

RESOLUTION 20-R-14

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS, CONFIRMING AND RATIFYING THE THIRD AMENDMENT TO THE UTILITY SERVICES CONTRACT WITH BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 73; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the City of Alvin, Texas (the “City”), is a municipal corporation that provides a full range of governmental services to its citizens, and the City owns and operates water production and distribution facilities and wastewater collection and treatment facilities and provides other municipal services; and

WHEREAS, the City and Rooted Development Group, LLC (“RDG”), on behalf of itself and Brazoria County Municipal Utility District No. 73 (the “District”), entered into that certain Utility Services Contract dated effective as of September 21, 2017 (the “Original Agreement”), relative to, among other things, the provision of water and sanitary sewer service for approximately 69.728 acres of land situated within the boundaries of the City and the District (the “Original Tract”); and

WHEREAS, by that certain Assignment of Utility Services Contract dated August 16, 2018, RDG assigned all of its rights, benefits and obligations in and to the Original Agreement to the District, all as contemplated by and in accordance with Section 5.8 of the Original Agreement; and

WHEREAS, on June 6, 2019, in Ordinance 19-O, the City approved the addition of approximately 18.65 acres of land into the District (the “MC Detention Pond No. 1”), thereby conferring ownership and maintenance of the detention pond currently located thereon; and

WHEREAS, on June 6, 2019, in Ordinance 19-P, the City approved the addition of approximately 55.90 acres of land into the District (the “Stanton Tract”); and

WHEREAS, on February 20, 2020, in Ordinance 20-F, the City approved the addition of approximately 9.99 acres of land into the District (“Planka Tract”); and

WHEREAS, on May 7, 2020, in Ordinance 20-O, the City approved the addition of approximately 35.354 acres of land into the District; and

WHEREAS, the District is requesting an amendment to the Utility Services Contract to amend certain provisions of the Original Agreement in connection with the proposed addition of the approximately 35.354 acres to the District;

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

Section 1. Findings

(a) The facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct and are adopted as part of this Resolution for all purposes.

(b) It is hereby found and declared that the terms of this Resolution will be beneficial to the City and its citizens.

Section 2. Approval of Third Amendment to Utility Services Contract. City Council does hereby approve the Third Amendment to Utility Services Contract between the City and the Brazoria County Municipal Utility District Number 73.

Section 3. Open Meetings Act. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

Section 4. Effective Date. The resolution shall take effect upon the passage of this Resolution.

PASSED AND APPROVED on this the 7th day of May 2020.

CITY OF ALVIN, TEXAS

ATTEST

By _____
Paul A. Horn, Mayor

By _____
Dixie Roberts, City Secretary

**THIRD AMENDMENT
TO
UTILITY SERVICES CONTRACT**

This THIRD AMENDMENT TO UTILITY SERVICES CONTRACT (this "Third Amendment") is made and entered into this 7th day of May, 2020, but to be effective as of the date provided in Section 4 hereof, by and between THE CITY OF ALVIN, TEXAS, a body political and municipal corporation located in Brazoria County, Texas (the "City"), and BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 73, a body politic and corporate and a political subdivision of the State of Texas located wholly within the corporate limits of the City (the "District").

RECITALS

WHEREAS, the City and Rooted Development Group, LLC ("RDG"), on behalf of itself and the District, entered into that certain Utility Services Contract dated effective as of September 21, 2017 (the "Original Agreement");

WHEREAS, by that certain Assignment of Utility Services Contract dated August 16, 2018, RDG assigned all of its rights, benefits and obligations in and to the Original Agreement to the District, all as contemplated by and in accordance with Section 5.8 of the Original Agreement;

WHEREAS, the City and the District entered into that certain First Amendment to Utility Services Contract dated June 20, 2019 (the "First Amendment") and that certain Second Amendment to Utility Services Contract dated February 20, 2020, whereby the Parties amended the definition of certain defined terms within the Original Agreement to address the annexation of additional land into the District (the Original Agreement, the First Amendment and the Second Amendment are collectively referred to herein as the "Agreement");

