



Travis County Commissioners Court Agenda Request

Meeting Date: 1/³¹~~24~~/2012 Executive Session
Prepared By: Jon A. White **Phone #:** 854-7212
Division Director/Manager: Jon A. White, TNR NREQ

Department Head: Steven M. Manila, P.E., County Executive - TNR
Sponsoring Court Member: Commissioner Karen Huber, Precinct Three
Commissioner Sarah Eckhardt, Precinct Two

AGENDA LANGUAGE:

Consider and take appropriate action on a request for additional funding in the amount of \$12,000 from the Coalition of Central Texas Utilities Development Corporation (UDC).

(THIS ITEM MAY BE TAKEN INTO EXECUTIVE SESSION PURSUANT TO GOV'T. CODE ANN 551.071, CONSULTATION WITH ATTORNEY)

BACKGROUND/SUMMARY OF REQUEST:

On August 23, 2011 the Commissioners Court voted to:

1. Execute an interlocal agreement to join the Coalition of Central Texas Utilities Development Corporation (UDC) (Attachment 1) and
2. Contribute funds to the UDC in the amount of \$12,000 to help fund the UDC's development of a bid for the purchase of water and waste water utilities from the Lower Colorado River Authority (LCRA).

The County's contribution was paid from TNR account number 001-4908-628-6099 in November, 2011. The interlocal agreement provides for future funding of additional UDC activities subject to an amendment to the adopted agreement.

The UDC has been in continuous negotiations with LCRA to develop a purchase agreement. UDC has incurred additional costs in this effort and has requested additional funds from its various partners and members (Attachment 2.)

STAFF RECOMMENDATIONS:

Staff is not offering any recommendation now, but is prepared to act promptly upon direction of the Court.

ISSUES AND OPPORTUNITIES:

The efforts of the UDC are intended to preserve public ownership of the various water and wastewater utilities LCRA is seeking to divest. The UDC and its members are concerned about issues related to escalating utility rates and accountability and transparency of management of these systems. The systems in Western Travis and Hays County are of particular interest. These systems serve approximately 30,000 residents including 3000 connections in unincorporated Travis County. The UDC has worked to establish a Public Utility Agency (PUA) to own and operate the Western Travis County and Hays County systems. The current request for an additional contribution may offer an opportunity to influence the UDC and PUA as they move forward.

FISCAL IMPACT AND SOURCE OF FUNDING:

A funding source for the additional contribution has yet to be determined.

ATTACHMENTS / EXHIBITS:

1. Executed Interlocal Agreement approved 8/23/2011
2. UDC request for additional funding

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

CC:

Steven Manilla, TNR
Cynthia McDonald, TNR
John Hille, County Attorney
Tom Nuckols, County Attorney
Jon White, TNR
Marvin Brice, Purchasing
Jessica Rio, PBO
Jose Palacios, Auditor

0801 Environmental

Attachment 1

INTERLOCAL COOPERATION AGREEMENT REGARDING PARTICIPATION IN THE COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION

THIS INTERLOCAL COOPERATION AGREEMENT REGARDING PARTICIPATION IN THE COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION (“Agreement”) is entered into by and between THE COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION, a non-profit corporation of the State of Texas, created and existing under the laws of the State including Subchapter D of Chapter 431, as amended, Texas Transportation Code (“UDC”), and Travis County (the “County”). In this Agreement, the UDC and the County are sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Lower Colorado River Authority (“LCRA”) is attempting to sell and convey water and wastewater utilities, systems and facilities that serve a large number of local governments and communities within an area extending from Llano County to Matagorda County, Texas in the Colorado River Basin;

WHEREAS, divesting the local governments and communities of all participation in decisions regarding the quality, quantity, dependability and cost of services of the water and wastewater utilities, systems and facilities is contrary to the intent of the agreements made by the LCRA;

WHEREAS, ownership of the water and wastewater utilities, systems and facilities by private, for profit, entities is not in the public interest and will adversely impact the local economy;

WHEREAS, a coalition of cities, counties, municipal utility districts, and other governmental entities, and citizen organizations has been formed for the purpose of meeting the LCRA’s requirements that purchase proposals and bids include all the water and wastewater utilities, systems and facilities proposed for sale by the LCRA;

