

C76189
2019-0508

**FIRST AMENDMENT TO THE SECOND SUPPLEMENT
TO WATER SUPPLY CONTRACT
BETWEEN THE CITY OF HOUSTON, TEXAS AND THE
NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY**

THIS FIRST AMENDMENT TO THE SECOND SUPPLEMENT TO WATER SUPPLY CONTRACT ("First Amendment to Second Supplement") is made by and between the **CITY OF HOUSTON, TEXAS** ("Houston"), a Home Rule City located principally in Harris County, and the **NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY**, as a body politic and corporate under Article XVI, Section 59 of the Texas Constitution ("Authority") (collectively the "Parties").

RECITALS:

1. Pursuant to Ordinance No. 2002-1123 (December 16, 2002), Houston and the Authority entered into a Water Supply Contract (the "Original Contract").
2. Pursuant to Ordinance No. 2009-0052 (January 28, 2009), Houston and the Authority executed a First Supplement to Water Supply Contract ("First Supplement"), which was amended by the First Amendment to the First Supplement by Ordinance No. 2013-0044 (January 22, 2013) ("First Amendment to First Supplement").
3. Pursuant to Ordinance No. 2015-0139 (February 25, 2015), Houston and the Authority entered into the Second Supplement to Water Supply Contract ("Second Supplement").
4. Pursuant to Ordinance No. 2015-1076 (November 10, 2015), Houston and the Authority entered into the Third Supplement to Water Supply Contract ("Third Supplement").
5. Pursuant to Ordinance No. 2015-1077 (November 10, 2015), Houston and the Authority entered into the Fourth Supplement to Water Supply Contract ("Fourth Supplement").
6. The Parties desire the Expansion Project to be able to reliably produce at least 320 MGD.
7. The Parties desire to amend the Second Supplement to, among other items: (i) reflect the possibility that Phase 2 of the Expansion Project may be constructed in multiple phases; (ii) allow for certain leases regarding the Expansion Project; (iii) address a Project Party's use of Excess Water (defined below); and (iv) address certain operations and maintenance matters regarding the Expansion Project.

NOW, THEREFORE, Houston and the Authority agree as follows:

Article I.

Section 1.

The recitals above are true and correct and are incorporated in this First Amendment to Second Supplement by reference.

Article II.

Definitions

Section 2.

Unless otherwise defined in this First Amendment to Second Supplement, the capitalized terms used in this First Amendment to Second Supplement have the meaning provided in the Original Contract, as supplemented or amended. In addition to the terms defined elsewhere in this First Amendment to Second Supplement, Article II of the Second Supplement shall be amended as follows:

Section 2.3A is added as follows:

Allocated Amount is defined in Section 5.1 of this First Amendment to Second Supplement.

Section 2.7A is added as follows

Authorized Capacity is defined in Section 5.3 of this First Amendment to Second Supplement.

Section 2.37A is added as follows:

Excess Usage Fee Payment is defined in Section 5.6 of this First Amendment to Second Supplement.

Section 2.37B is added as follows:

Excess Usage Fee Rate means an amount equal to Houston's then-current rate that it charges to Houston customers for contract treated water without airgap. Such rate is currently \$3.84 per 1,000 gallons and is set forth in Houston Ordinance Section 47-61(f).

Section 2.37C is added as follows:

Excess Water: (i) when used with respect to the Authority, means any Water taken by the Authority in any given month that exceeds its Allocated Amount (calculated by multiplying (A) the number of days in the month by (B) its Allocated Amount); (ii) when used with respect to the Other Authorities, means any Water taken by any of the Other Authorities, as applicable, in any given month that exceeds its Allocated Amount (calculated by multiplying (A) the number of days in the month by (B) its Allocated Amount); and (iii) when used with respect to Houston, means any Water taken by Houston in any given month that exceeds the sum of its Allocated Amount *plus* the Twelve Percent Figure (calculated by multiplying (A) the number of days in the month by (B) the sum of Houston's Allocated Amount plus the Twelve Percent Figure). Notwithstanding the foregoing, Water taken by Houston shall not be considered Excess Water until Houston is deemed to have acquired capacity in Phase 2 in accordance with Section 3.1.

Section 2.42A is added as follows:

Facilities Management Committee is defined in Section 5.2 of this First Amendment to Second Supplement.

Section 2.46A is added as follows:

Meters means the water meters and measuring equipment: (i) installed by the West Harris County Regional Water Authority at the location designated as "WHCRWA/NFBWA Meter(s)" on **Exhibit A-1** in order to measure the amount of Water flowing through same; (ii) installed by the North Harris County Regional Water Authority at the location designated as "NHCRWA/CHCRWA Meter(s)" on **Exhibit A-1** in order to measure the amount of Water flowing through same; (iii) installed by the Central Harris County Regional Water Authority at the location designated as "CHCRWA Meter(s)" on **Exhibit A-1** in order to measure the amount of Water flowing through same; and (iv) installed by the Design/Builder at the Expansion Project (and designated as "Expansion Project Meter(s)" on **Exhibit A-1**) in order to measure the amount of Water leaving the Expansion Project.

