

## CONTRACT FOR RAW WATER SERVICE

This Contract for Raw Water Service (this "Contract") is entered into as of the \_\_\_\_ day of April, 2022, between Guadalupe-Blanco River Authority, a conservation district and political subdivision of the State of Texas ("GBRA"), and the City of Seguin.

For and in consideration of the mutual promises, obligations, and benefits hereinafter set forth, GBRA and Purchaser agree as follows:

1. QUANTITY. GBRA agrees to furnish Purchaser, at the Point of Diversion during the term of this Contract, untreated water from conservation storage in Canyon Reservoir under Certificate of Adjudication 18-2074, as amended, in such quantity as may be required by Purchaser, not to exceed 1,000 acre-foot/feet per year (the "Annual Commitment"), to be used for municipal purposes only. GBRA may also furnish untreated water under the terms and conditions of this Contract from any source or combination of sources that may be available to GBRA on a firm-yield basis including without limitation, run-of-river flows of the Guadalupe River under new water rights or amendments to existing water rights, and water obtained from sources other than surface waters of the Guadalupe River Basin. Upon request, Purchaser shall provide to GBRA information reasonably necessary to demonstrate the basis of the request for the quantities of water to be furnished hereunder.
2. POINT OF DIVERSION AND PLACE OF USE. The water will be furnished at a point in Guadalupe County (the "Point of Diversion") described as follows: on the north bank of the Guadalupe River in the Humphries Banch Survey A-6, 81° 30'0" East, 5,556 feet from the southeast corner of the Joseph D. Clements Survey A-12 line with the Guadalupe River.  
  
The maximum rate of diversion at the Point of Diversion shall not exceed twenty-five cubic feet per second (25 cfs). The vicinity map attached hereto as Exhibit "A" shows the Point of Diversion and place of use. Certificate of Adjudication 18-2074, as amended, authorizes GBRA to use the bed and banks of the Guadalupe River to convey water released from Canyon Reservoir to the Point of Diversion. The water diverted under this Contract may not, under any circumstances be leased or resold by Purchaser or used outside of GBRA's ten-county statutory district.
3. MONTHLY PAYMENTS. Purchaser agrees to pay GBRA at its office in Guadalupe County, Texas, or such other place as GBRA may designate in writing, upon execution of this Contract by Purchaser, an amount of money equal to 1/12 of the Annual Commitment multiplied by the then applicable rate for firm water supplied pursuant to this Contract (the "Firm Water Rate"). Such payment shall be due no later than the fifteenth (15<sup>th</sup>) day of the following month. The firm water rate as of the date of the execution of this agreement is \$157.00 per acre foot.

Should Purchaser's usage exceed the Annual Commitment, such overage shall be due to GBRA no later than the thirty-first (31) day of January of each year. Such amount shall be equal to the Firm Water Rate times the number of acre-feet by which the total amount of water diverted at the Point of Diversion in the previous calendar year exceeds the Annual Commitment. Accepting payment for the excess usage does not obligate GBRA to supply more water than the Annual Commitment in any one year.

4. ADJUSTMENT OF FIRM WATER RATE. The Firm Water Rate may be adjusted by GBRA at any time and from time to time. If GBRA desires to adjust the Firm Water Rate, it shall, at least sixty (60) days prior to the first day on which the adjustment is proposed to become effective, give written notice of the proposed adjustment to Purchaser.
5. METERING. Purchaser shall furnish, install, operate and maintain at its own expense at the Point of Diversion a measuring device or devices to measure the quantity of water diverted by Purchaser within five percent (5%) above or below the amount actually diverted. All measuring devices shall be subject to inspection, examination and testing by an employee or agent of GBRA. Any measuring device which fails to function or which functions incorrectly shall, at Purchaser's sole expense, promptly be adjusted, repaired or replaced by a like device having the required accuracy. GBRA may, at its expense, install and maintain such measuring devices, as it deems appropriate to measure the quantity of water diverted by Purchaser at the Point of Diversion, in which case GBRA's measuring devices shall make measurement of water. Purchaser shall read the metering equipment monthly at or near the first day of each month, and shall maintain records of such readings. Purchaser shall furnish GBRA by the first day of each month an estimate of the total amount of water to be diverted that month, as well as the amount actually diverted during the previous month. GBRA agrees to complete and file with the Texas Commission on Environmental Quality (or its successor) all reports of water used by Purchaser.

The measuring devices shall be tested for accuracy by GBRA, at least once each calendar year, at intervals of approximately twelve (12) months, and a report of such test shall be furnished to the Purchaser upon request. In the event any question arises at any time as to the accuracy of the measuring devices, then the measuring devices shall be tested promptly upon demand of the Purchaser. The expense of such test shall be borne by the Purchaser if the tested measuring devices are found to be within five percent (5%) of accuracy and by GBRA if the tested measuring devices are found to not be within five percent (5%) of accuracy.

If, as a result of any test, the measuring devices are found to be registering inaccurately (in excess of five percent (5%)), the readings of the measuring devices shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon or, if no such period is known or agreed upon, the shorter of:

(1) a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or

(2) a period extending back one half of the time elapsed since the last previous test;

and the records of the readings, and payments which have been made on the basis of such readings, if any, shall be adjusted accordingly.

