

REGIONAL WATER SUPPLY CONTRACT BETWEEN
THE CITY OF SEGUIN AND NEW BRAUNFELS UTILITIES

THIS REGIONAL WATER SUPPLY CONTRACT (the “Contract”) is entered into by and between the **City of Seguin**, Texas, a home-rule city (“Seguin”) and **New Braunfels Utilities**, a Texas municipal owned utility (“NBU”).

RECITALS

WHEREAS, Seguin, through the Seguin Water System, has established that through its multiple resources its public water supply system has sufficient excess supply of potable water to enter into this Contract; and

WHEREAS, Seguin has the capacity to draw from its run of the river rights, its 50% share of the Schertz Seguin Local Government Corporation production, and potential future projects with the Schertz Seguin Local Government Corporation; and

WHEREAS, NBU provides water service to its customers in Comal and Guadalupe Counties and surrounding areas through a water production, treatment, storage, and distribution system (the “NBU Water System”) in close proximity to Seguin’s Water System; and

WHEREAS, NBU desires to obtain an additional water supply to supplement its existing water supply sources and is willing to accept delivery of potable water from Seguin that is available from the Seguin Water System sources and is determined by Seguin to be in excess of the demands of Seguin’s customers; and

WHEREAS, operating Seguin’s Water System at a greater volume creates opportunities for Seguin to mitigate increases in rates paid by all of its customers due to the economies of scale; and

WHEREAS, the Seguin Water System has determined that it has available capacity to transport the volume of water at the rate of delivery required for the Seguin Water System to satisfy its contractual obligations to its customers, and to initially deliver 1,100 acre-feet of water annually to NBU through the existing interconnect between Seguin and Springs Hill Water Supply Corporation (“Springs Hill”) located in an easement along Highway 123 on the Helmich and Payne property, as more particularly shown on Exhibit A (the “Springs Hill Point of Delivery”); and

WHEREAS, Springs Hill has agreed pursuant to a separate contract with NBU to transport through the Springs Hill water distribution system up to 1,100 acre-feet of water per year to an existing interconnect between the NBU Water System and Springs Hill pipelines; and

WHEREAS, both Seguin and NBU contemplate a larger volume sale of potable water when a direct interconnect between the two systems is accomplished; and

WHEREAS, Seguin has the capacity to sell and deliver to NBU up to 3,000 acre feet of potable water per year upon the completion of a direct interconnect between NBU and Seguin.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, Seguin and NBU undertake, promise, and agree as follows:

ARTICLE I

DELIVERY OF WATER

1.01. Point of Delivery. Subject to the terms and conditions of this Contract, Seguin agrees to deliver water to NBU through the interconnect at the Springs Hill Point of Delivery. However, when a direct interconnect between Seguin and NBU is completed from the Weltner Road pump station to a point of delivery with Seguin (the “Seguin/NBU Point of Delivery”), Seguin and NBU agree to amend this Contract to change the Springs Hill Point of Delivery to the interconnect at the Seguin/NBU Point of Delivery in the manner described in Section 1.10 of this Contract. In this Contract, when the term “Point of Delivery” is used without specifying a specific Point of Delivery, the terms of this Contract shall apply to the Point of Delivery then in effect.

1.02. Volume of Water Produced and Purchased. Subject to the terms and conditions of this Contract, Seguin agrees to sell and deliver, and NBU agrees to take or pay for, 1,100 acre-feet of water per year through September 30, 2021. Beginning October 1, 2021, NBU will take or pay for 1,500 acre-feet of water per year with said take or pay quantity increasing by 500 acre-feet of water per year on each anniversary thereof until reaching 2,500 acre-feet of water, which shall be the maximum take or pay quantity of water for the remainder of the Contract term. Seguin agrees to make Additional Water (defined hereafter) available to NBU as described in Section 1.03 to increase the maximum amount of water available for purchase to 3,000 acre-feet per year (2,500 maximum take or pay quantity of water in addition to 500 acre-feet of the Additional Water). If Seguin determines that it has a larger volume of potable water to sell to NBU than specified herein, the Parties shall amend this Contract accordingly.

