

RESOLUTION NO. R-21-04-07-5A

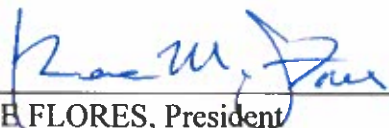
WHEREAS, the Brushy Creek Regional Utility Authority (“BCRUA”) desires to enter into a Fifth Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project, Now Therefore

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY,

That the Board President is hereby authorized and directed to execute on behalf of the BCRUA a Fifth Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The Board hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 7th day of April, 2021.



RENE FLORES, President
Brushy Creek Regional Utility Authority

ATTEST:



ANNE DUFFY, Secretary

**FIFTH AMENDMENT TO THE MASTER CONTRACT FOR THE FINANCING,
CONSTRUCTION AND OPERATION OF THE BCRUA
REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT**

THIS FIFTH AMENDMENT TO THE MASTER CONTRACT FOR THE FINANCING, CONSTRUCTION AND OPERATION OF THE BCRUA REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT (the "Fifth Amendment") is dated and entered into as of the 22nd day of April, 2021, by and among Brushy Creek Regional Utility Authority, Inc. ("BCRUA"), a non-profit corporation of the State of Texas (the "State"), created and existing under the laws of the State, including Subchapter D of Chapter 431 as amended, Texas Transportation Code, and the City of Cedar Park, Texas ("Cedar Park"), the City of Leander, Texas ("Leander"), and the City of Round Rock, Texas ("Round Rock") all home-rule municipalities and political subdivisions of the State (individually, the "City"; collectively, the "Cities"). The BCRUA and the Cities are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, on the 2nd day of September, 2008 the Parties entered into that one certain Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project (the "Master Contract"), that provides terms and conditions for the financing, construction and operation of the first phase of the new regional system consisting generally of upgrades to Cedar Park's raw water intake, a raw water intake line, new water treatment plant, and water transmission mains; and

WHEREAS, on the 22nd day of January, 2009 the Parties entered into that one certain First Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project ("First Amendment") to postpone the date on which the BCRUA Project is to be operational from April 1, 2011 to April 1, 2012; and

WHEREAS, on the 20th day of October, 2010 the Parties entered into that one certain Second Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project ("Second Amendment") to update the estimated costs shown in Exhibit D with actual cost numbers, as well as to revise estimated costs; and

WHEREAS, on the 22nd day of February, 2012 the Parties entered into that one certain Third Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project ("Third Amendment") to delay substantial completion of the water treatment plant from April 2012 to June 2012; and

WHEREAS, on the 25th day of April, 2018 the Parties entered into that one certain Fourth Amendment to the Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project ("Fourth Amendment") to expand the definition of "BCRUA Project" to include certain Phase II Regional System Components, as referenced in the Preliminary Engineering Report, and

EXHIBIT "A"

WHEREAS, the Parties now desire to expand the definition of “BCRUA Project” to include all Phase II Regional System Components, as referenced in the Preliminary Engineering Report, and

WHEREAS, with respect to the added Phase II components, the Parties also desire to attach a new Exhibit D-1 to set out the estimated costs, the allocation of the costs among the Parties, and to set out the Parties respective reserved capacities in said Phase II components;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the terms and conditions hereinafter set forth, the Cities and the BCRUA mutually agree that the Master Contract is amended as follows:

ARTICLE I
TABLE OF CONTENTS

The list of exhibits in the Table of Contents of the Master Contract, is amended to read as follows:

EXHIBITS

- Exhibit A-1 Contract between City of Round Rock and BRA for Lake Travis Water
- Exhibit A-2 Contract between City of Round Rock and BRA for Lake Travis Water
- Exhibit A-3 Contract between City of Round Rock and BRA for Lake Travis Water
- Exhibit B Contract between City of Cedar Park and LCRA for Lake Travis Water
- Exhibit C Contract between City of Leander and LCRA for Lake Travis Water
- Exhibit D BCRUA Regional Water Project Capacity and Cost Allocation, Phase 1A, Amended: October 20, 2010
- Exhibit D-1 BCRUA Regional Water Project Capacity and Cost Allocation, Phase II, Updated: March 30, 2021.

ARTICLE II
AMENDED EXHIBIT D-1

The attached document entitled “Exhibit D-1, BCRUA Regional Water Project Capacity and Cost Allocation, Phase II, Updated: March 30 2021.,” has been amended to include all Phase II Regional System Components and it shall be considered attached to and incorporated in the Master Contract.

