



RIVERBEND RESOLUTION NO. 20170124-04

AUTHORIZING THE APPROVAL OF AN AMENDMENT TO THE CONTRACT WITH TEXAMERICAS CENTER FOR CURRENT AND FUTURE WATER SUPPLY

WHEREAS, Riverbend Water Resources District is a conservation and reclamation district created under and essential to accomplish the purposes of Section 59 Article XVI, Texas Constitution, existing pursuant to and having the powers set forth in Chapter 9601 of the Special District Local Laws code of the State of Texas; and

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, Riverbend Water Resources District authorized the negotiation and execution of an agreement with Susan Roth consulting for the completion of a Regional Water Master Plan on May 11, 2016; entered into an agreement with and acquired the wet utilities from TexAmericas Center and with the acquisition assumed the role of project coordinator, manager and general supervisor for a variety of ongoing and immediately forthcoming projects; and

WHEREAS, Susan Roth Consulting and subcontractors have made substantial progress in the review of the region's current water supply and infrastructure, as well as the region's population and water demand projections for both municipal and non-municipal uses; and

WHEREAS, Riverbend Water Resources District has recently determined through its Regional Water Master Plan that the Northeast Texas region and Riverbend's member entities have an additional need for both municipal and non-municipal water that is above the need listed in the current and 2017 State Water Plan and intends to better substantiate and update the State Water Plan with the correct population projections and water demand projections at the completion of the Regional Water Master Plan study; and

WHEREAS, TexAmericas Center, the largest contiguous industrial footprint in the State of Texas, has provided information that potential for development on the footprint and the prospect client list is in need of over 80,000 acre-feet of water to meet the industrial, non-municipal needs; and



WHEREAS, TexAmericas Center and Riverbend entered into a Purchase and Sale of Assets Agreement on May 26, 2015 detailing the transfer of the wet utilities, and further set forth a time frame for the future delivery of industrial raw water to meet the needs of TexAmericas Center and/or future TexAmericas tenants/grantees and assigns; and

WHEREAS, TexAmericas Center and Riverbend Water Resources District desire to amend this portion of the agreement in order to update the amount of water supply requested by contract for the industrial, non-municipal needs.

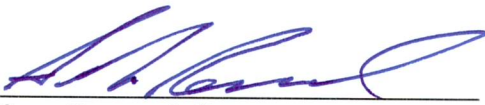
NOW, THEREFORE, BE IT RESOLVED that the Executive Director/CEO, Elizabeth Fazio Hale, is hereby authorized to negotiate and the President, Marshall Wood, is hereby authorized to execute by signature an amendment to the Purchase and Sale of Assets Agreement with TexAmericas Center dated May 26, 2015 section 23.13 regarding the time frame for adding of raw water supply for additional water to the TexAmericas footprint and the benefit of providing service to TexAmericas Center and or Future TexAmericas Center tenants/grantees and assigns.

PASSED and APPROVED this 24th day of October 2017



Marshall Wood, President

ATTEST:



Sean Rommel, Secretary

**FIRST SUPPLEMENT AND AMENDMENT TO THE AGREEMENT FOR
PURCHASE AND SALE OF ASSETS AND ASSIGNMENT AND
ASSUMPTION OF CONTRACT RIGHTS**

This *First Supplement and Amendment to the Agreement for Purchase and Sale of Assets and Assignment and Assumption of Contract Rights* is made by and between TexAmericas Center, a political subdivision of the state of Texas, acting by and through its duly authorized Board of Directors (hereinafter called "TAC"), and Riverbend Water Resources District, a conservation and reclamation district of the State of Texas, acting by and through its duly authorized Board of Directors (hereinafter referred to as "Riverbend"), and is effective as of the date set opposite the signature of the last party to execute this agreement below.

