

AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute a letter amendment to the Agreement Regarding Provision of Water and Wastewater Service between Hays County and Lower Colorado River Authority ("LCRA") executed in Court on September 5, 2000.

ITEM TYPE

ACTION-MISCELLANEOUS

MEETING DATE

September 3, 2013

AMOUNT REQUIRED

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY

Whisenant

SPONSOR

WHISENANT

CO-SPONSOR

N/A

SUMMARY

Summary to be provided by Commissioner Whisenant in Open Court.

09 03 13

FILED:

HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28285 VOL V PG 229

AGREEMENT REGARDING PROVISION OF WATER AND WASTEWATER SERVICE

This "Agreement Regarding Provision of Water and Wastewater Service" (the "Agreement") is entered into between the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas ("LCRA") and Hays County (the "County") and shall be effective as of the date the Agreement is approved by the latter of the governing bodies of the LCRA and the County to approve the Agreement.

WHEREAS, areas of the County currently outside the city limits of incorporated municipalities in the County are experiencing rapid growth necessitating the provision of retail water and wastewater services;

WHEREAS, the County desires to accomplish the provision of water and wastewater service to the County, including that portion of the County lying within the watershed of the Colorado River basin;

WHEREAS, LCRA has authority to provide water and wastewater services within the portion of the County lying within the watershed of the Colorado River basin (the "Service Area");

WHEREAS, the County and LCRA desire to enter into this Agreement to implement the provision of water and wastewater services to the Service Area by LCRA in cooperation with the County; NOW, THEREFORE,

It is hereby agreed between the parties as follows:

1. LCRA and the County agree to cooperate to enable LCRA to provide water and wastewater services to the Service Area in accordance with this Agreement. Water and wastewater services shall be provided in accordance with that certain "Memorandum of Understanding" between LCRA and the United States Fish and Wildlife Service, dated May 24, 2000 (the "MOU").
2. The County shall conduct planning activities, including coordinating the activities of LCRA, the County and political subdivisions within the County regarding the provision of water and wastewater services by LCRA to the Service Area pursuant to this Agreement (the "County Services").

3. The MOU provides that water and wastewater services will be provided only to "existing development" (as defined in the MOU) until such time as an environmental impact study for the Service Area is performed by LCRA in compliance with the MOU. Both parties agree to conform to the MOU and to take actions required to implement the MOU including adoption of appropriate land use and platting requirements by the County to assist in implementation of the MOU. The County agrees to adopt orders as may be appropriate to implement the MOU's requirements or to cause the Hays County Water & Sewer Authority to adopt such orders. The MOU provides that water and wastewater service will be provided to "new development" (as defined in the MOU) to those properties that conform with the water quality protection measures approved by USFWS as part of the Section 7 consultation or that have been independently determined by the USFWS as being in compliance with the Endangered Species Act. The MOU provides that the LCRA can provide water and wastewater service to "new development" that is in compliance with a regional solution for water quality protection that has been agreed to by the USFWS.
4. LCRA agrees to provide retail water and wastewater services for the Service Area to the extent feasible and practicable, and if other water and wastewater services meeting minimum State standards are not economically or readily available. In portions of the Service Area where LCRA provides retail water or wastewater services, LCRA may apply for a certificate of convenience and public necessity ("CCN") from the Texas Natural Resource Conservation Commission, and in such event, the County agrees to support LCRA in obtaining the CCN. If LCRA does not provide retail service within 24 months after receiving a written request for retail water or wastewater service for a property within the Service Area, then the County may provide retail water or wastewater service to the tract. In portions of the Service Area where another retail public utility is exclusively authorized by law to provide retail water or wastewater services, LCRA may, but shall not be required to, provide wholesale services to the authorized retail service provider.
5. LCRA agrees to pay to the County a fee for the County Services equal to six percent (6%) of the revenues generated from: (a) the provision of retail water and wastewater services by LCRA in the Service Area, excluding revenues from any non-monthly recurring fees such as application fees or connection fees; and, (b) the provision of wholesale water and/or wastewater services by LCRA to any retail water or wastewater service provider, other than a municipality, that is not authorized to provide water or wastewater services as of the effective date of this Agreement. The fee will be added as a specific charge on the invoice for each of LCRA's customers from whom the fee is collected and paid. The fee will be due

and payable on January 30 of each year for revenues received by LCRA during the prior year from the provision of any applicable water and wastewater services to the Service Area. LCRA will not provide retail water or wastewater services where another retail public utility is exclusively authorized by law to provide such services. Within thirty days after execution of this Agreement, LCRA will pay the County the sum of ten thousand dollars (\$10,000) as a prepayment ("Prepayment") of the fee for the County Services provided for in this section. Such Prepayment shall be credited against the first amounts otherwise due by LCRA under the provisions of this section. The Prepayment may be used by the County for the purpose of implementing this Agreement.