1.03. Additional Water. After the completion of the Seguin/NBU Point of Delivery as described in Section 1.10 of this Contract, Seguin may determine that up to 500 acre feet of additional water (the “Additional Water”) is available each year to sell and deliver to NBU. No later than May 1 of each year of this Contract, Seguin shall notify NBU that a specified amount of Additional Water is available. NBU may, but is not so required to, take or purchase Additional Water in an amount up to the maximum specified amount by submitting written notice of its acceptance to take or purchase such Additional Water to Seguin by June 1. Payment for Additional Water shall be in accordance with the rates and terms set forth in Article II below.

1.04 Maximum Volume and Rate of Flow. The Parties agree that the interconnection at the Springs Hill Point of Delivery will be capable of allowing the delivery of up to One Million

(1,000,000) gallons per day of water (“Original Daily Maximum”) at a rate not to exceed 700 gallons per minute. The Parties agree that when the interconnect at the Seguin/NBU Point of Delivery is complete, the Seguin/NBU Point of Delivery will be capable of allowing the delivery of up to Two Million Seven Hundred Thousand (2,700,000) gallons per day of water (“Amended Daily Maximum”) at a rate not to exceed 1,860 gallons per minute; provided, however, these requirements can be modified by amendment to this Contract if Seguin makes more water available for purchase to NBU. Seguin’s minimum pressure at the Point of Delivery is 35 psi and will be set by Seguin. At the Point of Delivery a SCADA system shall exist to track and meter the delivery to ensure that said delivery does not negatively impact Seguin’s system. In the case of a region-wide emergency effecting Seguin’s System, Seguin may curtail delivery in accordance with Section 1.05 of this Contract.

Section 1.05. Water Conservation, Drought Contingency, and other Required Plans. Each party’s obligations under this Contract shall be subject to water conservation plans, drought contingency plans, or any other plan adopted by such party and required by the Texas Commission on Environmental Quality (the "TCEQ"), the Texas Water Development Board, or any other federal, state, or local regulatory authority (other than a party to this Contract) with power to require or approve water conservation and drought contingency plans. As required by rules of the TCEQ in effect on the Effective Date of this Contract, both parties have developed and implemented a water conservation plan or water conservation measures using the standards established by the TCEQ. If required by order of the TCEQ, either party to this Contract may be required to implement water conservation strategies and if such party is so ordered, the other party to this Contract will cooperate and consent to the implementation by the other party of such water conservation strategies required by the TCEQ. As required by TCEQ rules in effect on the Effective Date of this Contract, in case of a shortage of water resulting from drought, the water to be distributed by Seguin to NBU will be distributed in accordance with the provisions of this Contract, or to the extent required by law. In accordance with TCEQ rules in effect on the Effective Date, Seguin and NBU agree that each has developed and implemented a water conservation plan or water conservation measures using the applicable elements of the TCEQ rules and each agrees that if they resell the water delivered under the Contract, each successive contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of the TCEQ rules in 30 TAC Chapter 288. Under contract with CPS Energy for the provision of water to the Rio Nogales Power Plant, Seguin is obligated to state that all contracts for the sale of water are subordinate to the CPS Water Supply Agreement

Section 1.06 Water Quality. The water that Seguin delivers to NBU at the Point of Delivery shall be potable treated water suitable for public water supply and shall meet the quality criteria prescribed by the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems, 30 TAC Chapter 290 subchapter F. NBU shall have no obligation to accept or pay for delivery of treated water for introduction into the NBU distribution system that does not conform to the water quality requirements described

herein. If NBU accepts or receives the water into its System, NBU is obligated to pay Seguin for the amount of water received even if the water does not satisfy the quality requirements of this subsection.