Section 2.50A is added as follows:

Operational Limit is the maximum amount of Water (in MGD) to be produced from the Expansion Project, as established in accordance with Section 5.3.

Section 2.50B is added as follows:

Operations & Maintenance Manual is defined in Section 5.4 of this First Amendment to Second Supplement.

Section 2.64A is added as follows:

Party In Excess is defined in Section 5.6 of this First Amendment to Second Supplement.

Section 2.77A is added as follows:

Reservation Portion: (i) when used with respect to the Authority, means a portion of the Authority's Expansion Project Reservation or a portion of any other Reservation(s) that the Authority may hereafter obtain in the NEWPP, and (ii) when used with respect to any of the Other Authorities, means a portion of the Expansion Project Reservation of any of the Other Authorities, as applicable, or a portion of any other Reservation(s) that any of the Other Authorities may hereafter obtain in the NEWPP, as applicable.

Section 2.82 is amended as follows:

Substantial Completion Date means, for each Phase (or sub-phase), the date of Substantial Completion shown on the certificate of Substantial Completion issued by Houston.

Section 2.82A is added as follows

TCEQ is defined in Section 5.3 of this First Amendment to Second Supplement.

Section 2.86A is added as follows

Twelve Percent Figure is the amount equal to 12% of Houston's capacity (in MGD) in the Expansion Project shown on Exhibit "A" (Participation Table) of the Second Supplement. Currently, the Twelve Percent Figure equals 6.144 MGD (derived by multiplying 0.12 times 51.20 MGD (Houston's current capacity (in MGD) in Phase 2 of the Expansion Project shown on Exhibit "A" (Participation Table) of the Second Supplement)).

Article III.

Cost Sharing and Reservation

Section 3. Section 3.1 of the Second Supplement is amended to add the following two paragraphs at the end of Section 3.1:

Houston has no Phase 1 capacity. For Phase 2, Houston shall be deemed to have acquired its Phase 2 capacity on the Substantial Completion Date of Phase 2.

Phase 2 may be constructed in multiple sub-phases. In the event Phase 2 is constructed in multiple sub-phases, then (i) Houston's Phase 2 capacity shall be allocated pro-rata among the sub-phases and shall be deemed acquired by Houston on the Substantial Completion Date of the applicable sub-phase, and (ii) the Authority's Phase 2 Expansion Project Reservation shall be allocated pro-rata among the sub-phases and shall be deemed approved on the Substantial Completion Date of the applicable sub-phase if the Authority is not then in Non-Payment Default. For example, if Phase 2 is subdivided into two sub-phases (the first being 80 MGD and the second being 160 MGD), then: (i) Houston shall be deemed to have acquired one-third of its Phase 2 capacity on the Substantial Completion Date of the first sub-phase of Phase 2 and two-thirds of its Phase 2 capacity on the Substantial Completion Date of the second sub-phase of Phase 2, and (ii) one-third of the Authority's Phase 2 Expansion Project Reservation shall be deemed approved on the Substantial Completion Date of the first sub-phase of Phase 2 (if the Authority is not then in Non-Payment Default) and two-thirds of the Authority's Phase 2 Expansion Project Reservation shall be deemed approved on the Substantial Completion Date of the second sub-phase of Phase 2 (if the Authority is not then in Non-Payment Default).

Article IV.

Leases

Section 4.1. Section 3.2 of the Second Supplement is amended to add Sections 3.2.2.a and Section 3.2.2.b after Section 3.2.2 as follows:

3.2.2.a. Without the need for consent from any Project Party, upon such terms as are mutually agreed upon by the lessor and lessee, and subject to the requirements set out in Sections 3.2.2.a and 3.2.2.b, (i) the Authority or any of the Other Authorities may, in writing, lease Water out of its Expansion Project Reservation to any other Project Party, and (ii) Houston may, in writing, lease Water out of its capacity in the Expansion Project to any other Project Party. Notwithstanding any terms of such lease, (i) if the Authority is the lessor, then it shall remain the owner of its Expansion

Project Reservation for purposes of the Second Supplement, (ii) if Houston is the lessor, then it shall remain the owner of its capacity in the Expansion Project for purposes of the Second Supplement, and (iii) the Weighted Vote of each Project Party shall not be changed by any such lease.

3.2.2.b. Notwithstanding anything herein to the contrary, for purposes of administering the Second Supplement, no lease shall be effective until the first day of the month following the expiration of 30 days after the lessor has provided notice of such lease (including a fully executed copy of such lease) to Houston (by sending the fully executed copy of the lease to the Director in accordance with Section 10.6 of the Second Supplement) and the other Project Parties. For example, if a lease is provided to the parties described in the preceding sentence on March 2nd, then such lease will not be effective until May 1st (30 days from March 2nd is April 1st and the first day of the following month is May 1st).

