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**CONTRACT FOR WASTEWATER TREATMENT  
NEW BRAUNFELS UTILITIES AND GUADALUPE-BLANCO RIVER AUTHORITY**

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This Contract and Agreement (“Agreement”) is made and entered into by and between New Braunfels Utilities (“NBU”), an agency of the City of New Braunfels, Texas, and the Guadalupe-Blanco River Authority (“GBRA”), a Conservation and Reclamation District created pursuant to Article 16, Section 59, of the Texas Constitution (collectively, the “Parties”). This Agreement is effective on the later date indicated in the signature blocks below (the “Effective Date”).

**RECITALS**

A. NBU is an agency of the City of New Braunfels, Texas charged with complete management and control of its electric, water, and wastewater utility systems to serve properties within NBU’s service areas.

B. GBRA is a conservation and reclamation district created by the Texas Legislature under Article 16, Section 59, of the Texas Constitution, that has, among other powers, authority to develop collection, transportation, treatment, disposal, and handling of any waste, including sanitary sewer facilities and sewage.

C. GBRA will be providing retail wastewater or sewer service in an area in the general vicinity of State Highway 46 east of Lake Dunlap within the Guadalupe River Basin, which is more specifically illustrated in “Exhibit A” attached hereto (the “Service Area”), that is currently not certificated for sewer service under a certificate of convenience and necessity.

D. GBRA has submitted an application for a sewer certificate of convenience and necessity with the Public Utilities Commission that includes the Service Area illustrated in Exhibit

A.

E. GBRA currently does not own or operate a wastewater treatment plant in or adjacent to the Service Area to provide wastewater treatment that would be required by development in the Service Area.

F. Portions of the Service Area are generally within the same drainage basin as NBU's existing Sam C. McKenzie Water Reclamation Facility (the "McKenzie Plant"), authorized by the Texas Commission on Environmental Quality ("TCEQ") under Water Quality Permit No. WQ0010232004 to dispose of up to 9.9 million gallons per day ("MGD") of treated wastewater effluent.

G. As of the date of signing of this Agreement by the Parties, the McKenzie plant is constructed to dispose of 2.5 MGD of treated wastewater effluent; NBU intends to expand the McKenzie plant to the full 9.9 MGD rate at an undetermined date in the future.

H. NBU currently has available treatment capacity in the McKenzie Plant to provide permanent wholesale wastewater treatment service to GBRA.

I. On September 21, 2017, GBRA and NBU executed a Memorandum of Understanding (the September 21 MOU), outlining issues that the Parties wanted to resolve between themselves, including wastewater treatment, additional water supplies for NBU, and a resolution of a pending application for a bed and banks authorization under Texas Water Code § 11.042 now pending before the State Office of Administrative Hearings. This Agreement is intended to address the wastewater treatment component of the September 21 MOU. It is the intent of the Parties to address the other issues in subsequent agreements and to work diligently to finalize those agreements.

## **AGREEMENTS**

### **1. Wastewater Treatment Service; Living Unit Equivalents.**

(a) Subject to the terms and conditions of this agreement, NBU agrees to provide wholesale wastewater treatment and disposal services to GBRA for the Service Area by permitting connections to NBU's wastewater trunk mains at the following locations: \_\_\_\_\_, which are more specifically illustrated in "Exhibit B" attached hereto (the "Points of Delivery"). NBU will reserve and make available, on a take-and-pay basis, treatment capacity totaling the lesser of twenty five (25) percent of the as-built treatment capacity of the McKenzie Plant or an equivalent flow rate sufficient to serve a fixed number of "living unit equivalents" ("LUE") to GBRA for service of the Service Area. At the time of execution of this Agreement, NBU calculates that 25 percent of the as-built treatment capacity (2.5 MGD) is 0.625 MGD or 2,083 LUEs.

(b) It is agreed and understood that, for purposes of this Agreement, one LUE will generate 300 gallons of sewage per day, which is NBU's current established rate. The Parties may, from time to time, recalculate or adjust the stipulated amount of sewage generated daily for an LUE, provided that they agree to do so in writing.