Section 1.07. Title, Control, and Responsibility. Subject to the terms of this Contract, the party in possession of water hereunder shall have control of and responsibility for that water. Control and responsibility shall transfer initially (i) from Seguin to Springs Hill on the discharge side of the meters located at the Seguin Point of Delivery and the interconnect at the Springs Hill Point of Delivery and (ii) from Springs Hill to NBU on the discharge side of the meter located at the interconnect between Springs Hill and NBU. When the interconnect at the Seguin/NBU Point of Delivery is completed and approved for use by both Seguin and NBU pursuant to Section 1.10 of this Contract, control and responsibility shall transfer from Seguin to NBU on the discharge side of the meters located at the Seguin Point of Delivery. When water is delivered to NBU at the Point of Delivery by either Springs Hill or Seguin under this Contract, title to such water shall transfer to NBU. If any other changes are made to the Point of Delivery in connection with Section 1.10 of this Contract, the parties shall revise this Section accordingly.

Section 1.08. Indemnity.

- A. NBU. To the fullest extent allowed by law, NBU agrees on behalf of itself and its successors and assigns to defend, save and hold harmless Seguin and Seguin's officers, directors, and employees from and against any and all claims, losses, expenses, costs, demands, judgments, causes of action, suits, and liability in tort, contract or any other basis and of every kind and character whatsoever (including but not limited to all costs of defense, such as fees and charges of attorneys, expert witnesses, and other professionals and all court or other dispute resolution costs) arising out of or incident to the transportation and delivery of water pursuant to this Contract while possession remains in NBU. NBU acknowledges that all payments under this Contract are paid from the gross revenues of its utility system and that no payments, including payments under this subsection, are payable from taxes from the City of New Braunfels, Texas.

- B. Seguin. To the fullest extent allowed by law, Seguin agrees on behalf of itself and its successors and assigns to defend, save and hold harmless NBU and NBU's trustees, officers, directors, and employees from and against any and all claims, losses, expenses, costs, demands, judgments, causes of action, suits, and liability in tort, contract or any other basis and of every kind and character whatsoever (including but not limited to all costs of defense, such as fees and charges of attorneys, expert witnesses, and other professionals and all court or other dispute resolution costs) arising out of or incident to the transportation, treatment and delivery of water pursuant to this Contract while possession remains in Seguin.

Section 1.09. Approvals. Unless otherwise required by law, each consent, approval, or other official action required of either party to this Contract by any provision of this Contract

shall be deemed in compliance with this Contract when written evidence of such action, signed by the respective authorized representative is delivered to the party who is to receive evidence of such action. The parties to this Contract will cooperate with the each other in the design and construction of the Points of Delivery and in obtaining, amending and maintaining all groundwater district permits or other regulatory authorizations necessary for the delivery and treatment of water under this Contract. The parties to this Contract will not take any action or fail to take any action (including, without limitation, any exercise or denial of its consent or approval of any action proposed to be taken by the party or any of its agents hereunder), if taking or failing to take such action, respectively, would unreasonably delay or obstruct the delivery of water under this Contract, unless the cessation of delivery is due to non-payment of charges pursuant to this Contract, or the water delivered does not comply with the requirements set forth in this Contract relating to volume, rate of flow, or quality.

Section 1.10. Changes to Point of Delivery. The Point of Delivery may be changed by the mutual agreement of Seguin and NBU. The party requesting a change in the Point of Delivery will bear the expense of changing any Point of Delivery and will make, at its own expense, any changes or improvements necessary to receive water of different pressure and flow rate at a changed Point of Delivery. In the event of a change in a Point of Delivery, a revised Exhibit A will be appended to this Contract, as agreed by the Parties, to depict the location of the Points of Delivery, as modified, without the necessity of formally amending this Contract.