Section 4.2. Section 3.15.6 of the Second Supplement is amended to add the following sentence at the end of Section 3.15.6:

The Authority or any of the Other Authorities may in whole or in part lease to any Project Party, in the same manner as provided in Section 3.2.2.a for Expansion Project Reservations, the Oversized Facilities Reservation and any Reservation that increases its Untreated Water Facilities Demand Allocation under this Section 3.15.

Article V.

Allocated Amount, Production and Operations, and Amount of Water Taken

Section 5.1. Article III.A is added to the Second Supplement, immediately following Article III, as follows:

Section 3A.1. *Allocated Amount.* The amount of Water in the Expansion Project allocated to a Project Party ("Allocated Amount") is set forth below in this Section 3A.1.

3A.1.1. The term "Allocated Amount" when used with respect to Houston, means (i) its capacity (in MGD) in the Expansion Project shown on Exhibit "A" (Participation Table) of the Second Supplement, as such capacity is acquired pursuant to Section 3.1 (as amended) of the Second Supplement, plus (ii) any additional capacity (in MGD) acquired by Houston constructing and paying for additional capacity in the NEWPP beyond its capacity shown on such Exhibit "A." In addition, and without limiting item (ii) of the preceding sentence, Houston may increase or decrease, as applicable, its Allocated Amount by (i) executing a written lease whereby it leases a portion of its capacity to another Project Party for use by

such other Project Party, or (ii) leasing a Reservation Portion for its own use from the Authority or from any of the Other Authorities.

3A.1.2. The term "Allocated Amount" when used with respect to the Authority or any of the Other Authorities, means (i) its Expansion Project Reservation (in MGD) shown on Exhibit "A" (Participation Table) of the Second Supplement, as such Expansion Project Reservation is deemed approved pursuant to Section 3.1 (as amended) of the Second Supplement, plus (ii) any increase (in MGD) of its Treated Water Facilities Demand Allocation in the NEWPP beyond its Expansion Project Reservation shown on such Exhibit "A" pursuant to the Reservation, payment, and other provisions of the Original Contract, as supplemented or amended. In addition, and without limiting item (ii) of the preceding sentence, the Authority or any of the Other Authorities, as applicable, may increase or decrease its Allocated Amount by (i) executing a written lease whereby it leases a Reservation Portion to another Project Party for use by that Project Party, (ii) leasing for its own use a Reservation Portion from any of the Other Authorities, or (iii) leasing for its own use capacity from Houston.

3A.1.3. If a Project Party's Allocated Amount is increased or decreased due to any such lease, then at the expiration or termination of such lease, the increase or decrease in such Project Party's Allocated Amount shall no longer be in effect.

Section 5.2. Section 3A.2 is added to the Second Supplement as follows:

Section 3A.2 *Facilities Management Committee.*

3A.2.1. The "Facilities Management Committee" is hereby established (i) for matters related to operations, staffing, use of third party operators, budget, maintenance, and rehabilitation of the Expansion Project, (ii) to facilitate the smooth operation of the Expansion Project in accordance with the Operations & Maintenance Manual (defined below), and (iii) to consider waivers of Excess Usage Fee Payments due to extraordinary events. In its deliberations, the members of the Facilities Management Committee will consider in good faith (i) applicable law, (ii) Houston's generally applicable employment standards and policies and contract procurement procedures adopted by the Houston City Council or Mayor of Houston, and (iii) regulatory requirements related to workplace safety, public safety, operations, or regulatory compliance, including environmental compliance.

3A.2.2. The Facilities Management Committee shall be comprised of 5 members: one member shall be appointed by each of (i) Houston, (ii) Central Harris County Regional Water Authority, (iii) North Fort Bend Water Authority, (iv) North Harris County Regional Water Authority, and (v) West Harris County Regional Water

Authority. For the Authority and the Other Authorities, the member shall be each party's Representative (or other individual designated by its board of directors), or his or her designee. For Houston, the member shall be the Senior Assistant Director for Drinking Water (or other individual designated by the Utility Official), or his or her designee.

3A.2.3. The Facilities Management Committee shall make reasonable efforts to meet at least once per calendar quarter, provided that Houston or any two other Project Parties may call a meeting of the Facilities Management Committee at any time by providing written notice to the other Project Parties. The Facilities Management Committee may not meet unless all Project Parties are given at least seven (7) days prior written notice of the meeting; provided, however, in the event of an emergency, such seven (7) day requirement may be shortened by unanimous written approval of all five (5) members of the Facilities Management Committee. The Facilities Management Committee, in its first meeting, by written Consensus Vote, shall adopt written rules and procedures for the administration of the Facilities Management Committee. Any determinations of the Facilities Management Committee must be approved by written Consensus Vote of its members, which determinations will be implemented by Houston subject to Section 3A.2.4 below.

