

Resolution authorizing the City Manager to execute a Third Amendment to the Contract between the City of Corpus Christi and San Patricio Municipal Water District for Supply of Treated Water

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

The City Manager is authorized to execute a Third Amendment to the Contract between the City of Corpus Christi and San Patricio Municipal Water District for Supply of Treated Water as attached with such changes thereto as approved by the City Attorney.

PASSED and APPROVED on the _____ day of _____, 2024.

ATTEST:

Paulette Guajardo, Mayor

Rebecca Huerta, City Secretary

**THIRD AMENDMENT TO THE CONTRACT BETWEEN
THE CITY OF CORPUS CHRISTI AND
SAN PATRICIO MUNICIPAL WATER DISTRICT FOR SUPPLY OF TREATED WATER**

Whereas, on March 17, 1997, the City of Corpus Christi (“City”) and San Patricio Municipal Water District (“District”) entered into a Treated Water Supply Contract with a term of 30 years; and

Whereas, effective August 13, 2013, the City and the District entered into a Settlement Agreement and Mutual Release which amended the foregoing Treated Water Supply Contract, and effective September 5, 2018, the City and the District entered into that certain Second Amendment to and Extension of the Contract Between the City of Corpus Christi and San Patricio Municipal Water District for Supply of Treated Water (“Second Amendment”) and the Treated Water Supply Contract, as amended by the Settlement Agreement and Mutual Release, and as further amended by the Second Amendment is hereinafter referred to as the Contract; and

Whereas, the District’s Designated Customer has advised that after over 18 months of run time, it has seen that design enhancements have demonstrated improved water utilization so that it can save approximately 2 MGD and has requested a reduction in its Take-or-Pay obligations to the District; and

Whereas, the parties desire to further amend the Contract regarding Quantity and Take-or-Payment requirements in response to the District’s Designated Customer’s request and pursuant to Section 6 (c) of the Contract.

In consideration of the above recitals and the mutual promises, covenants, and agreements, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree to amend the following sections of the Contract.

This Third Amendment to the Contract between the City and the District for Supply of Treated Water (herein “Third Amendment”) amends the Contract Section 2 (Use and Quantity of Treated Water) and Section 6 (Reserve Capacity, Capacity for Designated Customer and Fixed Minimum Obligation of Treated Water to Serve Designated Customer), to read as follows:

2. USE AND QUANTITY OF TREATED WATER.

a. Subject to and as limited by the provisions of Section 6 below, the City agrees to allow the District to divert, and use consumptively, treated water for municipal and industrial purposes in such quantity as may be required by the District, but not exceeding a total of ~~34,760~~ ~~37,000~~ acre feet (10,000 acre feet of which shall be designated as Reserve Capacity as set forth in Section 6(a) below) in a calendar year (January 1 to December 31). Treated water includes water treated at the City’s O.N. Stevens Water Treatment Plant and may also include any other treated water available from any other City facility, so long as it is potable quality.

b. However, if an emergency situation arises, the City may deliver additional treated water. The City Manager or designee (“City Manager”) will determine how long the extra

deliveries will last, the rate at which deliveries will be increased, and whether the increased deliveries will exceed 34,760 ~~37,000~~ acre feet during a calendar year.

c. Except as provided in subparagraph 2.b., if the District's projected needs for treated water exceed 23,000 **gallons per minute**, the District will notify the City Manager of the District's needs at least 90 days prior to date on which the increased deliveries are needed. The District agrees to provide at least 2 years advance notice if requested increase exceeds 20% of amount stated in subparagraph 2.a. The City Manager will determine whether there is sufficient capacity within the system to allow an increased rate of delivery after considering the City's planned needs and the needs of its other water customers. The City Manager will determine whether water can be delivered at an increased rate and the rate to which deliveries will be increased, and notify the District's Representative of the decision.

d. The District may request an increase in the amount of treated water delivered in a year based on the extent of then uncommitted available water. The City Manager will consider the City's planned needs, the needs of its other water customers, and the needs of other communities in the region before committing to any increase in the District's annual deliveries. However, the City is under no obligation to authorize an increase in the annual deliveries. In event an increase in the annual deliveries is authorized, this contract must be amended in writing to show the amount of increased deliveries.

e. Title to and possession of the treated water passes to the District at the points of delivery.