WHEREAS, the coalition members have supported the creation of the UDC for use as a legal entity to organize and submit a bid and proposal to the LCRA for the purchase of the water and wastewater utilities, systems and facilities; and

WHEREAS, the UDC shall enable the local governments and communities to do all things reasonably necessary to submit a bid to the LCRA, and to proceed to finance and purchase the water and wastewater utilities, systems and facilities, without risk or financial obligation to the participating local governments and communities;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I. PARTICIPATION IN UDC

1.01 Incorporation of Recitals. The provisions and definitions contained in the above Recitals are incorporated herein for all purposes.

1.02 UDC Purposes. The Parties hereby agree to cooperate and work together in the efforts of the UDC to accomplish the purposes of the UDC as set forth in its Articles of Incorporation as follows:

- (a) aid, assist and act on behalf of participating entities in the performance of their governmental functions to promote the common good and general welfare of the local governments and to assist local groups and entities to preserve valuable rights, serve as a legal entity to organize, finance, purchase and transfer, or hold, operate and sell, water and wastewater assets, facilities, utilities and systems; and the development and improvement of public utilities, systems and infrastructure; and
- (b) aid, assist and act on behalf of the participating entities, to acquire, and to aide and assist governmental and local entities to acquire, water and wastewater utilities, systems and facilities from the Lower Colorado River Authority; and
- (c) to acquire, own, hold, improve, use or otherwise deal with real or personal property, or any interest therein, wherever situated, to accomplish the successful transition of the referenced water and wastewater utilities, systems and facilities to governmental entities or locally controlled public entities; and
- (d) to plan, develop and coordinate proposals to finance, bid and negotiate for, and purchase water and wastewater utilities, systems and facilities; and
- (e) to provide for the operation and maintenance of water and wastewater utilities, systems and facilities as may be required for the public good; and
- (f) to transfer, sell and convey to local governments and publicly controlled legal entities the water and wastewater utilities, systems and facilities that are acquired by the Corporation.

II. CONTRIBUTION TO UDC

For the purposes of funding the efforts of the UDC to coordinate the planning and preparation of a final bid for submission to the LCRA for the purchase of water and wastewater facilities by August 2011, the County agrees to contribute an amount not to exceed \$12,000. Future funding for any additional activities of the UDC shall be the subject of an amendment to this Agreement. Payments made by the County pursuant to this Agreement shall be made from current revenues available to the County.

III. EXECUTIVE COMMITTEE

The Travis County Commissioners Court shall appoint one (1) member to serve on the UDC's executive committee as defined in Section 2.08 of the UDC's Bylaws.

IV. FINANCIAL OBLIGATIONS

The UDC shall have no authority whatsoever to issue any contractual or financial obligation, debt, bonds or notes that shall ever be or become obligations of the County.

V. GENERAL PROVISIONS

5.01. Authority. This Agreement is made in part under the authority conferred in *Chapter 791, Texas Government Code*.

5.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

5.03. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement

5.04. Entire Agreement. Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the UDC or the water and wastewater utilities, systems and facilities referenced herein, and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the UDC and the water and wastewater utilities, systems and facilities are contemplated and will not be affected or limited by this Agreement.

5.05. Amendments. Any amendment of this Agreement must be in writing and will be effective only if approved by the governing body and executed by the authorized representatives of each of the Parties.

5.06. Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Travis County, Texas.

5.07. Notices. Any notices given under this Agreement will be effective if (i) forwarded to the other Party by hand-delivery; (ii) transmitted to the other Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

The Corporation:

The Coalition of Central Texas Utilities Development Corporation

c/o Pix Howell

200 West Willis Street

Leander, Texas 78641

The County:

County Judge Samuel T. Biscoe

P.O. Box 1748

Austin, Texas 78767-1748

With Copy To:

David Escamilla

Travis County Attorney

P.O. Box 1748

Austin, Texas 78767-1748

5.08. Force Majeure. Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or due to circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

5.09. Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

5.10 Term and Termination. The initial term of this Agreement shall be from the Effective Date hereof until March 31, 2012. Thereafter, this Agreement shall automatically renew for successive one year periods beginning on April 1, 2012 and on each April 1st thereafter. Provided however, either Party hereto shall have the option, at any time and for any reason, of terminating this Agreement upon 90 days written notice to the other Party.

