

**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**

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 the Treated Water Supply Contract, as amended by the Settlement Agreement and Mutual Release, is hereinafter referred to as the Contract; and

Whereas, the Contract provides for the City to provide the District with 10,000 acre feet of treated water on annual basis;

Whereas, the parties desire to further amend the Contract regarding quantity and price of water and also extend the Contract as amended;

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 sections of the Contract and add new sections to the Contract.

This Second Amendment to and Extension of the Contract between the City and the District (herein “Second Amendment and Extension”) amends the Contract Section 1 (Term); Section 2 (Use and Quantity of Water); Section 3 (Point of Delivery); Section 6 (Fixed Minimum Obligation); Section 13 (Force Majeure) and Section 14 (Resolution of Rate Disputes), and adds new Section 30 (Backflow Prevention Devices and Other Regulatory Requirements); Section 31 (Required Notices); Section 32 (District Service Obligations-Service Areas); and Section 33 (Required Statement Regarding Effectiveness of Contract), to read as follows:

1. TERM.

The term of the Contract is amended and extended to continue for an additional forty (40) years from the Effective Date of this Second Amendment and Extension. After such additional forty-year term, the term of this Contract shall be renewed for additional terms of ten (10) years each, only upon written agreement by both Parties.

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

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 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.

3. TWO POINTS OF DELIVERY OF TREATED WATER.

The City will deliver the treated water to the existing delivery point at the City's J.W. Cunningham facility, and to the additional delivery point described on Exhibit "A" /or any other delivery points agreed to by letter agreement of the City Manager and the District Executive Director.

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

- a. Out of the total 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.
- b. The remainder of the 37,000 acre feet of treated water capacity set forth in Section 2 above, being 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 27,000 acre feet.
- c. Commencing on January 1, 2023, 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 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 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.

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.

13. **FORCE MAJEURE.** If the City or District is prevented, wholly or in part, from fulfilling its obligations under this Contract by reason of any act of God, unavoidable accident, acts of enemies, strikes, fires, floods, conservation of water for those with superior and legal rights to such water, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances reasonably beyond its control, then the obligations of City or District, as provided in this Contract, are temporarily suspended during continuation of such force majeure. No damage is recoverable by the District from City by reason of the temporary suspension of delivery of water due to any of the causes above mentioned. If the City's obligation is affected by any of such causes, the City will promptly notify the District's Representative in writing, giving full particulars of such majeure as soon as possible after the occurrence of the cause or causes relied upon.

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 by reason of acts of God, unavoidable accident, acts of the public enemy, strikes, floods, fires, governmental restraint or regulations, or for any other cause beyond Designated Customer's control, then subject to the District's providing 30 days' notice to the City of said event, the District's minimum take or pay purchase obligations will be adjusted to reflect the actual use during such force majeure(s) per the terms of Section 6(c).

14. **RESOLUTION OF DISPUTES.**

In the event of any dispute between the parties under this Contract, the parties shall first attempt in good faith to settle and resolve such dispute. The party shall provide written notice of the dispute and allow at least 30 days for written response prior to initiating any further action. If dispute cannot be resolved by mutual agreement, then resolution shall be in accordance with applicable law.

The parties agree to further amend the Contract by adding new Sections 30 through 33 to the Contract to read as follows:

30. **BACKFLOW PREVENTION DEVICES AND OTHER REGULATORY REQUIREMENTS**

- a. District shall design, construct, operate, and maintain its water system in compliance with all applicable Federal, State and local laws.
- b. District shall ensure that all connections with the City water system contain backflow prevention device and/or air gaps consistent with City Plumbing Code requirements and in compliance with State laws. Notwithstanding the foregoing, the City agrees to provide District with a variance, if such variance is approved by the Texas Commission on Environmental Quality (“TCEQ”), for the air gap installation at the storage tank at the District’s Designated Customer’s Facility to allow for less than two pipe diameters between the top of the tank and the water surface due to the large 48” diameter of the pipe. District shall not allow any other party to connect with the City water system. The City reserves the right to immediately disconnect water connections in violation of this requirement without any notice to District and without any penalty or liability to City.
- c. District grants the City and its officers agents employees to go upon District property at any time to inspect for compliance with these requirements.

31. REQUIRED NOTICES

- a. District shall notify City in writing at least two weeks prior to making any change in its planned diversion rates, not to exceed the maximum diversion rates specified in this Contract. Such notice shall include District’s anticipated diversion rate.
- b. District shall provide to City a demand or use schedule that estimates District’s annual usage, and any increases to it over time (“Demand Schedule”). District shall update its Demand Schedule and provide to City not less than once a year or following written request from City.
- c. District shall provide copies of any termination notice received from the District’s Designated Customer within 10 business days of the District’s receipt of such notice.

32. DISTRICT SERVICE OBLIGATIONS – SERVICE AREAS

District agrees to make its treated water available for sale to the City and treat the City the same as any other treated water customer within San Patricio County.

33. REQUIRED STATEMENT REGARDING EFFECTIVENESS OF CONTRACT.

This Contract’s effectiveness is dependent upon the compliance by the City and the District with 30 Texas Administrative Code 295.101 and Chapter 297, Subchapter J of Title 30 of the Texas Administrative Code (relating to Water Supply Contracts and Amendments).

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 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 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: _____

President

ATTEST:

By: _____

Secretary/Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF SAN PATRICIO

This instrument was acknowledged before me on the _____ day of _____, 2018 by _____, President of the San Patricio Municipal Water District, on behalf of said district, after approval of the Board of Directors on _____, 2018.

Notary Public

CITY OF CORPUS CHRISTI

By: _____

City Manager

ATTEST:

By: _____

Rebecca Huerta, Secretary

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on the _____ day of _____, 2018 by _____, City Manager of the City of Corpus Christi, Texas, on behalf of said city, after approval of the City Council on _____, 2018.

Notary Public