ARTICLE II

PAYMENTS

Section 2.01 Payment for Water. NBU agrees to pay Seguin's monthly charges for water based upon the rate established in Section 2.02 for one-twelfth of the amount of water specified in Section 1.02. In addition, water shall be measured by NBU's meter in increments of thousand gallons at the Point of Delivery so that any Additional Water is measured and accounted for by the Parties. Each invoice will include the beginning and ending meter readings of the NBU meter applicable to the invoice and the amount due for Additional Water that month. NBU shall pay Seguin's monthly invoice within 30 calendar days of receipt thereof. The Parties will reconcile the bills once per year to account for any differences in the invoiced amount of the Water and Additional Water measured by the meter.

Section 2.02. Rate Paid by NBU for Water. On the Effective Date of this Contract, NBU shall pay the current wholesale customer rate for water of \$3.19 per thousand gallons. This wholesale customer rate shall remain fixed until the Seguin/NBU Point of Delivery is completed and approved by the Parties pursuant to Section 1.10 of this Contract. Thereafter, the annual wholesale customer rate paid for water by NBU shall increase no more than two and one-half percent (2.5%) annually. If Seguin increases the wholesale customer rate as specified herein, Seguin agrees (i) to provide notification of such increase to NBU prior to May 1 of such year and (ii) that such increase will not be effective until August 1 of the year the increase goes into effect.

Section 2.03. Default in Payments. All amounts due and owing to a party to this Contract by the other party to this Contract shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law as set forth in Chapter 1204, as amended, Texas Government Code. If any amount due and owing by one party to the other party is placed with an attorney for collection, the party owing the amount shall pay to the other party, in addition to all other payments provided by this Contract, including interest, the other party's collection expenses, including court costs and attorneys' fees as may be ordered by a court or tribunal. The party who is owed the money may, to the extent permitted by law, suspend delivery of water to the other party if the other party remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not required to resume delivery of water while the party is so delinquent. Either party may pursue all legal remedies against the other party to enforce and protect the rights of the party under this Contract.

Section 2.04. Gross Revenue. Each party to this Contract represents and covenants to the other party that all payments to be made by it under this Contract shall constitute reasonable and necessary operating expenses of its utility system, and that all such payments will be made from the gross revenues of its utility system. Each party agrees throughout the term of this Contract to continuously operate and maintain its utility system and to fix and collect such rates and charges for water services to be supplied by its utility system as will produce gross revenues in an amount equal to at least all of its payments under this Contract.

A party to this Contract shall never have the right to demand payment by another party of any obligations assumed by or imposed upon that party under or by virtue of this Contract from any funds raised or to be raised by taxation and a party's obligation under this Contract shall never be construed to be a debt of the party of such kind as to require it under the Constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation. NBU has no taxing authority.

Section 2.05. Payment under Protest. If a party at any time disputes the amount to be paid by it to the other party, the party shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by the party should have been less, or more, the other party shall promptly revise the monthly payment in a manner that the party, will recover the amount due within six months.

Section 2.06. Stipulations. By signing this Contract, each party stipulates and agrees that the other party will be prejudiced if a party avoids the obligation to furnish water while accepting the benefits of payments, or avoids the obligation to pay the rates for water specified in this Contract while accepting the benefits of obtaining water, from the other party. Nothing in this Contract shall be construed as constituting an undertaking by a party to furnish water to the other party except pursuant to the terms of this Contract.

ARTICLE III

TERM OF CONTRACT AND REMEDIES

Section 3.01. Term. This Contract shall be effective on _____ 1, 2018 (the “Effective Date”), and shall continue in effect for a period of twenty years from the Effective Date.

Section 3.02. Renewal. This Contract will automatically renew for successive terms of five (5) years unless either Party gives written notice that the party issuing the notice objects to the renewal of this Contract. The notice of the objection to renewal must be given at least twelve (12) months prior to the termination date of this Contract.

