

**RESOLUTION NO. R-18-03-28-6A**

**WHEREAS**, the Brushy Creek Regional Utility Authority ("BCRUA") desires to enter into a Fourth 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 BRUSHY CREEK REGIONAL UTILITY AUTHORITY,**

That, subject to the approval of the Participating Cities, the Board President is hereby authorized and directed to execute on behalf of the BCRUA a Fourth 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 28th day of March, 2018.



FRANK LEFFINGWELL, President  
Brushy Creek Regional Utility Authority

ATTEST:



STEPHEN THOMAS, Secretary

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

THIS FOURTH AMENDMENT TO THE MASTER CONTRACT FOR THE FINANCING, CONSTRUCTION AND OPERATION OF THE BCRUA REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT (the "Fourth Amendment") is dated and entered into as of the 25th day of April, 2018, 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 2<sup>nd</sup> 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 22<sup>nd</sup> 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 20<sup>th</sup> 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 22<sup>nd</sup> 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, the Parties now desire 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, 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;

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 1** **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	Cities' Reserved Capacity and Cost Allocation in BCRUA Project Components, Phase I
Exhibit D-1	Cities' Reserved Capacity and Cost Allocation in BCRUA Project Components, Phase II

## **ARTICLE II** **NEW EXHIBIT D-1**

The document entitled "Exhibit D-1, Cities' Reserved Capacity and Cost Allocation in BCRUA Project Components: April 25, 2018," which is attached to and incorporated herein is considered attached to and incorporated in the Master Contract.

## **ARTICLE III** **DEFINITIONS**

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

## **ARTICLE IV** **AMENDED DEFINITIONS**

4.01 The Parties acknowledge that the term "BCRUA Project," as defined in Sec. 1.1(f) of the Master Contract is hereby 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 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.

4.02 The Parties acknowledge that the term "BCRUA Project Costs," as defined in Sec. 1.1(g) of the Master Contract is hereby amended to read as follows:

(g) "BCRUA Project Costs" means and includes, without limitation, the following costs incurred for the BCRUA Project by or on behalf of the BCRUA or the Cities:

- (i) the cost of acquisition of the Land Interests, including appraisals, closing costs and title insurance policies;
- (ii) the cost of acquisition, construction, repair, replacement, improvement or decommissioning of the BCRUA Project, and any structure, item of equipment, or other item, used for, or in connection with, the BCRUA Project;
- (iii) the cost of site preparation of the Land Interests, including demolition or removal of structures and improvements as necessary or incident to accomplishing the BCRUA Project;
- (iv) the cost of engineering, legal, architectural or other related services;
- (v) the preparation cost of plans, specifications, studies, surveys, cost estimates, and other expenses necessary or incident to planning, providing, or financing the BCRUA Project;
- (vi) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the BCRUA Project in operation;
- (vii) finance charges and interest before, during, and after construction as permitted by the laws of the State;
- (viii) costs incurred in connection with financing the BCRUA Project, including, without limitation:
  - (1) financing, legal, accounting, financial advisory, rating agency, and auditing fees, expenses and disbursements;
  - (2) the cost of printing, engraving, and reproduction services; and
  - (3) the cost of a trustee's or paying agent's initial or acceptance fee and subsequent fees;
- (ix) all costs, fees and expenses of litigation of all kinds;
- (x) the cost of property casualty and public liability insurance;
- (xi) the fees and costs of the underwriters as the anticipated purchasers of the Bonds;
- (xii) reimbursement of the costs previously incurred by and agreeable to the other Cities with respect to the BCRUA Project; and

(xiii) other costs generally recognized as a part of BCRUA Project construction costs.

BCRUA Project Costs will be allocated among the Cities in accordance with Exhibit "D" and Exhibit "D-1".

## **ARTICLE V**

### **FINANCING OF THE BCRUA PROJECT**

The Parties acknowledge that Article IV, Sec. 4.1(a) of the Master Contract is hereby amended to read as follows:

#### **Section 4.1 Issuance of Bonds.**

(a) The BCRUA's acquisition, construction, and completion of the BCRUA Project will be financed by

- (i) receipt of funds from the Cities, respectively,
- (ii) the BCRUA through the issuance of one or more series or issues of Bonds by the BCRUA for a City, which Bonds are payable solely from and secured, in part, by an assignment of the Bond Payments made under this Contract by the City for which such series of Bonds are issued, or
- (iii) any combination of funds from the Cities, respectively, and the issuance of Bonds for the Cities, respectively. It is expressly understood and agreed by the BCRUA and the Cities that the BCRUA shall issue Bonds as separate series for the applicable City.