ARTICLE III
DEFINITIONS

Except as amended herein, all terms used herein shall have the meanings assigned to them in the Master Contract, unless the context clearly requires otherwise.

3.01 The Master Contract, Article I, Section 1.1 (f) shall be amended to read as follows:

(f) “BCRUA Project” means, collectively, the Land Interests and the improvements described in the recitals to this Contract and further described in the Preliminary Design Report, and as shown on Exhibit D, and on Exhibit D-1. Without limitation the BCRUA Project includes the facilities, lines, intake structures, storage tanks, booster pumps, and other appurtenances in the BCRUA Project, including specifically Phase II Regional System Components, as described in the Preliminary Design Report and owned by the BCRUA sufficient to treat the raw water and deliver the treated water to which the Cities, respectively, are entitled under this Contract.

ARTICLE IV **AMENDMENTS**

4.01 The Master Contract, Article III, Section 3.1 General, shall be amended to read as follows:

Section 3.1 General. Subject to the remaining terms and provisions of this Contract, the BCRUA agrees to issue one or more series of the Bonds, as requested by any City, to acquire and construct the BCRUA Project as generally described in the Preliminary Design Report. The Parties anticipate that the BCRUA Project will be operational by May 1, 2028. It is expressly understood and agreed that any obligations on the part of the BCRUA to finance, acquire, construct, and complete the BCRUA Project and any future expansions of the BCRUA Project and to provide the water treatment capacity to the Cities shall be (i) conditioned upon the BCRUA’s ability to obtain all necessary permits, Land Interests, material, labor, and equipment, and upon the ability of the BCRUA to finance the BCRUA Project Costs through the actual sale of the Bonds or receipt of funds from the Cities, including any Additional Bonds needed to complete the BCRUA Project, and (ii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State, and any regulatory body having jurisdiction. The BCRUA shall acquire and construct the BCRUA Project with all reasonable dispatch, and the BCRUA will diligently pursue such acquisition and construction in order that the BCRUA Project will be operational by May 1, 2028 delays incident to events of Force Majeure only excepted; but if for any reason there should be delays in or the entire failure of such acquisition, construction, and improvement, there shall be no diminution in or postponement of the Annual Payments to be made by the Cities hereunder and no resulting liability on the part of the BCRUA.

4.02 The Master Contract, Article III, Section 3.5 Award of Construction Contracts, shall be amended to read as follows:

Section 3.5 Award of Construction Contracts. Upon obtaining the approval of the Board of Directors of the BCRUA of the Plans and Specifications, the BCRUA will promptly advertise for sealed bids or comply with the requirements for an alternative delivery method for the BCRUA Project to the extent and as required by law. The BCRUA may break the BCRUA Project into several contracts or phases as it determines is best for the timely acquisition and construction of the BCRUA Project. The BCRUA shall not be obligated to award a construction contract unless the proceeds from the Bonds or other funding are available to pay the contract(s). The BCRUA

shall ensure that all contracts for the construction of the BCRUA Project provide that the BCRUA Project will be operational by May 1, 2028.

ARTICLE V
MISCELLANEOUS

Section 5.1 To the extent necessary to effect the terms and provisions of this Fifth Amendment, the Master Contract is hereby amended and modified. In all other respects, the aforesaid Master Contract is hereby ratified and confirmed.

Section 5.2 This Fifth Amendment may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Fifth Amendment to be duly executed as of the 22nd day of April, 2021.

(SIGNATURES ON FOLLOWING PAGES)

BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

By: _____
Rene Flores, President

Attest:

By: _____
_____, Secretary

CITY OF CEDAR PARK, TEXAS

By: _____
Corbin Van Arsdale, Mayor

Attest:

By: _____
LeAnn Quinn, City Secretary

CITY OF LEANDER, TEXAS

By: _____
Troy Hill, Mayor

Attest:

By: _____
Dara Crabtree, City Secretary

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

Attest:

By: _____
Sara White, City Clerk

Exhibit D-1

Exhibit D-1 Cities' Reserved Capacity and Cost Allocation in BCRUA Project Components,
Phase II, Amended: April , 2021

Exhibit D-1
 BCRUA Regional Water Project
 Capacity and Cost Allocation, Phase II
 Updated: March 30, 2021

