

ACTION FORM BRYAN CITY COUNCIL

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| DATE OF COUNCIL MEETING: Aug 27, 2013 | | DATE SUBMITTED: Aug 2, 2013 | |
| DEPARTMENT OF ORIGIN: BTU | | SUBMITTED BY: Gary Miller | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: | STRATEGIC INITIATIVE: |
| <input type="checkbox"/> BCD | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1ST READING | <input type="checkbox"/> PUBLIC SAFETY |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input type="checkbox"/> 2ND READING | <input type="checkbox"/> SERVICE |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> STATUTORY | | <input type="checkbox"/> ECONOMIC DEVELOP. |
| <input type="checkbox"/> WORKSHOP | <input type="checkbox"/> REGULAR | | <input type="checkbox"/> INFRASTRUCTURE |
| | | | <input type="checkbox"/> QUALITY OF LIFE |
| AGENDA ITEM DESCRIPTION: Consideration of a Resolution approving an Amendment to the Texas Municipal Power Agency (TMPA) Power Sales Contract to specify a modification to the date requirement for Future Services Notice and authorizing the Mayor to sign the Amendment on behalf of the City of Bryan. | | | |
| SUMMARY STATEMENT: Section 19 of the Operating Agreement between the Member Cities of the Texas Municipal Power Agency (TMPA) states that Member Cities must give 5 years notice if not electing to withdraw from the Agency. Five years notice would be September, 2013. In order to insure that Member Cities have sufficient time to study alternatives, all parties have agreed that an appropriate time frame for notice under Section 19 would be not later than September 30, 2016. | | | |
| Legal representatives of each Member City met via conference call to discuss and come to agreement on acceptable language modifications. The BTU Board has reviewed and recommends that the Bryan City Council adopt a Resolution approving the Amendment and authorizing the Mayor to sign the Amendment to the TMPA Power Sales Contract. | | | |
| STAFF ANALYSIS AND RECOMMENDATION: Staff has reviewed the TMPA Power Sales Contract and is certain that the proposed modification is in the best interest of BTU and the City of Bryan. Staff recommends that the City Council approve the proposed Resolution. | | | |
| OPTIONS (In Suggested Order of Staff Preference): | | | |
| <ol style="list-style-type: none"> 1. Adopt Resolution Approving Amendment to the TMPA Power Sales Contract. 2. Do not approve Resolution. If Council elects this option, all Member Cities would be required to abide by the current language in the Power Sales Contract which could be detrimental to the interests of the City of Bryan or continue further negotiations with the other Member Cities. | | | |
| ATTACHMENTS: Resolution; TMPA Power Sales Contract Amendment | | | |
| FUNDING SOURCE: n/a | | | |
| APPROVALS: | | | |
| APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 08-12-2013 | | | |
| APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton 08-12-2013 | | | |

RESOLUTION NO. _____

A RESOLUTION OF THE BRYAN CITY COUNCIL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE POWER SALES CONTRACT BETWEEN THE TEXAS MUNICIPAL POWER AGENCY (THE “AGENCY”) AND THE CITY OF BRYAN, TEXAS, TO SPECIFY THE DATE BY WHICH THE CITY OF BRYAN MUST PROVIDE NOTICE TO THE AGENCY OF ITS INTENT TO RECEIVE SERVICES FOR THE USEFUL LIFE OF THE SYSTEM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Agency and each of the Cities of Bryan, Denton, Garland and Greenville, Texas, (collectively, “Member Cities”) have previously entered into the Power Sales Contract, dated September 1, 1976, as amended as of September 1, 1976, November 5, 1997, and June 24, 2010 (the “Power Sales Contract”);

WHEREAS, the Agency and the Member Cities desire to amend Section 19 of the Power Sales Contract to better specify the date by which a Member City must provide notice to the Agency of its intent to receive services for the useful life of the System;

WHEREAS, under Section 12 (c) of the Power Sales Contract, no amendment to the Power Sales Contract shall become effective until the Agency has received prior written consent of the Member Cities approving the amendment (the “City Approvals”);

WHEREAS, under the Bond Resolution (as defined in the Power Sales Contract) no amendment to the Power Sales Contract shall become effective until the Agency has received an opinion of bond counsel to the effect that the amendment will not adversely affect the security of the holders of the Agency’s outstanding Bonds (as defined in the Power Sales Contract) by lessening the amount to be paid to the Agency under the Power Sales Contract or by changing the source or nature of such payment (the “Bond Counsel Opinion”);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1. That the above recitals are true and correct;
2. That the Bryan City Council finds the Power Sales Contract between the Agency and the City of Bryan should be amended in the form as set forth in Exhibit “A” hereto, and the Mayor is authorized to said Amendment;
3. That this Resolution shall be and become effective immediately upon and after its adoption and approval.