Section 3.03. Default – Notice and Opportunity to Cure. If either party fails to perform any obligation or make any payment in the required amount when due under this Contract, the other party may, without prejudice to any other right or remedy it may have under this Contract, provide written notice of default to the non-performing party. The non-performing party has sixty (60) days from receipt of the notice within which to remedy the default (the “Cure Period”). Provided, however, the requirement for notice and the sixty day opportunity to cure does not apply to NBU’s obligations to pay Seguin for water delivered to NBU under this Contract. The amount due to Seguin shall be paid by NBU by the due date specified in Section 2.01 of this Contract.

Section 3.04. Mediation. In the event any controversy arising under this contract (other than a controversy arising from payments under Section 2.01 of this Contract or for rates charged under this Contract) is not resolved by informal negotiations between Seguin and NBU within thirty (30) days after any party requests negotiations, then, upon the request of either party, the controversy shall be referred to the voluntary settlement procedure known as mediation, which process shall be governed by the Texas Civil Practice and Remedies Code, Section 154.002, et seq., or its successor statute. The parties shall attempt to select a mutually acceptable mediator. Failing identification of a mutually acceptable mediator, the parties shall request the presiding judge of the State District Courts of Guadalupe County, Texas, to appoint a mediator. The mediation process shall continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or either party chooses not to continue further. All costs and expenses of the mediation (including the mediator’s fees) shall be shared equally by the parties; provided however, that costs incurred by each party shall be costs solely of such party, but Seguin’s costs and expenses relating to such mediation shall be included as a system-wide cost within Seguin’s operation and maintenance expense.

ARTICLE IV

METERING AND MEASUREMENT

Section 4.01. Unit of Measurement. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

Section 4.02. Measuring Equipment. Such meter and other equipment so installed shall remain the property of the party installing the meter. The other party shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be done only by the employees or agents of the party that owns the meter. For the purpose of this Contract the original record or reading of the meter or meters shall be the records of the party installing the meter in its office in which the records of the employees or agents of the party who take readings are or may be transcribed. Upon written request of the other party, the party owning the meter will give the other party a copy of such records book, or permit the other party to have access to the same in the office of the party during reasonable business hours, or by electronic means if available.

Each party at the party's expense shall annually test its meter(s) at the Point of Delivery, if requested in writing by the other party to do so, in the presence of a representative of the other party, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if the check meters hereinafter provided for have been installed by the party, the same shall also be calibrated by the party in the presence of a representative of the other party and the parties shall jointly observe any adjustment in case any adjustment is necessary. The party will provide to the other party a copy of the meter calibration test to the party for its inspection reports. If the party shall in writing request the other party to calibrate its meters and the other party shall give the party notice of the time when any such calibration is to be made and a representative of the party is not present at the time set, the other party may proceed with calibration and adjustment in the absence of any representative of the party.

If either party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the said meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty- eight (48) hours' notice of the time of all tests of meters so that the other parties may conveniently have a representative present.

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of accuracy limits as established in AWWA Manual 6 – Testing of Meters, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one - half ($\frac{1}{2}$) of the time elapsed since the last date of calibration. If for any reason any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto

upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Each party may, at the party's option and expense, install and operate a check meter to check each meter installed by the other party, but the measurement of water for the purpose of this Contract shall be solely by the party's meters, except in the cases hereinabove specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the other party, but the reading, calibration and adjustment thereof shall be made only by the party who owns the meter. During any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by the party with representation from the other party.

If a party requests the other party to test the other party's meter, either more frequently than once every year required by this section or because the other party's meter and the party's check meter show different readings, the party requesting the test will pay the cost of the test if the test shows that the meter is within the accuracy limits as established in AWWA Manual 6 – Testing of Meters (within two percent registration), but if the test shows that the meter is not accurate (in excess of accuracy limits as established in AWWA Manual 6 – Testing of Meters), then the other party will pay the costs for conducting the test.