Each City shall be solely responsible for Bond Payments on its series of Bonds. No City shall have any liability or responsibility for any Bond Payment on a series of Bonds issued for another City. In consideration of the covenants and agreements set forth in this Contract, and to enable the BCRUA to issue the Bonds to carry out the intents and purposes hereof, this Contract is executed to assure the issuance of the Bonds at the request of a City and to provide for and ensure the due and punctual payment by such City to the BCRUA, or to the Trustee relating to the series of Bonds issued for such City, of amounts not less than the Bond Payments. Each City hereby agrees to make, or cause to be made, its respective Bond Payments, as and when due, for the benefit of the owners of the Bonds, as provided in the Bonds and the Bond Resolution. The cost allocations for the BCRUA Project Cost are shown in Exhibit "D" and in Exhibit "D-1".

## **ARTICLE VI**

### **RESERVED CAPACITIES**

The Parties acknowledge that Article VI Reserved Capacities of the Master Contract is hereby amended to read as follows:

**Section 6.1 Reserved Capacities in BCRUA Project Components.** Each City, respectively, shall have the exclusive right to its reserved capacity in each BCRUA Project component as described in Exhibit D and in Exhibit D-1. No reserved capacity may be allocated to or used by anyone other

than the City on whose behalf that capacity has been reserved, unless the affected City specifically agrees in writing to the allocation or use.

Section 6.2 Reserved Capacities for Treated Water in the BCRUA Project. Each City, respectively, shall have the exclusive right to take, and the BCRUA shall have the obligation to deliver, treated water at the Delivery Points in the amounts shown in Exhibit D and in Exhibit D-1.

Section 6.3 Transfer of Reserved Capacity. Any City may transfer any portion of its reserved capacity in one or more BCRUA Project components to another City, in exchange for such consideration as such Cities shall deem appropriate. The Cities making such transfer shall provide written notice to the BCRUA and the other City, signed by the Cities making the transfer, specifying the amount of transferred reserved capacity and the affected BCRUA Project component(s), and providing that the Cities otherwise ratify and confirm their pre-existing obligations under this Contract. No such transfer shall be effective until and unless such notice is provided. A transfer of reserved capacity shall not change any Bond Payment, other payment, or other obligations of the Cities pursuant to this Contract.

Section 6.4 Documentation of Transferred Reserved Capacity. In the event that reserved capacity is transferred, the BCRUA and the Cities shall cause a written amendment to be made to Exhibit D and/or Exhibit D-1 describing such transfer and setting forth the revised reserved capacity of each City in the BCRUA Project or component(s) thereof.

## **ARTICLE VII**

### **MISCELLANEOUS**

Section 7.1 To the extent necessary to effect the terms and provisions of this Fourth Amendment, the Master Contract is hereby amended and modified. In all other respects, the aforesaid Master Contract is hereby ratified and confirmed.

Section 7.2 This Fourth 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 Fourth Amendment to be duly executed as of the day and year first above written.

(SIGNATURES ON FOLLOWING PAGES)

**CITY OF CEDAR PARK, TEXAS**

By: \_\_\_\_\_  
Matt Powell, Mayor

Attest:

By: \_\_\_\_\_  
LeAnn Quinn, City Secretary

**CITY OF LEANDER, TEXAS**

By: \_\_\_\_\_  
Christopher Fielder, 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  
BCRUA Regional Water Project  
Capacity and Cost Allocation, Phase 2  
Updated: March 26, 2018

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
<b>PHASE 2-DEEP WATER INTAKE &amp; RAW WATERLINE</b>								
Planning & Design Services	144.7	\$ 16,700,000	28.96	\$ 4,836,320	42.85	\$ 7,155,950	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
Electrical Improvement Construction & Construction Phase Services	144.7	\$ 4,597,657	28.96	\$ 1,331,481	42.85	\$ 1,970,096	28.19	\$ 1,296,080
<b>PHASE 2-DEEP WATER INTAKE &amp; RAW WATERLINE SUB-TOTAL</b>		<b>\$ 23,797,657</b>		<b>\$ 6,891,801</b>		<b>\$ 10,197,296</b>		<b>\$ 6,708,560</b>
Cost Allocation Percentages				28.96%		42.85%		28.19%
<b>BCRUA PROJECT PHASE 2 TOTAL COST</b>								
		<b>\$ 23,797,657</b>		<b>\$ 6,891,801</b>		<b>\$ 10,197,296</b>		<b>\$ 6,708,560</b>

  

	Capacity (MGD)	% of Capacity
Cedar Park	41.9	28.96
Leander	62.0	42.85
Round Rock	40.8	28.19
Total	144.7	100

**DATE:** March 23, 2018

**SUBJECT:** BCRUA Board Meeting – March 28, 2018

**ITEM:** 6A. Consider a resolution authorizing the President to execute a Fourth 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, subject to the Approval of the Participating Cities.