ATTEST:

CITY OF BRYAN, TEXAS

BY: _____
Mary Lynne Stratta, City Secretary

BY: _____
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

BY: _____
Janis K. Hampton, City Attorney

AMENDMENT TO POWER SALES CONTRACT
BETWEEN
TEXAS MUNICIPAL POWER AGENCY
AND
CITY OF BRYAN, TEXAS
CITY OF DENTON, TEXAS
CITY OF GARLAND, TEXAS
CITY OF GREENVILLE, TEXAS

This Amendment to Power Sales Contract (this "Amendment"), made and entered into as of the Amendment Date (as hereinafter defined), by and between the Texas Municipal Power Agency, a municipal corporation and political subdivision of the State of Texas and herein referred to as the "Agency" and the City of Bryan, Texas, the City of Denton, Texas, the City of Garland, Texas and the City of Greenville, Texas, each of which cities is a municipal corporation of the State of Texas and a home rule city, and herein collectively called the "Cities" and individually called "City."

WHEREAS, the Agency and the Cities are the parties to that certain Power Sales Contract (the "Power Sales Contract") made and entered into as of the September 1, 1976, which Power Sales Contract was amended by and between the Agency and the Cities as of September 1, 1976, November 5, 1997 and June 24, 2010 (such amendments together with the Power Sales Contract being herein called the "Contract"); and

WHEREAS, Section 19 of the Contract provides that following the termination date of the Contract each City not electing to withdraw from the Agency shall have the right to the continued performance of services provided under the provisions of the Contract for the useful life of the System by giving written notice to that effect to the Agency at least 5 years prior to the scheduled termination of the Contract (the "Future Services Notice"); and

WHEREAS, as of the Amendment Date, taking into account all outstanding Bonds and Subordinated Indebtedness of the Agency, the Contract is scheduled to terminate on September 1, 2018; and

WHEREAS, the Agency and the Cities desire to amend the Contract to modify the notice requirements of said Section 19 of the Contract to allow the Future Services Notice to be given by a City to the Agency by not later than September 30, 2016; and

WHEREAS, the Agency and the Cities mutually agree to the amendment of the Contract for the purposes and upon the terms hereinafter provided; and

WHEREAS, the Agency has obtained the consents and given the notices required to be obtained or given prior to entering into this Amendment; and

WHEREAS, the "Amendment Date" shall be, assuming the approval and execution of this Amendment by the Agency and each of the Cities, the date that this Amendment is executed by the last party to execute this Amendment; and

WHEREAS, all other capitalized terms used herein but not defined herein shall have the meanings set forth for such terms in the Contract or in the Bond Resolution (as defined in the Contract); and

WHEREAS, the modification effected to the Contract by this Amendment does not modify in any respect the obligation of each City and the Agency to perform their respective obligations under the terms of the Contract to the date of the scheduled termination thereof, and the amendment to the Contract effected hereby does not modify the termination date of the Contract; and

WHEREAS, the modification effected to the Contract by this Amendment does not affect, and in particular does not adversely affect, the rights and interests of any of the bondholders, noteholders, insurers, credit banks and other beneficiaries or interested persons or entities having interests in the Agency's outstanding Bonds or Subordinated Indebtedness (collectively, the "Interested Parties") and, more specifically, no modification effected by this Amendment adversely affects the security of the Interested Parties by lessening the amount to be paid to the Agency by the Cities or any other person or entity under the Contract, or by changing the source or nature of such payment; and

WHEREAS, the Cities hereby reaffirm their respective commitments to the Agency and to the holders of the outstanding Bonds or Subordinated Indebtedness to provide the payments required under the Contract to assure that the obligations of the Agency are timely paid in accordance with the provisions of the Contract;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Agency and each of the Cities hereby agree as follow:

ARTICLE I

Section 1.1. Section 19 of the Contract is hereby amended to read as follows:

Section 19: Continuation of Services. A City, unless it elects an option under Section 13 or withdraws under Section 16, shall have the right to the continued performance of services provided under the provisions of this Contract for the useful life of the System by giving written notice to the Agency by not later than September 30, 2016. Such City shall be obligated to continue paying its proportionate share of the Annual System Costs.

ARTICLE II

Section 2.1. All other terms, provisions, conditions and obligations of the Contract shall remain in full force and effect, and said Contract, as amended hereby, shall be construed together as a single contractual agreement.

Section 2.2. The Amendments made hereby shall be effective upon the Amendment Date.

[Signature pages follow.]

TEXAS MUNICIPAL POWER AGENCY

By: _____

Date: _____

ATTEST:

By: _____

CITY OF BRYAN, TEXAS

By: _____

Jason Bienski, Mayor

Date: _____

ATTEST:

By: _____

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

By: _____

Janis Hampton, City Attorney

CITY OF DENTON, TEXAS

By: _____

Date: _____

ATTEST:

By: _____

CITY OF GARLAND, TEXAS

By: _____

Date: _____

ATTEST:

By: _____

CITY OF GREENVILLE, TEXAS

By: _____

Date: _____

ATTEST:

By: _____

GEUS, ACTING ON BEHALF OF THE
CITY OF GREENVILLE PURSUANT TO
ITS CHARTER

By: _____

David Dreilling
Chairman, Board of Trustees of
Electric Utility Board

Date: _____

ATTEST:

By: _____