DESCRIPTION	CONSTRUCTED CAPACITY (MGD)	ESTIMATED COST	CEDAR PARK RESERVED CAPACITY (%)	CEDAR PARK COST	LEANDER RESERVED CAPACITY (%)	LEANDER COST	ROUND ROCK RESERVED CAPACITY (%)	ROUND ROCK COST
PHASE II-DEEP WATER INTAKE & RAW WATERLINE								
Planning & Design Services	144.7	\$ 16,700,000	28.96	\$ 4,836,320	42.85	\$ 7,155,960	28.19	\$ 4,707,730
Land Rights	144.7	\$ 2,500,000	28.96	\$ 724,000	42.85	\$ 1,071,250	28.19	\$ 704,750
Temporary Electrical Improvement Construction & Construction Phase Services	144.7	\$ 4,597,657	28.96	\$ 1,331,481	42.85	\$ 1,970,098	28.19	\$ 1,296,080
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PHASE II-DEEP WATER INTAKE & RAW WATERLINE SUB-TOTAL		\$ 282,912,657		\$ 81,931,505		\$ 121,228,074		\$ 79,753,078
Cost Allocation Percentages				28.96%		42.85%		28.19%
BCRUA PROJECT PHASE II TOTAL COST		\$ 282,912,657		\$ 81,931,505		\$ 121,228,074		\$ 79,753,078

	Capacity (MGD)	% of Capacity
Cedar Park	41.9	28.96
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Total	144.7	100

ORIGINAL EXECUTED DOCUMENT
TO FOLLOW...

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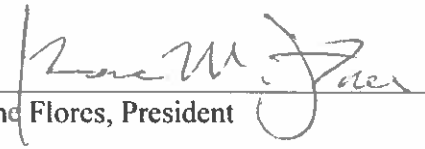
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By: 
Rene Flores, President

Attest:
By: 
Anne Duffy, Secretary

CITY OF CEDAR PARK, TEXAS

By: Corbin Van Arsdale
Corbin Van Arsdale, Mayor


Attest:

By: LeAnn M. Quinn
LeAnn Quinn, City Secretary

CITY OF LEANDER, TEXAS

By: 
Troy Hill, Mayor

Attest:

By: 
Dara Crabtree, City Secretary



CITY OF ROUND ROCK, TEXAS

By: _____


Craig Morgan, Mayor

Attest:

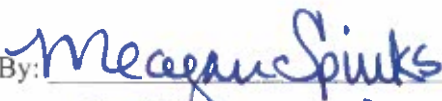
By: 
~~Sara White~~ City Clerk *Deputy*

Exhibit D-1
 BCRUA Regional Water Project
 Capacity and Cost Allocation, Phase II
 Updated: March 30, 2021

DESCRIPTION	CONSTRUCTED CAPACITY (MGD)	ESTIMATED COST	CEDAR PARK RESERVED CAPACITY (%)	CEDAR PARK COST	LEANDER RESERVED CAPACITY (%)	LEANDER COST	ROUND ROCK RESERVED CAPACITY (%)	ROUND ROCK COST
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Leander	62.0	42.85
Round Rock	40.8	28.19
Total	144.7	100

DATE: April 2, 2021

SUBJECT: BCRUA Board Meeting – April 7, 2021

ITEM: 5A. Consider a resolution authorizing the President to execute a Fifth Amendment to the Master Contract for the Financing, Construction and Operation of the Brushy Creek Regional Utility Authority, Inc. Regional Water Treatment and Distribution Project approving the construction of Phase II of the BCRUA System.

PRESENTER: Karen Bondy, General Manager

BACKGROUND:

To apply for 2021 TWDB SWIFT Loans, the Board and all three city councils must amend the Master Agreement to add authorization for Phase II financing, construction, and operation.

The amendment updates Exhibit D-1, which adds \$239,580,000 for Phase 2 Construction & Construction Phase Services and \$19,535,000 for Permanent Electrical Improvement Design, Construction & Construction Phase Services (not including debt issuance costs and \$5,000 incremental bond unit costing).

We will need to update the existing Exhibit D to the Master Contract to reflect final expense allocations related to all Phase 1A savings, as well as incorporating the Phase 1B, 1C and 1D treatment plant expansions. I anticipate that this can be accomplished in mid-2021.