



RIVERBEND RESOLUTION 20200422-01

A RESOLUTION BY THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT TO ACCEPT OAK GROVE WATER SUPPLY CORPORATION'S PETITION FOR MEMBERSHIP AND NEGOTIATE AN AGREEMENT FOR SERVICES WHEREBY OAK GROVE WATER SUPPLY CORPORATION SHALL THEREIN AFTER BE DESIGNATED AS A MEMBER OF RIVERBEND WATER RESOURCES DISTRICT.

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, by way of correspondence dated March 4, 2020, the president of Oak Grove Water Supply Corporation, hereinafter ("OGWSC"), petitioned Riverbend Water Resources District for membership in the district as provided under Texas Special District Local Laws Code § 9601.005(b) as amended by the 2019 Regular Session of the 86th Legislature; and

WHEREAS, OGWSC desires to procure certain services from Riverbend Water Resources District in exchange for its participation in funding the development of Riverbend Water Resources District projects as a member of the district.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT:

1. That the District, giving due consideration toward OGWSC's petition for membership, hereby accepts said petition finding the request for membership to be in compliance with its enabling statute, specifically Texas Special District Local Laws Code § 9601.005(b) as amended by the 2019 Regular Session of the 86th Legislature.
2. That OGWSC, as a member of the district, will become eligible to receive certain services from Riverbend Water Resources District in exchange for an agreement to participate in the funding of the development of Riverbend projects.
3. That the District's Executive Director/CEO be and is hereby designated as the authorized representative of Riverbend Water Resources District for purposes of negotiating an agreement between Riverbend Water Resources District and OGWSC whereby OGWSC, as a member of the district, will participate in the funding of the development of Riverbend projects in exchange for certain services to be provided by Riverbend Water Resources District.



4. That the District's Executive Director/CEO is hereby designated to negotiate an agreement with OGWSC having the same or similar materials terms outlined in the Interlocal Cooperation Agreement between the Central Bowie Water Supply Corporation and Riverbend Water Resources District bearing an effective date of October 22, 2019, a copy of which is attached hereto.
5. That upon the effective date of the agreement between Riverbend Water Resources District and OGWSC, then OGWSC shall become and thereafter designated as a member of the district as provided under § 9601.005(b) of the Texas Special District Local Laws Code, subject to the provisions of Riverbend Water Resources District's enabling statute as fully set forth under Chapter 9601 of the Texas Special District Local Laws Code.

PASSED AND APPROVED, this the 22nd day of April 2020.

A blue ink signature, appearing to read "Sonja", written over a horizontal line.

Sonja Hubbard, President, President

ATTEST:

A blue ink signature, appearing to read "Marshall Wood", written over a horizontal line.

Marshall Wood, Secretary, Secretary

Attached: Oak Grove Water Supply Corporation Membership Petition and Draft Contract

Oak Grove Water Supply
904 W. Front St.
De Kalb, TX 75559
ogwsc1@gmail.com

March 5, 2020

Riverbend Water Resources District
228 Texas Ave., Suite A
New Boston, TX 75570

Subject: Membership

1. At the January 14, 2020 meeting of the Directors of Oak Grove Water Supply Corporation a Resolution was discussed to join Riverbend Water Resources District. In the resolution Oak Grove Water Supply Corporation requested to become a member of Riverbend.
2. At the February 13, 2020 meeting of the Directors of Oak Grove Water Supply Corporation a motion was made by Mr. Rachel Slider for Oak Grove Water Supply Corporation to formally petition Riverbend Water Resources District to become a member of the District by way of this letter. The motion was seconded by Mr. Danny House. The motion carried. The vote was 6 Yeas, 0 Nay, with one director not in attendance.
3. Thank you for your consideration.
4. If you have any questions please contact Ricky M. Wilson at 903/667-0344.

Best Regards,

A handwritten signature in cursive script that reads "Ricky M. Wilson".

Ricky M. Wilson
President

Member Agreement

This Member Agreement, hereinafter ("Agreement"), is entered into by and between Central Bowie County Water Supply Corporation, hereinafter ("CBCWSC"), a not-for-profit water supply corporation duly incorporated under the laws of this state and operating under Chapter 67 of the Texas Water Code, and Riverbend Water Resources District, hereinafter ("Riverbend"), 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.

Recitals

WHEREAS, Riverbend is a local governmental entity and political subdivision of the state of Texas, created by the Texas Legislature under the authority of the Texas Constitution, CBCWSC deems it appropriate for Riverbend to establish and/or maintain contact with various federal and state governmental entities or agencies or political subdivisions on CBCWSC's behalf with respect to water supply and conservation, among other purposes; and

WHEREAS, CBCWSC desires to procure certain services from Riverbend and participate in the funding of the development of Riverbend projects as a member of the district in exchange for a specified fee and dollar-for-dollar credit towards participation in future water purchase should Riverbend develop such capability, and Riverbend is willing to provide such services and agree to such credits.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements contained herein, CBCWSC and Riverbend hereby agree as follows:

1. Term

- 1.1 *Initial Term.* This Agreement is for a five-year term, commencing on the Effective Date of this Agreement.
- 1.2 *Renewal Term.* This Agreement shall automatically renew for subsequent, one-year terms, unless terminated pursuant to Section 7 of this Agreement.