### **2. Measuring Equipment.**

(a) NBU shall furnish and install, at GBRA's expense, a meter or other equipment and devices at the Points of Delivery to measure quantity of wastewater delivered under this Agreement (the "Meters"). The Meters shall remain the property of NBU. NBU shall operate and maintain all Meters in good operating condition. NBU shall provide the GBRA with written notice at least ten (10) days in advance of any replacement of any existing Meter. The written notice will include a description of the new Meter that will be installed.

(b) The reading, calibration and adjustment of all Meters shall be done only by the employees or agents of NBU. The results of each reading of the Meters shall be recorded in a journal or other record book maintained in NBU's office. Representatives of the GBRA may inspect the same at any time during reasonable business hours.

(c) NBU will calibrate all Meters at least annually. NBU shall give GBRA reasonable notice of not less than 48 hours when any such calibration shall occur, and at the request of GBRA, conduct the calibration in the presence of the GBRA. In addition to the annual calibration, GBRA shall have the right to request that NBU calibrate the Meters not more than once in each year, in the presence of a representative of GBRA. If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of five percent (5%), the registration thereof shall be corrected, and accounts adjusted, 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 (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If, for any reason, any Meter is out of service or out of repair so that the amount of wastewater received by NBU under the terms of this Agreement cannot be ascertained or computed from the reading thereof, the wastewater received during the period the Meter is out of service or out of repair shall be estimated and agreed upon by the Parties based upon 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 same have been installed and are accurately registering. Otherwise, the amount of wastewater received by NBU during such period may be estimated (a) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (b) by estimating the quantity of wastewater delivered during the preceding period under similar conditions when the Meter was registering accurately.

3. **Title and Responsibility for, and Reuse of, Effluent.** Title to and responsibility for all effluent received by NBU under this Agreement shall be GBRA's to the Point of Delivery, at which point title shall pass to NBU. NBU shall have the exclusive right to directly reuse any effluent received, collected, and treated from GBRA under the terms of this Agreement.

4. **Reservation of Wastewater Capacity and Capital Participation Fee.**

(a) The Parties agree that GBRA may provide written requests to NBU from time-to-time related to the reservation of wastewater treatment plant capacity in the initial McKenzie Plant and related infrastructure. Such requests may be for 1 or more LUEs but may not exceed in the aggregate 2,083 LUEs which is the equivalent of 0.625 MGD of capacity using NBU's standard of 300 gallons per day per LUE (GPD / LUE). Following NBU's written agreement to such capacity reservation request(s), GBRA agrees to pay NBU \$4,081.00 per reserved LUE (the "Capital Participation Fee"). The Parties agree that GBRA's payment of each Capital Participation Fee shall be due to NBU within 60 days of GBRA receiving NBU's written consent to each capacity reservation request.

(b) The Parties further agree that, at the time of any expansion of the McKenzie Plant subsequent to the Effective Date, NBU will recalculate the Capital Participation Fee per LUE and said Fee will be based on costs incurred by NBU to design and construct each successive McKenzie Plant expansion (the "Secondary Capital Participation Fee"). GBRA agrees that it will pay NBU a Secondary Capital Participation Fee for each LUE of reserved capacity in the expanded Plant that is granted by NBU to GBRA and such payment will be made in the same manner as described in the preceding paragraph. At no time shall GBRA's reserve of the McKenzie Plant capacity constitute more than 25% of the capacity of any phase without written consent from NBU. For example, if the next expansion of the McKenzie Plant expands the plant to the fully permitted 9.9

MGD treatment capacity, GBRA will have the option to reserve up to approximately 2.5 MGD of available treatment capacity for wholesale service if available. In that case, GBRA may request that NBU reserve 1.875 MGD equaling 6,250 LUEs (assuming 300 GPD / LUE) in addition to the 0.625 MGD or 2,083 LUEs that may be reserved in the initial Plant capacity. NBU estimates that 2.5 MGD will create capacity to serve a total of 8,333 LUE. However, the parties recognize that unforeseeable circumstances may cause the actual number of LUE supported by the expanded McKenzie Plant to differ from that estimate. The Parties agree that the actual number of LUEs that can be served by the expanded facility will be determined at the time of expansion, and that the total dollar amount owed by GBRA to NBU per LUE will also be determined at the time the expansion is designed and/or completed.