3A.2.4. Houston shall refrain from implementing a determination of the Facilities Management Committee if the Director determines, in his or her reasonable discretion, that the Facilities Management Committee's determination will not comply with (i) applicable law, (ii) Houston's generally applicable employment standards and policies and contract procurement procedures adopted by the Houston City Council or Mayor of Houston, and (iii) regulatory requirements related to workplace safety, public safety, operations, or regulatory compliance, including environmental compliance. If the Director makes such a determination, the Director shall (i) provide the Facilities Management Committee members with written notice of such determination, and (ii) in good faith consider any comments or input provided by the Facilities Management Committee members to the Director within ten (10) days of the members' receipt of the written notice described in the preceding clause (i).

Section 5.3. Section 3A.3 is added to the Second Supplement as follows:

Section 3A.3 *Production of Expansion Project.* The Expansion Project is being designed to be able to reliably produce at least 320 MGD of Water. At the time of completion of construction, Houston shall initially obtain authorization from the Texas Commission on Environmental Quality ("TCEQ") in the maximum amount of production capacity allowable by the TCEQ (the "Authorized Capacity").

Section 3A.3.1 *Operational Limit*. Once the Substantial Completion Date of Phase 1 has occurred, the Operational Limit will be 80 MGD and, once both the Substantial Completion Date of Phase 1 and Phase 2 have occurred, the Operational Limit will be revised to be 320 MGD. The Facilities Management Committee, by written Consensus Vote, may from time to time establish Operational Limit(s) that differ from those described in this paragraph if such revision is consistent with applicable law and regulatory requirements. In no event shall the Operational Limit exceed the Authorized Capacity.

Section 3A.3.2 *Operational Limit and Allocated Amounts*.

3A.3.2.1 *Phase 1*. Upon the Substantial Completion Date of Phase 1, the Operational Limit shall be shared pro-rata among the Authority and Other Authorities based on their Phase 1 Cost Shares as shown on Exhibit "A" (Participation Table) of the Second Supplement. If the Facilities Management Committee modifies such Operational Limit to an amount different than 80 MGD, then the Authority's, and Other Authorities', Phase 1 Expansion Project Reservations, respectively, shall adjust (increase or decrease) commensurately.

3A.3.2.2. *Phase 2 Sub-Phases*. In the event Phase 2 is constructed in multiple sub-phases, then the Facilities Management Committee shall modify the Operational Limit upon the Substantial Completion Date of each sub-phase, and the amount (in MGD) of the Operational Limit shall be shared pro-rata among the Project Parties as follows: (i) the first 80 MGD of Operational Limit shall be shared pro-rata among the Authority and Other Authorities based on their Phase 1 Cost Shares as shown on Exhibit "A" (Participation Table) of the Second Supplement; and (ii) the remaining MGD of Operational Limit above 80 MGD shall be shared pro-rata among the Project Parties based on the Project Parties' Phase 2 Costs Shares as shown on Exhibit "A" (Participation Table) of the Second Supplement. If the Facilities Management Committee modifies the Operational Limit to an amount different than 80 MGD plus the pro rata increase in capacity attributable to the Phase 2 sub-phase(s) (as described more fully in Section 3.1), then Houston's capacity in the Expansion Project shall adjust (increase or decrease) commensurately and the Authority's, and Other Authorities', Expansion Project Reservations, respectively, shall adjust (increase or decrease) commensurately.

3A.3.2.3. *Substantial Completion of Phase 1 and Phase 2*. Once both the Substantial Completion Date of Phase 1 and Phase 2 have occurred, the Operational Limit shall be shared pro-rata among the Project Parties based on the Project Parties' Multi-Phase Cost Shares as shown on Exhibit "A" (Participation Table) of the Second Supplement. If the Facilities Management Committee modifies the Operational Limit to be an amount other than 320 MGD, then (i) Houston's capacity in the Expansion Project shall adjust (increase or decrease)

commensurately and the Authority's, and Other Authorities', Expansion Project Reservations, respectively, shall adjust (increase or decrease) commensurately, and (ii) Exhibit "A" (Participation Table) to the Second Supplement shall be promptly updated to reflect such adjustment in capacity, such adjustment in Expansion Project Reservations, and each Project Party's new Multi-Phase Cost Share.

3A.3.2.4. *Tracking of Operational Limit and Allocated Amounts.* Houston shall track the then-current Operational Limit and Allocated Amounts and shall reflect such information on monthly billing statements and annual true-up documents. It is understood and agreed that Houston will provide a full-time employee, at cost to the Project Parties based on their respective Cost Share, to maintain all tracking and accounting procedures required by this First Amendment to Second Supplement.