RECITALS

WHEREAS, TAC is a governmental agency and political subdivision of the state of Texas, existing pursuant to and having the powers set forth in Chapter 3503 of the Special District Local Laws Code of the State of Texas;

WHEREAS, Riverbend is a conservation and reclamation district created under and essential to accomplish the purposes of Section 59 Article XVI, Texas Constitution, existing pursuant to and having the powers set forth in Chapter 9601 of the Special District Local Laws Code of the state of Texas;

WHEREAS, TAC and Riverbend entered into an *Agreement for Purchase and Sale of Assets and Assignment and Assumption of Contract Rights* dated May 26, 2015, hereinafter ("Agreement");

WHEREAS, the Agreement provided for the survival of certain covenants to include sections of the Agreement contemplating performance beyond the Closing date as reflected under paragraph XII entitled "Survival of Representations and Warranties" at section 12.01, and paragraph XXIII entitled "Additional Agreements" at section 23.12;

WHEREAS, TAC and Riverbend desire to supplement the Agreement and memorialize a proposed timeframe for Riverbend's acquisition of water rights, and for construction and deployment of facilities and infrastructure necessary to deliver raw water to an agreed upon location on the TAC-East property as contemplated under section 23.12 of the Agreement; and

WHEREAS, TAC and Riverbend desire to amend section 23.12 of the Agreement to accurately reflect the projections for future demand and usage under the pending Regional Water Master Plan, , but not otherwise, especially with respect to the provision relating to Riverbend's obligation to deliver "raw, non-potable water upon commencement of operations of said facilities and infrastructure, which shall not be later than the tenth (10th) anniversary of the Closing of the [wet utilities] contemplated by this Agreement," and that the obligations of the respective parties relative thereto remain as stated in original Agreement.

XXIII. ADDITIONAL AGREEMENTS

23.12. Timeframe for delivery of raw water capability. By mutual consent of the parties to the Agreement, Riverbend, in cooperation with TAC, sets forth the following tentative timeframe for Riverbend's acquisition of water rights, and for construction and deployment of facilities and infrastructure necessary to deliver raw water to an agreed upon location on the TAC-East property, which shall be accomplished on or before May 1, 2026, which represents the tenth (10th) anniversary of the Closing of the Agreement, to wit:

- 2021 Design of new raw water intake / conveyance system completed; and water rights secured from TCEQ for additional water made available through the Ultimate Rule Curve ("URC").
- 2022 Construction of new raw water intake / conveyance system completed (Delivery of raw water to the TAC footprint); and begin design of new water treatment facility.
- 2023 Construction of new water treatment facility.
- 2025 New water treatment facility online; and Member Entities outside Texarkana, Texas, online.

Additionally, the parties agree that Riverbend shall design and construct said facilities and infrastructure on the TAC footprint, or at another mutually agreeable location, to deliver to the TAC footprint and any tenants thereon not less than thirty million (30,000,000) gallons per day of raw, non-potable water upon commencement of operations of said facilities and infrastructure as provided under the aforementioned timeline. Further, the parties agree that Riverbend shall reserve capacity in said facilities and infrastructure and/or in the first system expansion thereafter to deliver an additional sixty million (60,000,000) gallons per day of raw, non-potable water to the TAC footprint and any tenants thereon.

The parties acknowledge and agree the timeframe set forth in this amended section 23.12, is expressly contingent upon the anticipated implementation of the URC; and any delay in the implementation thereof will directly effect the timeframe set forth herein. As such, the timely implementation of the URC shall act as a condition precedent to Riverbend meeting the tentative timeframe set forth herein. Moreover, the final timeframe is subject to board approval by the respective parties' board of directors following implementation of the URC.

In witness whereof, the parties have affixed their signatures hereto on the dates set forth below to supplement and amend section 23.12, but not otherwise, of the *Agreement for Purchase and Sale of Assets and Assignment and Assumption of Contract Rights* dated May 26, 2015.

Riverbend Water Resources District

BY:


Marshall Wood, Board of Directors

01-24-, 2018.

TexAmericas Center

BY:  , 2018.
Boyd Sartin, Board of Directors