6. QUALITY. The water to be supplied hereunder shall be untreated water as it occurs at the Point of Diversion.
7. REGULATORY REQUIREMENTS. This Contract is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Contract is specifically subject to all applicable sections of the Texas Water Code and the rules of the Texas Commission on Environmental Quality, or any successor agency.
8. CONSERVATION AND DROUGHT MANAGEMENT PLANS. Purchaser agrees to provide to the maximum extent practicable for the conservation of water. Purchaser further agrees to assist GBRA in implementing water conservation and drought management plans applicable to the use of water from Canyon Reservoir or other sources of supply. Purchaser shall develop and implement a water conservation and drought management plan applicable to its use of all water supplied under this Contract. Any such plan shall at all times meet all requirements of all applicable laws and regulations, and all reasonable requirements of GBRA, including but not limited to the requirement to implement conservation-oriented water rates.
9. ALLOCATION DURING DROUGHT. During drought conditions or in any other condition when water cannot be supplied to meet the demands of all customers, the water to be distributed shall be divided by GBRA among all its customers pro rata, according to the amount each may be entitled to, subject to reasonable conservation and drought management plans and requirements based on particular purposes of use of the water, so that preference is given to no one and everyone suffers alike.
10. ASSIGNMENT. Except as specifically provided otherwise below, Purchaser may not assign this Contract without the prior written consent of GBRA. Any successor or assign of GBRA shall succeed to the rights and obligations of GBRA hereunder.
11. CAPTIONS. All titles of the sections of this Contract have been inserted for convenience of reference only and are not considered a part of this Contract and in no way shall they affect the interpretation of any provisions of this Contract.

12. TERMINATION.

- a. Convenience - Purchaser may terminate this Contract at any time for any reason by giving GBRA written notice of termination ninety (90) days prior to the date of termination. GBRA may terminate this Contract at any time for any reason by giving Purchaser thirty (30) advance written notice.
- b. Default of Payment - During the term of this Contract, if Purchaser fails to pay any amounts payable under this Contract when due and payable, GBRA may give written notice of such delinquency to Purchaser, and if all amounts due and unpaid, including interest thereon from the date payment was due at maximum legal rates, are not paid within thirty days after delivery of such notice, then GBRA may, at its option, institute suit for the collection thereof and utilize such other remedies as may exist to collect any amounts due and unpaid, together with interest thereon at the maximum legal rate and attorney's fees. In addition to all other remedies, GBRA may, at its option, if such amounts are not paid within said thirty-day period, terminate this Contract without recourse.

13. TERM. This Contract is for a five (5) year term commencing on September 01, 2022. The Contract shall renew for one additional term of five (5) years unless either party provides written notice of its intent to terminate pursuant to the terms set forth herein.

14. NOTICE. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or three (3) days after the date of mailing if mailed, by first class mail, registered or certified, postage prepaid and addressed as follows:

For **PURCHASER**

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

For **GBRA**

Guadalupe-Blanco River Authority  
933 E Court St.  
Seguin, Texas 78155

Any notices served by fax shall be deemed to have been given and received only when written confirmation of the receipt of such fax has been received by the sender. Any Party hereto may, at any time by giving fifteen (15) days' written notice to the other Party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given.

15. AGREEMENT. This Contract constitutes the entire agreement of the Parties and supersedes any and all prior negotiations, correspondence, understandings, and agreements between the Parties respecting the subject matter hereof. Neither this Contract nor any of its terms may be changed or modified, waived, or terminated (unless otherwise provided hereunder) except by an instrument in writing signed by

an authorized representative of the Party against whom the enforcement of the change, waiver, or termination is sought.

16. SEVERABILITY. If a court of competent jurisdiction determines that any term of this Contract is invalid or unenforceable to any extent under applicable law, the remainder of this Contract (and the application of this Contract to other circumstances) shall not be affected thereby, and each remaining terms shall be valid and enforceable to the fullest extent permitted by law.
17. IMMUNITY. No provision of this Contract shall affect or waive any sovereign or governmental immunity available to a Party and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to a Party and/or its elected officials, officers, employees and agents under Federal or Texas law.
18. GOVERNING LAW/VENUE. This Contract is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws and principles. This Contract is performable in Comal County, Texas.
19. DUE AUTHORIZATION, BINDING OBLIGATION, NO APPROVALS REQUIRED. This Contract has been duly authorized, executed and delivered by all necessary action of Purchaser, and constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms. No further approval, authorization, order or consent of, or declaration, registration or filing is required for the valid execution and delivery of this Contract by Purchaser or for the performance of any payment or other obligation by Purchaser.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed in multiple counterparts, each of which shall constitute an original.

Guadalupe-Blanco River Authority  
By Darell Nichols  
Darell Nichols  
Senior Deputy General Manager

City of Seguin  
By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM:

Joseph E. Cole  
Joseph E. Cole, General Counsel

THE STATE OF TEXAS           §  
   §  
COUNTY OF GUADALUPE       §

BEFORE ME, the undersigned Authority, on this day personally appeared Darrell Nichols, Senior Deputy General Manager of the Guadalupe-Blanco River Authority, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 25<sup>th</sup> day of April, 2022.



Tricia L. Ramirez  
Notary Public, The State of Texas

THE STATE OF TEXAS           §  
   §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_ (name and title) of the City of Seguin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, The State of Texas