

Resolution No. 09-02-11-5A

RESOLUTION APPROVING THE FIRST AMENDMENT TO THE MASTER CONTRACT FOR THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC., AND OTHER MATTERS IN CONNECTION THEREWITH.

THE STATE OF TEXAS

BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

WHEREAS, there has been presented and approved by the City Council of each of the participating and founding members of the Brushy Creek Regional Utility Authority, Inc. ("BCRUA") namely, the City of Leander, Texas ("Leander"), the City of Round Rock, Texas ("Round Rock") the City of Cedar Park, Texas ("Cedar Park"), (collectively, the Member Cities and the "Parties") a draft of the First Amendment to the Master Contract for the financing, construction and operation of the BCRUA Regional Water Treatment and Distribution Project (the "First Amendment to the Master Contract") between the Member Cities and the BCRUA, pursuant to which the BCRUA will construct, finance, operate and maintain water treatment and distribution facilities for the benefit of the Member Cities; and

WHEREAS, the Parties wish to clarify their agreement to allow for a limited delay in the issuance of bonds and commencement of construction of the BCRUA Project and provide for a release and withdrawal from the Contract under certain conditions;

WHEREAS, it is hereby further officially found and determined that public notice of the time, place, and purpose of this meeting was given, all as required by Texas Government Code, Chapter 551.

NOW, THEREFOR, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.:

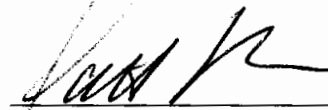
SECTION 1. RECITALS. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

SECTION 2. FIRST AMENDMENT TO THE MASTER CONTRACT. This First Amendment to the Master Contract is hereby approved and the President and Secretary of the Board are hereby authorized and directed to execute the First Amendment to the Master Contract in substantially the form and substance attached hereto as Exhibit "B", with such changes as may be approved by general counsel and bond counsel to the BCRUA.

SECTION 3. IMMEDIATE EFFECT. This Resolution shall take effect immediately from and after its adoption in accordance with the law

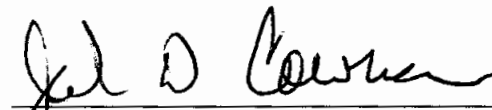
SECTION 4. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED THIS 11th day of Feb, 2009.



President
Brushy Creek Regional Utility Authority, Inc.

ATTEST:



Secretary
Brushy Creek Regional Utility Authority, Inc.
[SEAL]

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

THIS FIRST AMENDMENT TO THE MASTER CONTRACT FOR THE FINANCING, CONSTRUCTION AND OPERATION OF THE BCRUA REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT (the "First Amendment") is dated and entered into as of the 22nd day of January, 2009, 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, for several years the Cities have planned for the development and construction of a new regional water treatment system to meet the potable water needs of each City; and

WHEREAS, in order to facilitate a regional approach among the Cities, Leander and Round Rock have agreed to accelerate their plans for additional water treatment plant capacity, and Cedar Park has delayed the expansion of its existing water treatment plant and related facilities;

WHEREAS, the Parties created the BCRUA for the purpose of constructing, owning and operating the new regional water treatment system; and

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 "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, when the Contract was executed, the Parties intended that the BCRUA Project would be operational by April 1, 2011; and

WHEREAS, the Cities desire to delay the issuance of bonds and the commencement of construction of the Project by several months; and

WHEREAS, the Parties wish to clarify their agreement to allow for a limited delay in the issuance of bonds and commencement of construction of the BCRUA Project and provide for a release and withdrawal from the Contract under certain conditions;

WHEREAS, at this time the Parties believe that it would be beneficial to all of the Parties to postpone the date on which the BCRUA Project is to be operational from April 1, 2011 to April 1, 2012; and

WHEREAS, the Parties wish to amend the Contract to reflect this new date; 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 as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 All terms used herein shall have the meanings assigned to them in the Contract, unless the context clearly requires otherwise.

ARTICLE II **AMENDMENTS**

Section 2.1 Section 3.1, General of the Contract is hereby amended to read as follows:

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 April 1, 2012. 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 use best efforts to pursue such acquisition and construction in order that (i) the notice to proceed will be issued to the contractor, which will be deemed the commencement of construction, on the Phase I Raw Water Facilities as defined in the PDR by August 15, 2009; (ii) the notice to proceed will be issued to the contractor, which will be deemed the

commencement of construction on the water treatment plant component of the BCRUA Project by October 1, 2009, and (iii) the BCRUA Project will be operational by April 1, 2012, delays incident to events of Force Majeure only excepted.

Section 2.2 Section 3.5, Award of Construction Contracts of the Contract is hereby amended so that where it says "April 1, 2011," it shall hereafter state "April 1, 2012."

Section 2.4 Section 12.22, Withdrawal by and Release of a City is hereby added to the Contract as follows:

Section 12.22. Withdrawal by and Release of a City. Regardless of anything contained herein to the contrary, but prior to the issuance of bonds or other obligations by either a City or the BCRUA for the BCRUA Project, any of the three Cities, in its sole discretion, may elect to withdraw from this Contract (hereinafter referred to as the "Withdrawing City") and the non-withdrawing Cities (hereinafter referred to as the "Non-withdrawing City(ies)"), specifically agree that the Withdrawing City is and shall be fully released from the Contract,

- (i) for any reason prior to May 1, 2009; or
- (ii) if the BCRUA has not sold bonds, or any Non-withdrawing City has not otherwise provided for funding for its total allocations of the BCRUA Project Costs through a separate bond issue on or before July 15, 2009.