2. Membership in District

As reflected in the minutes of the Riverbend Board of Directors on the 14th day of August, 2019, upon the Effective Date of this Agreement and thereafter CBCWSC shall become a member of the district subject to the provisions of Riverbend Water

Resources District's enabling statute as fully set forth under Chapter 9601 of the Texas Special District Local Laws Code.

3. Riverbend's Services

Schedule of Services. Riverbend agrees to perform services on behalf of CBCWSC as set forth in Schedule A to this Agreement, incorporated herein by reference for all purposes.

4. CBCWSC's Advances and Credits

4.1 *Advances.* For each year during the term of the Agreement, CBCWSC shall pay or otherwise dedicate funds to the operation of Riverbend pursuant to Section 4, ("Advances"). These Advances shall be used by Riverbend for any costs, fees, or expenses, including internal costs, as permitted by law and Riverbend's enabling legislation.

4.2 *Credits.* If Riverbend develops a project with capability of providing potable water to CBCWSC ("Project"), then the amount of Advances made by CBCWSC shall be exchanged by CBCWSC, without interest, penalties, or fees, in the form of a water purchase credit for the purchase of water ("Credits") from Riverbend. Each one dollar in Advances shall be exchanged for one dollar in Credits that Riverbend shall accept for the purchase of water. The price of water provided by Riverbend shall be based on cost as determined outside of the terms of this Agreement. Credits will be available for use after cost is determined and execution of any contract that specifies the price of water from Riverbend and immediately following the development, construction, and operation of Riverbend's Project.

4.3 *Use of Credits.* On or before July 1 of each year after Riverbend's Project is completed and operational, CBCWSC shall provide Riverbend written notice of the intent to use available Credits and the amount of available Credits proposed to be used during the upcoming budget year. Credits may not be transferred, assigned, or otherwise sold without the agreement of Riverbend. CBCWSC and Riverbend agree that Riverbend may limit the amount of Credits accepted to maintain adequate funds necessary for its day-to-day operations, and the pro-rata percentage of such limitation, as determined by Riverbend's Board of Directors.

4.4 *Failure to Construct Project.* The parties understand that should certain

outside influences beyond Riverbend's control, such as environmental circumstances, denial of water permit, or failure to obtain necessary funding, prohibit Riverbend in proceeding with the Project, Riverbend shall have no liability to refund any Advances made by CBCWSC. However, if Riverbend decides, within five (5) years of the Effective Date of this Agreement, that it does not wish to develop, construct or operate the Project, other than the reasons stated in the preceding sentence, Riverbend shall repay Advances made by CBCWSC, together with any interest at the Federal Reserve Bank of New York prime rate minus one percent (1%) as posted on the date of the advance. Riverbend may make the repayment over a ten (10) year period in equal annual installments from its budgeted available revenues. Upon the refund of all advances, Riverbend will have no further obligation to CBCWSC.

- 4.5 *No Obligation to Develop Project/Price of Water Not Established.* Nothing in this Agreement, nor any payment of Advances or issuance of Credits, shall (a) obligate Riverbend to develop, construct, or operate the Project or any portion thereof, or (b) be construed as establishing the price of water. If the Project is developed and constructed, Riverbend shall prepare water purchase agreements that will set the price of water based on actual cost plus any reasonable charges necessary for the proper operation, maintenance and improvements necessary to operate the Project. The water purchase agreements will establish the amount of water based on the percentage of participation in advanced funding of Riverbend's annual budget and stipulate the maximum number of Credits available for use by CBCWSC for a budget year.

5. CBCWSC's Fee to Riverbend

- 5.1 In consideration of the Credits set forth in Section 4 of this Agreement, and in consideration for Riverbend's services to be provided pursuant to Section 3 of this Agreement, CBCWSC agrees to pay or dedicate to Riverbend the following fee, pro-rated on a monthly basis:

FEE COMPONENT (expressed in U.S. cents) per 1,000 gallons of potable water processed through "COMPANY facilities", that CBCWSC purchases from the City of Texarkana, Texas.

For the first year of this agreement, the FEE COMPONENT shall be fixed at \$0.045. For subsequent years under this Agreement, the FEE COMPONENT may be increased or decreased as determined during the "true-up" process.

- 5.2 “COMPANY facilities”, as that term is used in section 5.1, incorporates herein by reference Schedule A of the 1969 “Water Supply System Sale-Purchase-Financing Agreement” between Lake Texarkana Water Supply Corporation and the City of Texarkana, Texas, and shall have the same meaning as that term is used in the 1969 water supply contracts with Riverbend’s members.