WHEREAS, the District and Pulte Homes of Texas, LP have petitioned the City for its consent to the annexation of 35.354 acres of land (the "Mustang Ridge Tract") into the District; and

WHEREAS, the City and the District desire to further amend certain provisions of the Agreement, in connection with the proposed addition of the Mustang Ridge Tract to the District;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the City and the District agree as follows:

AGREEMENT

Section 1: The term "Property" in the recitals of the Agreement is amended to include the Mustang Ridge Tract. Exhibit A to the Agreement is amended and restated in its entirety with the Exhibit A attached hereto.

Section 2: The term "Point of Connection of Wastewater" in Article 1 of the Original Agreement is amended and restated as follows:

Point of Connection of Wastewater means those points where the District Wastewater System connects to the City Wastewater System, along one or more of the following: Mustang Crossing Boulevard, Quarterhorse Drive, Saddle Creek, Munson Road, North Gordon Street approximately 800 feet south of FM 528, the intersection of Alvin Bypass and Wheeler Drive, the intersection of Clydesdale Drive and Reserve "G" of Mustang Ridge Section One (drainage channel and pump station), or such other location(s) upon which the City Engineer and District Engineer may mutually agree. The locations of the Point of Connection of Wastewater shall be within easements and/or rights-of-way as mutually agreed upon by the District and the City; however, if the parties cannot agree, the City will designate the exact location.

Section 3: The term "Point of Connection of Water" in Article 1 of the Original Agreement is amended and restated as follows:

Point of Connection of Water means those points where the District Water System connects to the City Water System, along one or more of the following: Mustang Crossing Boulevard, Quarterhorse Drive, Saddle Creek, Wheeler Drive, Munson Road, N Gordon Street, approximately 400 feet southwest of the intersection of FM 528 and N. Gordon Street, the intersection of Mustang Road and Appaloosa Drive, the intersection of Mustang Road and Shire Drive, or such other location(s) upon which the City Engineer and District Engineer may mutually agree. The locations of the Point of Connection of Water shall be within easements and/or rights-of-way as mutually agreed upon by the District and the City; however, if the parties cannot agree, the City will designate the exact location.

Section 4: This Third Amendment shall become effective on the date the District adopts an Order adding the Mustang Ridge Tract to the District. The District shall provide the City with a recorded copy of said Order within ten (10) days of its adoption of same.

Section 5: All terms and provisions of the Agreement, except as amended hereby, shall remain in full force and effect and shall apply to this Third Amendment. In the event of a conflict between the Agreement and this Third Amendment, this Third Amendment shall prevail.

Section 6: Except as otherwise provided, all capitalized terms shall have the meanings specified in the Agreement.

Section 7: Pursuant to the requirements of Section 5.11 of the Agreement, RDG joins in this Third Amendment to evidence its consent hereto and the matters contained herein.

Section 8: The Agreement, together with this Third Amendment, constitutes the entire agreement between the parties hereto relating to the subject matter hereof and all prior agreements, proposals, negotiations, understandings and correspondence between the parties, whether written or oral, are hereby superseded and merged herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment in multiple copies, each of which shall be an original.

CITY OF ALVIN, TEXAS

By: _____
Paul Horn, Mayor

ATTEST:

Dixie Roberts, City Secretary

BRAZORIA COUNTY MUNICIPAL UTILITY
DISTRICT NO. 73

By: _____
Lewis Locke
President, Board of Directors

ATTEST:

Mouricia Carbone
Secretary, Board of Directors

ROOTED DEVELOPMENT GROUP, LLC,
a Texas limited liability company

By: _____
Christopher M. Gilbert
President

EXHIBIT A

[Attach Metes and Bounds for Original Tract (69.728 acres), MC Detention Pond No. 1 Tract (18.65 acres), Stanton Tract (55.90 acres), Planka Tract (9.99 acres), and Mustang Ridge Tract (35.354 acres)]