6. By these presents, County authorizes use by LCRA of easements and rights-of-way of the County for construction, operation and maintenance of LCRA's water and wastewater facilities, so long as such use is in compliance with the terms of any easement or right-of-way utilized by LCRA and does not interfere with any lawful use by the County and subject to all of the County's rules and regulations respecting the manner of such use and restoration of lands, pavement or improvements resulting from exercise of the rights provided in this section, including the cost of relocation of any facilities located within any such easement or right-of-way as an expense of LCRA. LCRA will cooperate with the County in the timing, planning and installation of LCRA's water and wastewater facilities to be constructed and installed hereunder. The provisions of this section shall survive any expiration or termination of this Agreement.
7. In case by reason of "Force Majeure" any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, partial or entire failure of water supply and inability on the part of LCRA to provide water necessary for operation of its water and wastewater system hereunder. It is

understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

8. This Agreement shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them and to the provisions of the MOU. In each instance herein where reference is made to a federal or State regulation, it is the intention of the parties that at any given time the then current edition of any such federal or State regulation shall apply. LCRA and the County agree that their obligations under this Agreement shall include compliance with the requirements made under said laws, and any rules and regulations issued pursuant thereto, and the MOU. New standards shall be adopted by the County and LCRA that are in compliance with applicable State and federal laws, any valid rules and regulations issued pursuant thereto and the MOU.
9. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, conditions, or liability hereunder, or of performance by the other parties of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.
10. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the others must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by telecopier, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to LCRA, to:

Joseph J. Beal
General Manager
Lower Colorado River Authority
P. O. Box 220
3701 Lake Austin Boulevard
Austin, Texas 78767
Fax No. (512) 473-3298

If to the County, to:

James Powers
County Judge
Hays County
111 East San Antonio, Suite 300
San Marcos, TX 78666
Fax (512) 393-2282

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties.

1. This Agreement shall take effect as of the date the Agreement is approved by the latter of the governing bodies of the LCRA and the County to approve the Agreement. The Agreement shall be subject to change or modification only with the mutual consent of the governing bodies of each of the parties.
2. This Agreement shall not be assignable by any party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
3. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.
4. This Agreement constitutes the entire agreement between the parties relative to the subject matter thereof. Except as noted in the previous sentence, there have

been and are no agreements, covenants, representations or warranties between the parties other than those expressly stated herein or expressly provided for herein.

5. Venue for any action arising hereunder will be in Hays County, Texas.
6. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto, any rights, benefits, or remedies under or by reason of this Agreement.
7. This Agreement shall have a term of twenty-five (25) years.

EXECUTED AND EFFECTIVE as of the last date of approval by either party's governing body as indicated in Section 11 above.

HAYS COUNTY, TEXAS

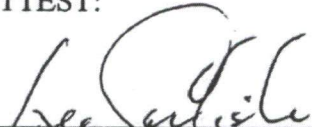
By: 

Name: James Powers

Title: County Judge

Date: Aug 29, 2000

ATTEST:



County Clerk

LOWER COLORADO RIVER AUTHORITY

By: 

Name: Joseph J. Beal

Title: General Manager

Date: 5 Sept 00



57951

FIRST AMENDMENT TO THE
AGREEMENT REGARDING PROVISION OF WATER AND WASTEWATER SERVICE
BETWEEN HAYS COUNTY AND LCRA

This 1ST Amendment to the Agreement Regarding Provision Of Water And Wastewater Service, attached as Exhibit "A" and executed on September 5, 2000 ("Amendment") is made this ____ day of September, 2013, by and between Hays County, a political subdivision of the State of Texas (herein referred to as "County"), and the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas (herein referred to as "LCRA"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 5. (on pages 2 and 3) of the Agreement shall be amended to reflect the following modification . (Any lined through words and/or sentences shall be removed from the Agreement. Any words and/or sentences not lined through shall remain part of the Agreement.):

~~LCRA agrees to pay to the County a fee for the County Services equal to six percent (6%) of the revenues generated from: (a) the provision of retail water and wastewater services by LCRA in the Service Area, excluding revenues from any non monthly recurring fees such as application fees or connection fees; and, (b) the provision of wholesale water and/or wastewater services by LCRA to any retail water or wastewater service provider, other than a municipality, that is not authorized to provide water or wastewater services as of the effective date of this Agreement. The fee will be added as a specific charge on the invoice for each of LCRA's customers from whom the fee is collected and paid. The fee will be due and payable on January 30 of each year for revenues received by LCRA during the prior year from the provision of any applicable water and wastewater services to the Service Area. LCRA will not provide retail water or wastewater services where another retail public utility is exclusively authorized by law to provide such services. Within thirty days after execution of this Agreement, LCRA will pay the County the sum of ten thousand dollars (\$10,000) as a prepayment ("Prepayment") of the fee for the County Services provided for in this section. Such Prepayment shall be credited against the first amounts otherwise due by LCRA under the provisions of this section. The Prepayment may be used by the County for the purpose of implementing this Agreement.~~

Section 4. (on page 5 and 6) of the Agreement shall be amended to reflect the following addition. (The underlined clause is hereby added.):

This Agreement constitutes the entire agreement between the parties relative to the subject matter thereof. Except as noted in the previous sentence, there have been and are no agreements, covenants, representation or warranties between the parties other than those expressly stated herein or expressly provided for herein , and the amendment executed by the Parties on or about September ____, 2013.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 1st Amendment to the Agreement Regarding Provision Of Water And Wastewater Service is hereby executed this ____ day of September, 2013, as is evidenced by the authorized signatures of the Parties, below.

LCRA

COUNTY

By: _____
Title: _____

HAYS COUNTY, TEXAS
BERT COBB, M.D.
HAYS COUNTY JUDGE

ATTEST: _____
LIZ Q. GONZALES
HAYS COUNTY CLERK