5. **Wholesale Gallonage Rate.**

(a) GBRA also agrees that NBU will charge, and GBRA will pay to NBU, a monthly charge for the actual wholesale wastewater service provided by NBU to GBRA. The charge shall be at an initial rate of \$4.527 per 1,000 gallons (“Wholesale Gallonage Rate”) of wastewater actually delivered by GBRA to NBU at the Points of Delivery for treatment and disposal. NBU will provide monthly billing statements or invoices to GBRA for all charges to GBRA.

(b) The Wholesale Gallonage Rate may increase from time to time based on NBU’s actual operating expenses. If NBU increases the Wholesale Gallonage Rate, it shall provide GBRA no less than 30-days’ advanced notice of such change. NBU may charge GBRA the increased Wholesale Gallonage Rate for all wastewater delivered to NBU for treatment and disposal after 30 days following such notice.

6. **Non-Competing Retail Sewer Service Rates.** GBRA anticipates that its initial retail wastewater customer rate for the Service Area as of the Effective Date will be no less than

\$7.80 per 1,000 gallons. GBRA agrees that, to the extent allowed by applicable regulations and regulatory authorities, GBRA's customer rate for retail wastewater service in the Service Area will be greater than the rate charged by NBU to NBU's retail wastewater service customers during the life and term of this Agreement and any amendments thereto.

7. **Wastewater Quality.**

(a) Wastewater delivered to NBU shall meet, on a six-month running average, the following qualitative parameters:

330 mg/L Biological Oxygen Demand (BOD)

330 mg/L Total Suspended Solids (TSS)

(b) To the extent consistent with Section 7(a), wastewater must also meet any technically-based local limits as established by NBU. GBRA also agrees to make good faith and reasonable efforts to control inflow and infiltration to the GBRA system.

8. **Commercial or Industrial Wastes.**

(a) GBRA agrees that it will authorize discharge of commercial or industrial wastes only with specific approval by NBU of each individual source. Such approvals shall not be unreasonably withheld, and shall be upon the terms and conditions as NBU may prescribe from time to time, which terms and conditions shall be no more restrictive than the terms and conditions placed upon commercial or industrial wastes within the CCN of NBU. NBU shall not be required to approve any discharge of commercial or industrial wastes prior to the filing by the applicant industry or commercial enterprise of an application, a copy of which shall be forwarded to NBU.

The application shall contain the following information:

- (i) Name and address of applicant;
- (ii) Type of industry, business activity or other waste creative process;

- (iii) Quantity of wastewater to be discharged;
- (iv) Typical analysis of the wastewater;
- (v) Type of pretreatment proposed; and
- (vi) Such other information as NBU may from time to time request by written notice.

(b) NBU shall act on such request within thirty (30) days after receipt of all information required by this Agreement. The applicant may appeal the decision to the NBU Board of Trustees.

(c) GBRA agrees that, during the life and term of this Agreement and any amendments thereto, GBRA will make all reasonable efforts to ensure that influent from GBRA's commercial and industrial customers fully, and at all times, complies with all pretreatment requirements of NBU's wastewater treatment system and permits as well as any applicable pretreatment requirements or standards set by ordinance of the City of New Braunfels, regulation of the State of Texas, and/or regulations as set forth by the federal government.

9. **Testing of Wastewater.** NBU shall be entitled to collect samples at the Points of Delivery and cause the same to be analyzed pursuant to approved TCEQ methods to determine if such samples are within the qualities specified above. If analysis discloses that a sample does not comply with the qualities specified, and the source is determined to be a retail customer of GBRA, it will be the obligation of GBRA to require the offending person or entity to cease discharging or to pretreat its discharge.

10. **Surcharges.** GBRA agrees that any wastewater delivered to the Points of Delivery in excess of normal domestic strength will incur a surcharge based on the current rate structure used to surcharge industries in NBU's CCN. Samples collected for surcharge purposes will be composite samples and will be collected at NBU's discretion. NBU will give GBRA 24-hour



notice of such samples and will split samples if requested. If more than one sample is collected during the month, TSS and BOD values will be averaged for surcharge calculations.

11. **Chemical Addition to Sanitary Sewer.** GBRA must obtain written approval from NBU prior to any chemical additions to the sanitary sewer system, such as the addition of chemicals for odor or grease control. GBRA agrees to adopt any policies or standard retail wastewater service contract terms necessary to implement this agreement.