ARTICLE V

INTERPRETATIONS

Section 5.01. Interpretation. The table of contents and caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Contract and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Contract.

ARTICLE VI

GENERAL PROVISIONS

Section 6.01. Participation by the Parties. Each party to this Contract represents to the others that it is empowered by law to execute this Contract and other agreements and documents as are or may hereafter be required to accomplish the same; and that its execution of this Contract has been duly authorized by action of its governing body.

Section 6.02. Force Majeure. If by reason of Force Majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of the party to make the payments required under this Contract, then if such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after the 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 Government of the United States or the State of Texas, or regulatory restrictions by a groundwater district, any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, tornados, blue northers, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, inability on the part of Seguin to deliver water for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 6.03. Modification. No change, amendment, or modification of this Contract shall be made or be effective that will affect adversely the prompt payment when due of all money required to be paid by the party under the terms of this Contract.

Section 6.04. Addresses and Notice. Unless otherwise provided herein, 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 other parties 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 prepaid telegram 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 herein, from and after the expiration of three 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 purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the NBU:

Chief Executive Officer
New Braunfels Utilities
263 E. Main Plaza
New Braunfels, Texas 78130

If to Seguin:

City Manager
City of Seguin, Texas
205 N. River Street
Seguin, Texas 78155

Seguin and NBU 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 five (5) days' written notice to the other parties.

Section 6.05. State or Federal Laws, Rules, Orders, or Regulations. This Contract is subject to all applicable federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction. Each party represents that, to the best of their knowledge, no provisions of any applicable federal or State law, nor any permit, ordinance, rule, order, or regulation of either party will limit or restrict the ability of either party to carry out their respective obligations under or contemplated by this Contract.

Section 6.06. Severability. The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Contract or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 6.07. Waiver. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the party to receive the payments from the other party, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within four years after the occurrence of such default. No waiver or waivers of any breach or default (or any

breaches or defaults) by any party hereto or of the performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 6.08. Venue. All amounts due to Seguin from NBU under this Contract, including, but not limited to, payments due under this Contract, shall be paid and be due in Guadalupe County, Texas, which is the County in which the principal administrative offices of Seguin are located. It is specifically agreed among the parties to this Contract that in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Guadalupe County, Texas.

Section 6.09. Succession and Assignment. This Contract is binding on and inures to the benefit of the parties hereto and their respective successors, representatives, and assigns. This Contract may not be assigned by either party hereto without prior written notice to and approval by the other party, which consent may be withheld without cause.

Section 6.10. Entire Contract. This Contract constitutes the entire agreement among the parties with respect to the matters described herein.

Section 6.11. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of Texas, and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 6.12. Counterparts. This Contract may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 6.13. Officers and Agents. No officer or agent of Seguin or NBU is authorized to waive or modify any provision of the Contract. No modifications to or rescission of this Contract may be made except by a written documents signed by Seguin's and NBU's authorized representatives.

Section 6.14. Recitals. NBU and Seguin agree that the recitals in this Contract are true and correct and are incorporated into the terms of this Contract.

Section 6.17. Goods and Services. The parties agree that the mutual commitments stated herein to provide water constitutes an agreement by each party for providing goods and services to the other party, and that this Contract is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

Section 6.18. No Third Party Beneficiary; No Partnership. This Contract is not intended to confer any rights, privileges or causes of action upon any third party. The relationship of the parties under this Contract is not and shall not be construed or interpreted to be a partnership,

joint venture or agency. The relationship of the parties shall be an independent contractor relationship. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party.

Section 6.19. Additional Representations. Each party hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Contract as described in Chapter 2270 of the Texas Government Code, as amended. Each party further declares that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed as of the Effective Date.

CITY OF SEGUIN, TEXAS

By: _____
Douglas G. Faseler, City Manager

Attest:

City Secretary

NEW BRAUNFELS UTILITIES

By: _____
Ian Taylor, Chief Executive Officer