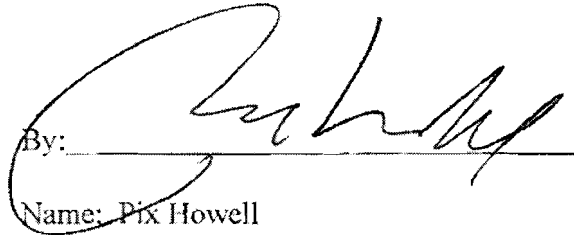
5.11. Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the Corporation.

5.12. Fiscal Year Limitation. The Parties agree that funding under this Agreement can only be provided for the portion of the Agreement Term corresponding to a time period included in the approved budget for any one Fiscal Year. In no event shall any provision of this Agreement or any agreement subject to this Agreement be interpreted to obligate either Party to provide funds in excess of the amount approved by the Party's governing body for any Fiscal Year and identified in this Agreement.

5.13. Audit. The Parties each have the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. Each Party agrees to permit the other or its authorized representative to audit the records that relate to this Agreement and to obtain any documents, materials, or information necessary to facilitate such audit. Each Party shall take whatever action is appropriate to facilitate the performance of any audits conducted pursuant to this Agreement that County may require of City.

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**COALITION OF CENTRAL TEXAS
UTILITIES DEVELOPMENT
CORPORATION**

By: 
Name: Pix Howell

Title: President

Date Signed: August 23, 2011

ATTEST:

By: 

Name: Frank Salvato

Title: Secretary/Treasurer

Date Signed: August 23, 2011

TRAVIS COUNTY, TEXAS

By: Samuel T. Biscoe

Name: Samuel T. Biscoe

Title: Travis County Judge

Date Signed: 8-23-11

ATTEST:

By: Dana DeBeauvoir

Name: Dana DeBeauvoir

Title: Travis County Clerk

Attachment 2

December 21, 2011

TO: Coalition Supporter

As many of you know, the UDC has been in negotiations with the LCRA in earnest since the October meeting of the LCRA Board. After a rollercoaster of negotiation we settled into a stride in the final week of November and actually reached agreement on the direction of terms in early December with the LCRA Board approving an MOU at the December Board meeting.

We still have some issues of concern as we head toward an agreement prior to the January LCRA Board meeting and some of it requires a great deal of preparation and document creation for the various TCEQ approvals. We still have a great deal of work to do in a very short time, DURING the HOLIDAYS.

We have estimated an additional \$92,000 necessary and this is assuming we still receive the ask from the last contribution letter. This is the final lap and we have an incredible team of folks that are working for the customers. We all think this is the right thing to do and hope you understand what this will mean to the future of your communities. Many of you have been through this with us and for those that haven't we could sure use your support. The contribution request breaks down as follows:

Rollingwood	\$2,587
TC MUD 16	\$3,500
Westlake Hills	\$7,600
Bee Cave	\$10,529
WTCMUD #3	\$7,500
WTCMUD#5	\$7,500
Hays County	\$21,305
Windmill Ranch	\$8,754
City of Dripping Sprngs	\$3,500
Dripping Sprngs WSC	\$3,500
Travis County	\$12,000
Travis Co MUD's 11, 12, 13	\$3,500
WCID #17	\$1,500
Belvedere MUD	\$1,500
Travis Co MUD 16	\$3,500

I realize this is an expensive process and in some cases more than can be borne by the communities served. So consider this, just what it is a request for contribution.

I hope you consider participation in this goal line dive and think that our efforts on your behalf have had a significant impact on the LCRA and how it will do business in the future. Have a Merry Christmas, Happy Holidays and prosperous New Year.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pix Howell'. The signature is fluid and cursive, with a large initial 'P'.

Pix Howell, President, Coalition of Central Texas Utilities Development Corporation

Attachment: breakdown of request