3A.3.2.5. Notwithstanding any other provision hereof or of the Original Contract, as supplemented or amended, adjustments to Houston's capacity or adjustments to the Authority's, or Other Authorities', Expansion Project Reservations, respectively, pursuant to this Section 3A.3 shall not cause any change in how Costs are paid under the Second Supplement.

3A.3.2.6. If a shortage of Water in the Expansion Project results from an impairment of the production capacity of the Expansion Project, the available Water shall be divided among the Project Parties pro rata, based on their respective Allocated Amounts.

Section 5.4. Section 3A.4 is added to the Second Supplement as follows:

Section 3A.4 *Operations & Maintenance Manual.* The Expansion Project shall be operated in accordance with the procedures and requirements for operations and maintenance of the Expansion Project from time to time adopted by the Facilities Management Committee ("Operations & Maintenance Manual") for the Expansion Project. The Operations & Maintenance Manual, and modifications thereto, shall be established by written Consensus Vote of the Facilities Management Committee.

Section 5.5. Section 3A.5 is added to the Second Supplement as follows:

Section 3A.5 *Determination of Water Taken.* Beginning at the Substantial Completion Date of Phase 1, and continuing thereafter, Houston shall (i) determine the amount of Water taken out of the Expansion Project (in MGD) by each Project Party, in accordance with **Exhibit A-2**, and (ii) provide a monthly written report to the Project Parties identifying the actual (and average) daily amount of Water taken by each Project Party for the prior month.

The Project Parties acknowledge and agree that: (i) prior to receiving Water from the Expansion Project, the West Harris County Regional Water Authority shall install the Meter(s) described in item "(i)" of the definition of "Meter(s)" in Section 2.46A hereof, as required by its Water Supply Contract with Houston dated April 8, 2003, as amended and supplemented; (ii) prior to receiving Water from the Expansion Project, the North Harris County Regional Water Authority shall install the Meter(s) described in item "(ii)" of the definition of "Meter(s)" in Section 2.46A hereof, as required by its Water Supply Contract with Houston dated December 16, 2002, as amended and supplemented; (iii) prior to receiving Water from the Expansion Project, the Central Harris County Regional Water Authority shall install the Meter(s) described in item "(iii)" of the definition of "Meter(s)" in Section 2.46A hereof, as required by its Water Supply Contract with Houston dated December 5, 2003, as amended and supplemented; and (iv) prior to the Substantial Completion Date of Phase 1, Houston shall cause the Design/Builder to install the Meter(s) described in item "(iv)" of the definition of "Meter(s)" in Section 2.46A hereof. Houston, at its sole discretion, shall determine in the future whether to install any meters to measure the amount of Water leaving the 120 inch and 108 inch transmission mains shown on **Exhibit A-1**. The Project Parties shall electronically share among themselves the meter readings from the meters described in this paragraph.

Section 5.6. Section 3A.6 is added to the Second Supplement as follows:

Section 3A.6 *Excess Water Usage*. Each Project Party is entitled only to its own Allocated Amount. If a Project Party takes Excess Water ("Party In Excess") in any given month, then, in addition to any other remedy available to a Project Party, the Party In Excess shall be required to pay an amount equal to the Excess Usage Fee Rate times the Excess Water ("Excess Usage Fee Payment"); provided, however, that the Facilities Management Committee, by written Consensus Vote, may waive the Excess Usage Fee Payment for Excess Water taken due to an extraordinary event if the Party In Excess submits a written request and presents evidence documenting the nature and extent of the extraordinary event.

When any Project Party's Allocated Amount is increased or decreased by the terms of a lease pursuant to Section 3A.1 that has been provided to Houston and the other Project Parties in accordance with Section 3.2.2.b, then each Project Party that is a party to such lease is responsible for its Excess Water and related Excess Usage Fee Payments based on its Allocated Amount as revised under the terms of such lease.

Nothing herein relieves the Party In Excess of its responsibility to pay its share of operation and maintenance costs and expenses according to the terms of the Original Contract, as supplemented or amended. Notwithstanding any provision hereof, Houston shall not owe or be required to pay Excess Usage Fee Payments until Houston is deemed to have acquired capacity in Phase 2 in accordance with Section 3.1.

Houston shall invoice the Party In Excess (including invoicing itself if Houston is the Party In Excess) for the amount of the Excess Usage Fee Payment. Payment for such invoice shall be due forty-five (45) days after receipt, and the funds in payment of same shall be placed by Houston in the Capital Renewal Fund.

Article VI.

Capital Renewal Fund and O&M Reserve Fund

Section 6.1. Section 3.16 is added as follows:

~~Section 3.16~~ *Capital Renewal Fund.* Prior to the Substantial Completion Date of Phase 1 of the Expansion Project, Houston shall establish an account separate and segregated from other Houston accounts entitled "Capital Renewal Fund" including sub-accounts within such account for funds deposited by (i) the Authority and the Other Authorities, and (ii) Houston. Houston will hold all funds in the Capital Renewal Fund in trust for the Project Parties. The funds in the Capital Renewal Fund shall not be comingled with any other funds held by Houston.