12. **Operational Issues and Emergencies.** In the event maintenance is required or NBU has an operational problem with the wastewater system, McKenzie Plant, or related infrastructure that affects NBU's wholesale wastewater service to GBRA, NBU agrees to notify GBRA and GBRA must in turn notify its retail wastewater service customers as soon as reasonably possible. Within \_\_\_\_\_ days of the Effective Date of this Agreement, NBU and GBRA agree to provide one another lists of emergency contact information for on-call operators and will maintain current contact information for the life and term of this Agreement and all amendments thereto.

13. **Term of Agreement.** Subject to all other terms and conditions of this Agreement, the term of this Agreement begins on the Effective Date and will remain in effect for a period of thirty (30) years from the Effective Date (the "Termination Date"); provided that the Agreement shall automatically renew for three successive periods of 10 years each from and after the original Termination Date unless either Party gives written notice of termination to the other Party at least two years prior to the original Termination Date in the case of the original 30-year term and thereafter at least two years prior to the end of the then-current 10-year renewal term.

14. **Notice.** Any notice to be given under this Agreement, except for notice of emergencies, shall be writing and sent by certified mail, return receipt requested, as indicated below. Emergency notices shall be given as provided in Section 9 hereof and followed by notice

under this Section. Each Party shall change the recipient of notice or the address as needed, by notifying the other Party in writing as required by this Section:

(a) Notice to NBU:

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

(b) Notice to GBRA:

General Manager/CEO  
Guadalupe-Blanco River Authority  
933 East Court Street  
Seguin, Texas 78155

**15. Computation of Time.**

(a) In computing any period of time prescribed or allowed under this Agreement for giving notice or any other act, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays,

(b) Any document to be send by United States mail that in an envelope, properly addressed and with all postage pre-paid that is deposited in the mail on or before the last day for sending same, if received not more than three business days tardy, shall be deemed received on time.

**16. Assignment.** Neither Party may assign this Agreement or its rights thereunder without the written consent of the other Party.

**17. Termination.** GBRA shall have a right to terminate this agreement upon one-year's written notice. If GBRA, for any reason, wishes to terminate this agreement, they must provide NBU with written notice, and all terms and conditions of this Agreement will remain in effect for

365 days from the date of such notice unless the parties mutually agree to amend this Agreement to terminate on an earlier date.

**18. No Third-Party Beneficiaries.** Nothing herein shall be construed to create third-party beneficiaries to this Agreement or confer rights on any Third Parties.

**19. Entire Agreement; Construction and Venue.**

(a) The recitals to this Agreement and any attachments referenced in the Agreement are made a part of this Agreement for all purposes. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous agreements and understandings of the Parties with respect to the subject matter of the Agreement—specifically, provision of wholesale wastewater service in the Service Area, if any. Section headings are included for convenience only and do not affect any interpretation of the Agreement.

(b) If any provision of this Agreement is held to be illegal or unenforceable, except for any essential term, the remainder of the Agreement will remain in full force and effect, and the Parties agree to reform the illegal or unenforceable provision to be legal and enforceable and to reflect the intention of the Parties as closely as possible.

(c) This Agreement will be construed in accordance with the laws of the State of Texas, and venue for any dispute will be in Comal County, Texas.

**20. Amendments; Waivers.**

(a) This Agreement may only be modified by a written agreement signed by authorized representatives of both Parties. Any waiver of a condition or obligation under this Agreement will only be effective if provided in writing signed by the authorized representative of the Party waiving the condition or obligation.

(b) Any waiver provided by a Party under this Agreement will constitute a one-time waiver, unless otherwise specified in writing, and any such one-time waiver of a condition or obligation in any particular instance will not create a waiver of any future non-compliance with the same condition or obligation.

**21. Counterpart Execution.** To facilitate execution, this Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which will constitute a single instrument.

**22. Further Assurances.** NBU and GBRA each agree to do, execute, acknowledge, and deliver all further reasonable acts, instruments, and assurances and to take all further reasonable action necessary or desirable to fully carry out this Agreement and to fully consummate and effect the actions contemplated herein and hereby.

GUADALUPE BLANCO RIVER  
AUTHORITY

NEW BRAUNFELS UTILITIES

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Kevin Patteson  
General Manager / CEO  
Guadalupe-Blanco River Authority

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Ian Taylor  
CEO  
New Braunfels Utilities

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_