6. RESERVE CAPACITY, CAPACITY FOR DESIGNATED CUSTOMER AND FIXED MINIMUM OBLIGATION OF TREATED WATER TO SERVE DESIGNATED CUSTOMER.

a. Out of the total 34,760 ~~37,000~~ acre feet of treated water capacity set forth in Section 2 above, 10,000 acre-feet of treated water capacity is hereby designated as "Reserve Capacity". Except for emergencies subject to Section 2(b) above, the District shall provide at least 2 years' advance written notice to the City of the District's intent to utilize the Reserve Capacity prior to use by the District. The District as of the Effective Date of this Third Amendment is utilizing the Reserve Capacity and provided the City with the notice required above.

b. The remainder of the 34,760 ~~37,000~~ acre feet of treated water capacity set forth in Section 2 above, being 24,760 ~~27,000~~ acre feet, shall be made available to the District by the City only for the period of time during which the contract between the District and Gulf Coast Growth Ventures LLC ("Designated Customer") is in effect. SPMWD must provide the City at least 90 days advance written notice prior to SPMWD actually taking any portion of the 24,760 ~~27,000~~ acre feet. As of the Effective Date of this Third Amendment the District is taking a portion of the 24,760 acre feet and provided the City with the notice required above.

c. Commencing on January 1, 2024 ~~3~~, and continuing so long as the contract between the District and its Designated Customer is in effect, the District is obligated to purchase minimum of ~~12,760~~ ~~15,000~~ acre-feet per calendar year (“Take-or-pay Amount”) at the monthly take or pay rate for public agency for resale, as adopted by City ordinance and which is in effect at the time of delivery. Notwithstanding the foregoing sentence, if the Designated Customer makes technological or other improvements or changes to operations of its facility that will result in a reduced anticipated water usage, and provided the Designated Customer provides documentation of such a change, then the City and District agree to review such documentation and to negotiate changes to this Contract to reduce the ~~24,760~~ ~~27,000~~ acre feet commitment in Section 6(b) above and the minimum take or pay purchase requirement in this Section 6(c). In addition, if the City is unable due to drought conditions to provide sufficient treated water to the District in an amount at least equal to the District’s then-existing minimum purchase requirements, the District shall only be required to pay for the actual amount of treated water delivered by the City. Once the provisions of the preceding paragraph are in effect, for any calendar year in which District has purchased less than the take-or-pay amount, City shall invoice District for the difference between the actual amount of treated water purchased during that calendar year and the take-or-pay amount. Notwithstanding any provision in this Third Amendment to the contrary, any treated water purchased by the District from the Reserve Capacity shall not be counted toward the District’s Take-or-Pay requirement in this Section 6(c).

If Designated Customer’s Facility (which is located in San Patricio County, bounded on the east by FM 2986, bounded on the north by US 181, bounded on the west by CR 3677 and bounded on the south by CR 1612) is prevented from operating fully due by reason of a force majeure event(s) described in Section 13 and during a calendar year in which the District has purchased less than the Take-or-pay Amount, then subject to City’s receipt of required notice and City’s concurrence of the existence of a qualifying force majeure event, which concurrence by the City shall not be unreasonably withheld, the calculation to determine the difference between the actual amount of treated water purchased during that calendar year and the Take-or-pay amount shall be adjusted to actual use and prorated to reflect the period of such down time; however any such adjustment(s) shall be for actual period of down time, not to exceed maximum of six months (“Period of Take-or-Pay Adjustment”). Subject to City’s concurrence of a qualifying force majeure event, the Period of Take or Pay Adjustment initiates as of the date of the qualifying force majeure event. Immediately upon the conclusion of the Period of Tax-or-Pay Adjustment, the District must resume payment of the Take-or-Pay Amount even if the qualifying force majeure event continues beyond the maximum six month Period of Take-or-Pay Adjustment.

d. If the payment due the City from the District for treated water withdrawn during the billing period under consideration exceeds the minimum, then payment must be made for the amount due.

All other terms and conditions of the previously executed Contract between the parties which are not inconsistent herewith shall continue in full force and effect.

By signatures below, the parties agree that the Contract as amended by this **Third Amendment and Extension Agreement** constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements or settlement agreement between the parties respecting the within subject matters.

The parties have executed this **Third Amendment and Extension Agreement** in multiple counterparts, and each executed copy shall be considered as an original, with all terms effective as of date of last signature ("Effective Date").

SAN PATRICIO MUNICIPAL WATER DISTRICT

By: _____

Printed Name: _____

President

ATTEST:

By: _____

Secretary/Treasurer

Printed Name: _____

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF SAN PATRICIO

This instrument was acknowledged before me on the _____ day of _____, 2024 by _____, President of the San Patricio Municipal Water District, on behalf of said district, after approval of the Board of Directors on _____, 2024.

Notary Public

CITY OF CORPUS CHRISTI

By: _____

City Manager

Printed Name: _____

ATTEST:

By: _____

_____, Secretary

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on the _____ day of _____, 2024 by _____, City Manager of the City of Corpus Christi, Texas, on behalf of said city, after approval of the City Council on _____, 2024.

Notary Public