**PRESENTER:** Tom Gallier, General Manager

**BACKGROUND:**

During the preliminary legal review of our upcoming current SWIFT Loan application, BCRUA's bond counsel has determined that the existing Master Contract language only authorizes Phase 1 related debt issuance. Since our current SWIFT Loan application mostly relates to Phase 2 debt, it will be necessary for the Board and all three city councils to amend the Master Agreement to add the necessary authorizations.

The amendment includes a new exhibit, Exhibit D-1, which outlines a total of \$23,797,657 (not including debt issuance costs and \$5,000 incremental bond unit costing) in direct Phase 2 expenditures. Please note that the Round Rock portion of \$6,708,560 is being paid out of the balance of Round Rock's remaining Phase 1A savings, so they will not be participating in this current SWIFT Loan Cycle. The remaining \$17,089,097 constitutes Leander's and Cedar Park's Phase 2 shares, most of which will be funded by the current SWIFT Loan application.

It should also be noted that Leander's SWIFT Loan application will not include their \$1,970,096 share of the \$4,597,657 total cost for "Phase 2 Electrical Improvement Construction & Construction Phase Services." That will require separate action and approval by Leander's city council, at a later date. Leander's upcoming SWIFT Loan application will only cover their share of costs for Phase 2 "Planning and Design Services" and "Land Rights" (Deferred Loan Option). Planning and design service costs will also include Leander's portion of the Phase 1D water treatment capacity expansion.

As a final note, we will need to update the existing Exhibit D to the Master Agreement to reflect final expense allocations related to all Phase 1A savings, as well as incorporating the Phase 1D capacity expansion (30 MGD to 42 MGD) that is being incorporated into the Phase 2 Final Design and Construction Project. I anticipate that this can be accomplished in late 2018, or early 2019, after we complete closeout of the original Phase 1A regional water treatment plant construction project.

The breakdown of funding sources necessary to complete Phase 2 Final Design, Phase 2 Land Rights Acquisitions, and Initial Electrical Improvement Construction and Construction Phase Services (not including the Phase 1D treatment facility expansion component), is as follows:

\$ 6,708,560	Round Rock Phase 1A Savings
\$ 6,891,801	Cedar Park 2018 SWIFT Loan Application
\$ 8,227,200	Leander 2018 SWIFT Loan Application
\$ 1,970,096	Leander Cash Funded (Subject to City Council Authorization at a later date)
<b>\$23,797,657</b>	<b>Total Authorized Phase 2 Expenses in Master Agreement Amendment #4 Exhibit D-1</b>

**FOURTH AMENDMENT TO THE MASTER CONTRACT FOR THE FINANCING,  
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REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT**

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**RECITALS**

WHEREAS, on the 2<sup>nd</sup> 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 22<sup>nd</sup> 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 20<sup>th</sup> 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

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WHEREAS, the Parties now desire to expand the definition of "BCRUA Project" to include certain 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;

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## **ARTICLE II** **NEW EXHIBIT D-1**

The document entitled "Exhibit D-1, Cities' Reserved Capacity and Cost Allocation in BCRUA Project Components: April 25, 2018," which is attached to and incorporated herein is considered attached to and incorporated in the Master Contract.

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

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**4.01** The Parties acknowledge that the term "BCRUA Project," as defined in Sec. 1.1(f) of the Master Contract is hereby amended to read as follows:

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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 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.

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(xii) reimbursement of the costs previously incurred by and agreeable to the other Cities with respect to the BCRUA Project; and

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BCRUA Project Costs will be allocated among the Cities in accordance with Exhibit "D" and Exhibit "D-1".

## **ARTICLE V**

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The Parties acknowledge that Article IV, Sec. 4.1(a) of the Master Contract is hereby amended to read as follows:

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## **ARTICLE VII** **MISCELLANEOUS**

Section 7.1 To the extent necessary to effect the terms and provisions of this Fourth Amendment, the Master Contract is hereby amended and modified. In all other respects, the aforesaid Master Contract is hereby ratified and confirmed.

Section 7.2 This Fourth 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 Fourth 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:

  
Frank Leffingwell, President

Attest:

By:

  
Stephen Thomas, Secretary

CITY OF CEDAR PARK, TEXAS<sup>OFF</sup>

By:   
Matthew Powell, Mayor

Attest:

By:   
LeAnn M. Quinn, TRMC  
City Secretary

CITY OF LEANDER, TEXAS

By:   
Christopher Fielder, Mayor

Attest:

By:   
Dara Crabtree, City Secretary



**CITY OF ROUND ROCK, TEXAS**

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

Craig Morgan, Mayor

Attest:

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

Sara White, City Clerk

R-2019-5432

## Exhibit D-1

	Capacity (MGD)	% of Capacity
Cedar Park	41.9	28.96
Leander	62.0	42.85
Round Rock	40.8	28.19
<b>Total</b>	<b>144.7</b>	<b>100</b>