Agreement, the text shall control. Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and the plural.

DRIPPING SPRINGS WATER SUPPLY CORPORATION, a  
Texas nonprofit Water Supply Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF DRIPPING SPRINGS, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT F**

**Susan Zachos**

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**From:** Faught, Ginger [gfaught@cityofdrippingsprings.com]  
**Sent:** Tuesday, July 14, 2009 2:22 PM  
**To:** araidbguy  
**Subject:** Extension– Water Service Termination Agreement

Hi Steve—

I wanted to touch base with you on the extension request to the Water Service Termination Agreement. I understood from Elena that the extension was denied. Rather than run up our attorney's fees, I thought I would come to you directly to see what the issues are.

Do you think we can get this back on track? Let me know your thoughts. Thanks.

***Ginger Faught***

*Deputy City Administrator  
City of Dripping Springs*

Email Address: gfaught@cityofdrippingsprings.com  
Phone Number: (512) 858-4725  
Facsimile Number: (512) 858-5646  
Website Address: [www.cityofdrippingsprings.com](http://www.cityofdrippingsprings.com)  
Mailing Address: PO Box 384, Dripping Springs, TX 78620  
Physical Address: 511 Mercer St, Dripping Springs, TX 78620



TCEQ APPLICATION NO. 36498-C

APPLICATION OF THE CITY OF	§	BEFORE THE TEXAS
DRIPPING SPRINGS TO COMPEL	§	
DRIPPING SPRINGS WATER SUPPLY	§	
CORPORATION TO TERMINATE	§	COMMISSION ON
WATER UTILITY SERVICE FOR	§	
NONPAYMENT OF SEWER UTILITY	§	
SERVICE, IN HAYS COUNTY,	§	
APPLICATION NO. 36498-C	§	ENVIRONMENTAL QUALITY

RESPONSE TO APPLICATION NO. 36498-C BY THE CITY OF DRIPPING SPRINGS TO COMPEL TERMINATION OF WATER SERVICE

COMES NOW, Dripping Springs Water Supply Corporation ("DSWSC") and files this response to Application No. 36498-C ("Application") by the City of Dripping Springs ("City") to compel DSWSC to terminate water utility service for nonpayment of sewer utility service.

DSWSC takes exception to and specifically denies that it has "refused to enter into an agreement with the City to terminate water service." See ¶ 2 of September 18, 2009 Commission letter, attached as Exhibit A.

In 2002, DSWSC and the City entered into that certain Settlement Agreement and Water and Wastewater Service Agreement Between the City of Dripping Springs and the Dripping Springs Water Supply Corporation ("Settlement Agreement"), which contemplated DSWSC terminating water service for nonpayment of City sewer bills pursuant to a joint billing agreement entered into by the parties.<sup>1</sup> As the City prepared to commence providing sewer service, DSWSC began negotiating in good faith a joint billing and water service termination agreement with the City, as contemplated by the Settlement Agreement. In the course of the negotiations, DSWSC sent the City several proposals and counter-proposals based on what

<sup>1</sup> Importantly, the State funding the City cites as a basis for issuing an order was obtained partly in reliance upon the provisions of the Settlement Agreement with which DSWSC seeks to maintain compliance.

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TCEQ WATER SUPPLY

DSWSC believed to be fair to its customers and consistent with the terms of the Settlement Agreement. In fact, as stated in section I.C. of the City's original application curiously titled "The WSC refuses to contract with the City to disconnect water service for non-payment of sewer charges", the City recites "numerous" attempts at negotiation by DSWSC, including entering and complying with a temporary "Water Service Termination Agreement" while the parties continued negotiations for a long-term agreement. Moreover, in a letter from the City dated September 3, 2009 (attached as Exhibit B), the City expressly acknowledges receipt of a "proposal regarding a Water Termination Agreement" from DSWSC on July 17, 2009. As is clear, DSWSC has not "refused to enter into" a termination agreement; rather, DSWSC has expended significant time, effort and resources negotiating precisely such an agreement.

DSWSC remains willing to enter an agreement that complies with the Settlement Agreement and is fair to its customers, and DSWSC respectfully requests the Commission consider DSWSC's efforts and interests expressed to date when evaluating the City's request.

Respectfully submitted,

McGINNIS, LOCHRIDGE & KILGORE, L.L.P.  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
Telephone: 512-495-6008  
Facsimile: 512-505-6308

By: Philip Haag  
Philip S. Haag                      SBN 08657800  
Scott Rhodes                        SBN 24053590

ATTORNEYS FOR DRIPPING SPRINGS  
WATER SUPPLY CORPORATION