6. Primary Contacts

The parties establish the primary contact persons for any issue arising under or touching upon the Agreement:

- 6.1 for CBCWSC, its President; and
- 6.2 for Riverbend, its Executive Director/CEO

7. Termination

The Agreement may be terminated as follows:

- 7.1 by mutual agreement of the parties;
- 7.2 by either CBCWSC or Riverbend, upon notice to the other party of one (1) year prior to the effective date of termination;
- 7.3 by CBCWSC, upon failure of Riverbend to perform any of its obligations under the Agreement, such failure not being cured by Riverbend within sixty (60) days following CBCWSC giving Riverbend written notice of CBCWSC’s intent to terminate the Contract; or
- 7.4 by Riverbend, upon failure of CBCWSC to perform any of its obligations under the Agreement, such failure not being cured by CBCWSC within sixty (60) days following Riverbend giving CBCWSC written notice of Riverbend’s intent to terminate the Contract.

8. Miscellaneous Provisions

- 8.1 Assignment: This Agreement shall be for the sole and exclusive benefit of Riverbend and CBCWSC and is not intended to confer any benefit or right upon any other parties or parties not expressly provided herein. This Agreement shall not be assigned by CBCWSC to any other party without

the prior written consent of Riverbend.

- 8.2 Authority: The individuals executing this Agreement on behalf of Riverbend and CBCWSC are duly authorized by their respective organizations to enter into this Agreement and are acting on behalf of said entities in signing this document. In entering into this Agreement CBCWSC verifies that it (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the Agreement as prohibited under section 2270.002 of the Texas Government Code.
- 8.3 Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, and Riverbend and CBCWSC consent to the jurisdiction of the state district courts serving Bowie County, Texas over all matters relating to this Agreement. As a condition precedent to any legal action, Riverbend and CBCWSC jointly agree to submit any such disputes to mediation in the event the parties are unable to amicably resolve their differences. Each party shall bear its own costs associated with any such alternative dispute resolution.
- 8.4 Legal Construction: Nothing in this Agreement is intended to waive any governmental immunity available to Riverbend under Texas law.
- 8.5 Enforceability/Severability: If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.
- 8.6 Entire Agreement/Modification: This Agreement constitutes the entire understanding and agreement between Riverbend and CBCWSC regarding the subject-matter set forth herein and it supersedes all prior agreements whether oral or written between the parties hereto with respect to the subject-matter of this Agreement. This Agreement may not be modified except by a subsequent written agreement signed by both parties.
- 8.7 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers with an effective date, ("Effective Date"), as of the date of the last signature affixed hereto:

CBCWSC:

By: Warren Dignight
President

Date: 4 Oct, 2019

ATTEST:

Thomas M. Weller

Riverbend Water Resources District:

By: W. D. Dignight
Executive Director / CEO

Date: OCT 22, 2019

ATTEST:

B. B. B. B.

Schedule A

Services to be provided by Riverbend under this Agreement shall include the following:

1. Acting as CBCWSC's agent in coordination with CBCWSC's board and the City Manager of Texarkana, Texas in the following matters:
 - a. negotiating with the United States Army Corps of Engineers regarding contractual rights and responsibilities with respect to the entire pool in the Lake Wright Patman Reservoir;
 - b. securing water permits and permissions from the Texas Water Development Board, Texas Commission on Environmental Quality, and any other state or federal agency, with respect to the entire pool in the Lake Wright Patman Reservoir, corresponding with item 1(a), above;
 - c. negotiating with governmental entities or political subdivisions outside of Texas Regional Water Planning Group - Region D regarding the purchase of water in the Lake Wright Patman Reservoir, corresponding with items 1(a) and 1(b), above; and,
 - d. attendance at and participation in state and regional water planning and development meetings.

The term "coordination" as used in this Section 1 shall include the following:

- Notifying the Texarkana, Texas Mayor and CBCWSC President in advance of any meetings or engagements which correspond with items 1(a), 1(b), 1(e), or 1(d), that Agent intends to either attend or participate in, so as to facilitate CBCWSC attendance; and regardless of CBCWSC attendance, submitting a written summary of such meetings or engagements to the Mayor and CBCWSC President, detailing any tasks or commitments Agent proposes or recommends for CBCWSC.
- Submitting a monthly status report to the Texarkana, Texas City Council on all major efforts which correspond with items 1(a), 1(b), 1(e), or 1(d), including securing water rights, providing water resources to the region, funding of recommended goals and efforts (including identification of revenues, sources of revenue, and expenditures), and defining any impediments towards achieving the recommended goals and efforts.

Agent shall have no authority to bind the CBCWSC or the CBCWSC board on any matter. The City Council may revoke this Section 1 at any time with or without cause.

2. Supervising performance of 1969 water supply contracts and any extensions/amendments thereto.