3.16.1 The Facilities Management Committee may, from time to time, by written Consensus Vote, establish the need for funds for Major Rehabilitations for the Expansion Project, for which funds are needed, but are not otherwise included in the Estimated O&M Rate. In such event, Houston shall issue a cash call for the approved amount to the Project Parties (including to itself) pro-rated among the Project Parties based on the Project Parties' Multi-Phase Cost Shares as shown on Exhibit "A" (Participation Table) of the Second Supplement. Each of the Project Parties shall pay such cash calls to Houston within 120 days of receipt of the cash call, and such funds shall be placed by Houston in the Capital Renewal Fund. In order for the Major Rehabilitation to not be delayed unduly, if a Project Party fails to make such payment, other Project Party(ies), in addition to any other available remedies, may (i) provide funds for deposit into the Capital Renewal Fund to cover such shortfall, and (ii) set off the amount of such deposit (with interest at the interest rate provided in Section 7.5) against any moneys otherwise due to the non-paying Project Party with respect to the Expansion Project. If the required funds for a cash call are paid (or otherwise provided) pursuant to the terms of this paragraph, Houston will utilize such funds to cause the Major Rehabilitation set forth in the cash call to be performed.

3.16.2 *Priority of Funds and Accounting.* In paying for the costs of Major Rehabilitations for the Expansion Project, Houston shall first use the funds from Excess Usage Fee Payments in the Capital Renewal Fund prior to using any other funds. Funds in the Capital Renewal Fund shall only be applied to payment of

Major Rehabilitations for the Expansion Project in accordance with this Section 3.16. Houston shall provide the Project Parties with a quarterly accounting of all revenues to, interest or earnings accrued, and expenditures from the Capital Renewal Fund. Included in such accounting shall be a report showing costs for Major Rehabilitations that were paid.

3.16.3 *Withdrawal of Other Funds.* Requests for disbursements of funds from the Capital Renewal Fund (other than those described in the last sentence of Section 3.16.1) may be initiated by any Project Party, and must specify the Major Rehabilitation that is being requested. If the Facilities Management Committee, by written Consensus Vote, approves the request for disbursement, then Houston will utilize such funds to cause such Major Rehabilitation to be performed.

3.16.4 *Investments and Interest.* For the benefit of the Project Parties, Houston shall cause the funds in the Capital Renewal Fund to be invested in investments (i) that comply with the requirements of Houston's investment policy and Texas Government Code Chapter 2256, and (ii) in which any funds of Houston are invested. All funds in the Capital Renewal Fund, including interest and earnings accrued on such funds, are owned by the Project Parties and shall be used only as provided in this Section 3.16. Houston will reflect on its records and books that the funds in the Capital Renewal Fund are owned by the Project Parties.

Section 6.2. Section 3.17 is added as follows:

Section 3.17 *O&M Reserve Fund.* Prior to the Substantial Completion Date of Phase 1 of the Expansion Project, Houston shall establish an account separate and segregated from other Houston accounts entitled "O&M Reserve Fund," including sub-accounts within such account for funds deposited by: (i) the Authority and the Other Authorities, and (ii) Houston. Houston will hold all funds in the O&M Reserve Fund in trust for the Project Parties. The funds in the O&M Reserve Fund shall not be comingled with any other funds held by Houston.

3.17.1 The Facilities Management Committee may from time to time, by written Consensus Vote, establish the need for funds for operation and maintenance for the Expansion Project, for which funds are needed, but are not otherwise included in the Estimated O&M Rate. In such event, Houston shall issue a cash call for the approved amount to the Project Parties (including to itself) pro-rated in accordance with each Project Party's anticipated Water usage in the Expansion Project utilized to calculate the then-current Estimated O&M Rate. Each of the Project Parties shall pay such cash calls to Houston within 90 days of receipt of the cash call, and such funds shall be placed by Houston in the O&M Reserve Fund. In order for the operation and maintenance to not be delayed, if a Project Party fails to make such payment, other Project Party (or Parties), in addition to any

other available remedies, may (i) provide funds for deposit into the O&M Reserve Fund to cover such shortfall, and (ii) set off the amount of such deposit (with interest at the interest rate provided in Section 7.5) against any moneys otherwise due to the non-paying Project Party with respect to the Expansion Project. If the required funds for a cash call are paid (or otherwise provided) pursuant to the terms of this paragraph, Houston will utilize such funds to cause the operation and maintenance set forth in the cash call to be performed.

3.17.2 *Accounting.* Funds in the O&M Reserve Fund shall only be applied to the payment of operation and maintenance of the Expansion Project in accordance with this Section 3.17. Houston shall provide the Project Parties with a quarterly accounting of all revenues to, interest or earnings accrued, and expenditures from the O&M Reserve Fund. Included in such accounting shall be a report showing costs for operation and maintenance expenses that were paid.