The Withdrawing City's withdrawal from the Contract shall be effective upon the Withdrawing City's written notice to the other Parties of its withdrawal as provided in Section 12.7 of this Contract. Upon notice of such withdrawal, the Non-withdrawing City(ies) and the BCRUA agree to release the Withdrawing City from this Contract and upon such withdrawal and release, the Withdrawing City shall no longer be a party to and shall be released from all obligations and liabilities of this Contract, including but not limited to any obligations to make Annual Payments to the BCRUA. The Non-withdrawing City(ies) agree that upon the provision of such notice by the Withdrawing City pursuant to this section, the Withdrawing City's withdrawal and the Non-withdrawing City(ies) release of the Withdrawing City shall be effective as provided herein and shall not require further action by any Party. In addition, within ninety (90) days of the notice of the Withdrawing City's withdrawal and release, the Withdrawing City shall convey all of its interests in the Engineering Reports, Land Interests acquired in the acquisition contracts listed herein below as (i) and (ii) by delivering to the Non-withdrawing City(ies) all necessary and appropriate conveyance documents, deeds, bill of sales, assignments, etc. that may be reasonably required by the Non-withdrawing City(ies). Likewise, within said ninety (90) day period, the Non-withdrawing City(ies) shall reimburse the Withdrawing City for the costs incurred by the Withdrawing City as defined in and made pursuant to the following agreements: (i) the Easement Acquisition Costs pursuant to the First Amended Interlocal Agreement Regarding Acquisition of

Easements for Construction of a Raw Water Transmission Line Along Trails End Road effective July 24, 2008; and (ii) the Real Estate Acquisition Costs pursuant to the Interlocal Agreement Regarding Acquisition of Real Property for a Regional Water Treatment Plant Site effective January 3, 2008. The Withdrawing City is also released from any further costs associated with the Interlocal Agreement Regarding Ancillary Consulting Services For Regional Water System dated February 28, 2007 and any operation and maintenance expenses associated with the New Hope waterline constructed pursuant to the Interlocal Agreement Regarding Construction Of Regional Waterline dated March 23, 2006.

In the event that Cedar Park is the Withdrawing City, Cedar Park specifically agrees to the following:

- (i) that despite its election to withdraw from the Master Contract Cedar Park agrees to continue to be bound by the terms and provisions of the Interlocal Agreement Regarding Construction of Regional Water Line, dated March, 2006; and
- (ii) that Cedar Park agrees not to oppose, but to reasonably cooperate with the BCRUA's, Leander's and/or Round Rock's efforts to obtain legal rights from LCRA or any other necessary person or entity to construct a floating barge and intake point on the tract owned by LCRA which is also the location of Cedar Park's existing floating barge and intake point.

ARTICLE III MISCELLANEOUS

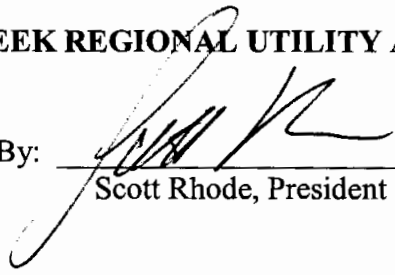
Section 3.1 To the extent necessary to effect the terms and provisions of this First Amendment, the Contract is hereby amended and modified. In all other respects, the aforesaid Contract is hereby ratified and confirmed.

Section 3.2 This First 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.

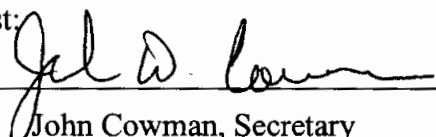
IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this First Amendment to be duly executed as of the day and year first above written.

(SIGNATURES ON FOLLOWING PAGES)

BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

By: 

Scott Rhode, President

Attest:
By: 

John Cowman, Secretary

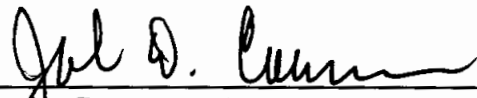
CITY OF CEDAR PARK, TEXAS

By: Robert D. Lemon
Bob Lemon, Mayor

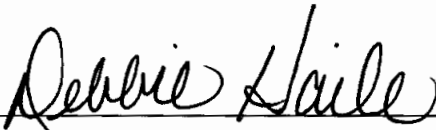
Attest:

By: LeAnn Quinn
LeAnn Quinn, City Secretary

CITY OF LEANDER, TEXAS

By: 
John Cowman, Mayor

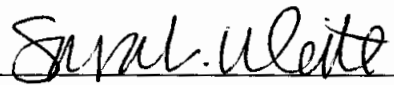
Attest:

By: 
Debbie Haile, City Secretary

CITY OF ROUND ROCK, TEXAS

By: 
Alan McGraw, Mayor

Attest:

By: 
Sara White, City Secretary