3.17.3 *Withdrawal of Other Funds.* Requests for disbursements of funds from the O&M Reserve Fund (other than those described in the last sentence of Section 3.17.1) may be initiated by any Project Party, and must specify the operation or maintenance that is being requested. If the Facilities Management Committee, by written Consensus Vote, approves the request for disbursement, then Houston will utilize such funds to cause such operation and maintenance to be performed.

3.17.4 *Investments and Interest.* For the benefit of the Project Parties, Houston shall cause the funds in the O&M Reserve Fund to be invested in investments (i) that comply with the requirements of Houston's investment policy and Texas Government Code Chapter 2256, and (ii) in which any funds of Houston are invested. All funds in the O&M Reserve Fund, including interest and earnings accrued on such funds, are owned by the Project Parties and shall be used only as provided in this Section 3.17. Houston will reflect on its records and books that the funds in the O&M Reserve Fund are owned by the Project Parties.

Article VII.

Section 7.1. Full Force and Effect; Conflict:

Except as modified herein, the Original Contract as amended by the First Supplement, the First Amendment to First Supplement, the Second Supplement, the Third Supplement, and the Fourth Supplement will remain in full force and effect. In the event of a conflict between the Original Contract (as modified by the First Supplement, the First Amendment to First Supplement, the Second Supplement, the Third Supplement, and the Fourth Supplement) and this First Amendment to Second Supplement, this First Amendment to Second Supplement will prevail.

Section 7.2. Effective Date:

The effective date of this First Amendment to Second Supplement is the date that this First Amendment to Second Supplement is countersigned by the Houston City Controller, as indicated below.

Section 7.3. Counterparts:

This First Amendment to Second Supplement may be executed in any number of counterparts by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original.

Section 7.4. Consent:

Pursuant to Section 10.4 of the Second Supplement, each Project Party consents to the other Project Parties executing this First Amendment to Second Supplement.

[Signature Pages to Follow]

**NORTH HARRIS COUNTY
REGIONAL WATER AUTHORITY**

By: 
Alan J. Rendl, President


ATTEST:

DATE APPROVED:

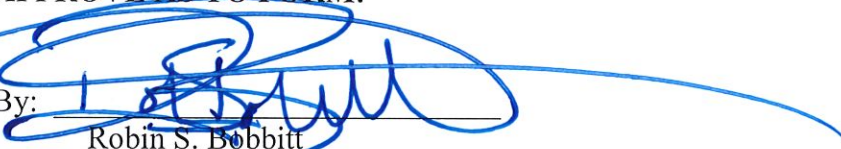
By: 
Lenox A. Sigler, Secretary

JUNE 3, 2019

APPROVED:

By: 
Jimmie Schindewolf, P.E.
General Manager

APPROVE AS TO FORM:

By: 
Robin S. Bobbitt
General Counsel



CITY OF HOUSTON, TEXAS

ATTEST/SEAL:

Asst J. Daniel
City Secretary **Assistant**

SIGNED BY:

Commander Washington
Mayor *6-27-19*

APPROVED BY:

Carol Faddock
Director, Houston Public Works

COUNTERSIGNED BY:

Cl B. Brown
City Controller *Jerald Bell*

APPROVED AS TO FORM BY:

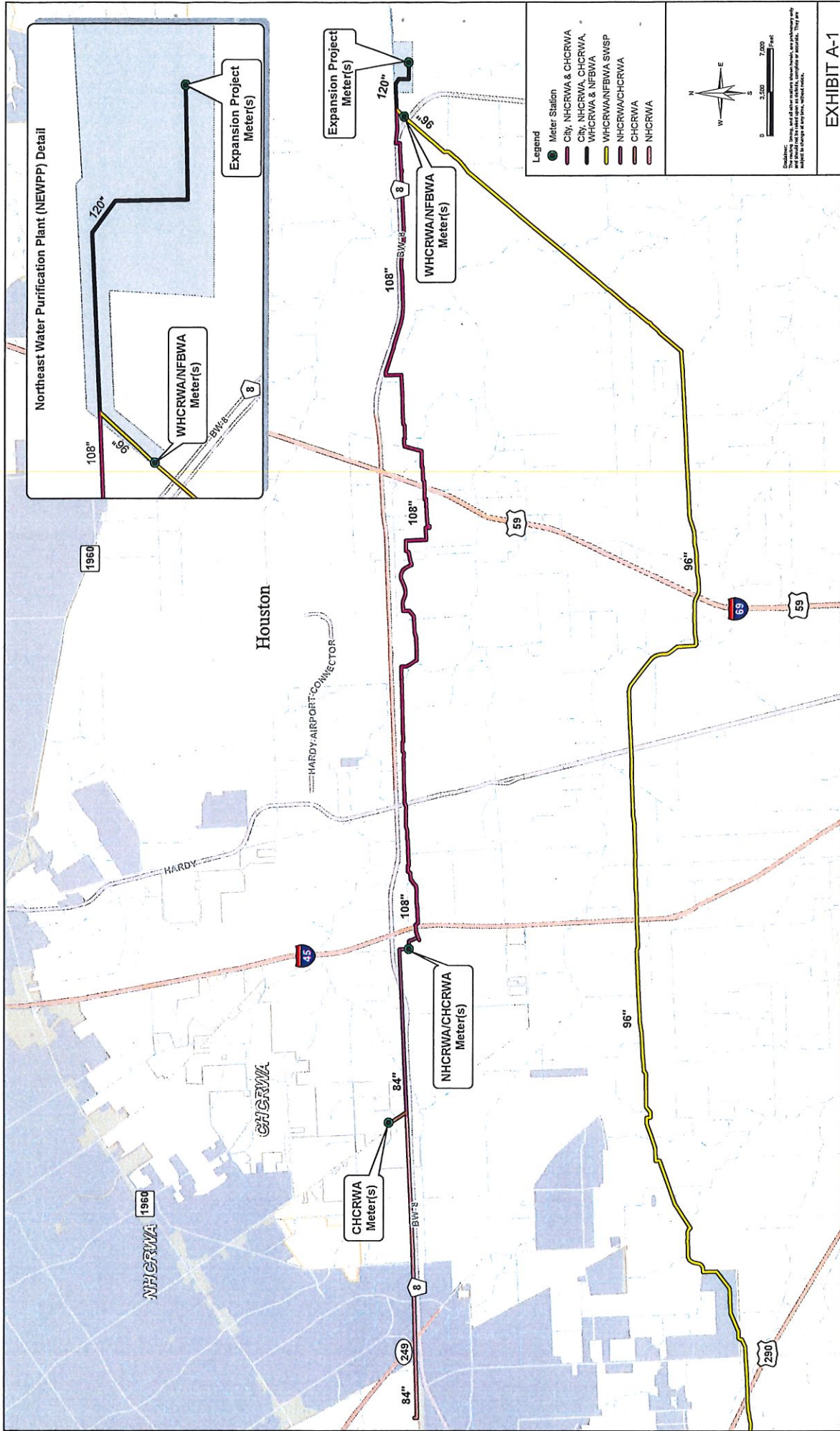
Mwendu Gyasi Bell
Senior Assistant City Attorney
LD No. 0811600035009

DATE COUNTERSIGNED:

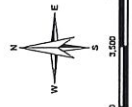
7-5-19



Exhibit A-1
Location of Meters



- Legend**
- Meter Station
 - City, NHCRA & CHCRWA
 - City, NHCRA, CHCRWA, WHCRWA & NFBWA
 - WHCRWA/NFBWA SWSP
 - NHCRA/CHCRWA
 - CHCRWA
 - NHCRA



Check for errors, omissions, and all other project issues before, on, or after any work is performed. The user of this document is responsible for its accuracy, completeness, and reliability. They are not to be held liable for any errors or omissions.

EXHIBIT A-1

Exhibit A-2 Metering Procedures

The amount of Water taken out of the Expansion Project by each Project Party in a given month, measured in MGD, shall be determined by the following:

The amount of Water taken by the Central Harris County Regional Water Authority (referred to as "F_C") is determined by the Meter(s) designated as "CHCRWA Meter(s)" on **Exhibit A-1**.

The amount of Water taken by the North Fort Bend Water Authority (referred to as "F_{FB}") is determined by multiplying F₁ times the Actual Billing Percentage or Assumed Billing Percentage, as applicable (each as defined in the Third Supplement to Water Supply Contract, dated November 10, 2015, by and between the West Harris County Water Authority and Houston), for the North Fort Bend Water Authority.

The amount of Water taken by Houston (referred to as "F_H") is determined by the applicable formula set forth below.

$$F_H = F_T - (F_C + F_{FB} + F_N + F_W)$$

The amount of Water taken by the North Harris County Regional Water Authority (referred to as "F_N") is determined by subtracting: (i) F_C, from (ii) the amount of Water measured at the Meter(s) designated as "NHCRWA/CHCRWA Meter(s)" on **Exhibit A-1**.

F_T is the amount of Water pumped out of the Expansion Project, measured at the Meter(s) designated as "Expansion Project Meter(s)" on **Exhibit A-1**.

The amount of Water taken by the West Harris County Regional Water Authority (referred to as "F_W") is determined by multiplying F₁ times the Actual Billing Percentage or Assumed Billing Percentage, as applicable (each as defined in the Third Supplement to Water Supply Contract, dated November 10, 2015, by and between the West Harris County Water Authority and Houston), for the West Harris County Regional Water Authority.

F₁ is the amount of Water measured at the Meter(s) designated as "WHCRWA/NFBWA Meter(s)" on **Exhibit A-1**.