

**FIRST AMENDMENT TO
CONTRACT FOR FINANCING AND OPERATION OF
LAKE MCQUEENEY DAM AND HYDROELECTRIC FACILITIES**

STATE OF TEXAS §
COUNTY OF GUADALUPE §

This *First Amendment to Contract for Financing and Operation of Lake McQueeney Dam and Hydroelectric Facilities* (this "*First Amendment*") by and between **Lake McQueeney Water Control and Improvement District No. 1**, a conservation and reclamation district of the State of Texas organized and operating as a water control and improvement district under Chapters 49 and 51 of the Texas Water Code (the "*WCID*"), and **Guadalupe-Blanco River Authority**, a conservation and reclamation district and political subdivision of the State of Texas organized and operating by special act of the Texas Legislature ("*GBRA*"), is made and entered into effective as of the last date of execution below for the purpose of amending specified portions of the *Contract for Financing and Operation of Lake McQueeney Dam and Hydroelectric Facilities between the WCID and GBRA*, originally effective as of October 27, 2020 (the "*Contract*"). Except as expressly amended herein, all other terms and conditions of the Contract remain in full force and effect as of the date first written.

RECITALS

WHEREAS, all capitalized terms used in this First Amendment which are not otherwise defined herein shall have the same meaning as set forth in the Contract; and

WHEREAS, the Parties entered into the Contract primarily for the purpose of providing "*for the funding, repair, replacement, rehabilitation, improvement and operation of the Lake McQueeney Dam and Hydroelectric Facilities and related improvements in order to better assure the long-term existence of Lake McQueeney*"; and

WHEREAS, GBRA is obligated under the Contract to "*acquire, construct and improve various facilities in order to better assure the long-term operability and existence of the Dam Facilities and water levels within Lake McQueeney*," which improvements shall be accomplished with the construction by GBRA of the Initial Dam Facilities Improvements, all of which were originally intended to be fully financed with the issuance of up to \$40,000,000 of Bonds by GBRA¹ that are secured with "*a pledge of the Debt Service Requirement component of the Annual WCID Payments*" made by the WCID pursuant to the Contract; and

WHEREAS, GBRA, in performance of the Contract, received and opened bids on February 7, 2023, for construction of the Initial Dam Facilities Improvements; and

WHEREAS, due primarily to significant, unexpected, and wide-spread increases in construction costs since the issuance of the Series 2021 GBRA Bonds, the winning bid for the construction costs for the Initial Dam Facilities Improvements totals \$44,731,862.00 (the "Construction Contract Cost"), thereby exceeding the amount of the proceeds of the Series 2021 GBRA Bonds available for construction of the Initial Dam Facilities Improvements; and

¹ In compliance with the Contract, GBRA issued and delivered to the Texas Water Development Board on December 8, 2021, \$40,000,000 in principal amount of its **Guadalupe-Blanco River Authority Contract Revenue Bonds, Series 2021 (Lake McQueeney Dam Facilities Project)** (the "*Series 2021 GBRA Bonds*") for the purpose of providing funds to plan, design, acquire, construct, repair, and equip the Initial Dam Facilities Improvements and pay costs of issuance.

WHEREAS, construction of the Initial Dam Facilities Improvements will require the lowering of the Lake McQueeney waters and will provide an opportunity for the WCID to construct additional lake remediation projects, if needed; and

WHEREAS, to provide additional funding to GBRA for the Initial Dam Facilities Improvements and to provide funding for the WCID to undertake additional lake remediation projects on Lake McQueeney, if needed, voters of the WCID approved at a bond election held within the WCID on May 6, 2023, authorization for the WCID to issue up to \$18,000,000 in principal amount of ad valorem tax bonds for the purpose of financing ". . . the purchase, construction, acquisition, development, design, improvement, management, repair, replacement, operation, and maintenance, inside and outside the District's boundaries, of the water storage and preservation facility known as Lake McQueeney and the Lake McQueeney dam and any and all related works, structures, equipment, facilities, appliances, improvements, interests in land, and contract rights necessary or convenient therefor and administrative facilities needed in connection therewith in order to store and preserve the waters within Lake McQueeney," the payment for which shall be secured with the annual levy and collection by the WCID of a sufficient tax upon all taxable property within the WCID (the "WCID Lake Remediation Bonds"); and

WHEREAS, the WCID and GBRA now deem it necessary and appropriate to amend the Contract to incorporate provisions relating to the issuance by the WCID of its WCID Lake Remediation Bonds, a portion of the proceeds of which shall be provided by the WCID to GBRA to provide the necessary additional funding (together with proceeds of the Series 2021 GBRA Bonds) to pay costs to plan, design, acquire, construct, repair, and equip the Initial Dam Facilities Improvements; and

WHEREAS, Section 10.8.A. of the Contract provides that the Contract "*shall be subject to change or modification only with the mutual written consent of the governing bodies of GBRA and the WCID . . .*"; and

WHEREAS, in compliance with Section 49.108(b), Texas Water Code, the Contract was approved by the voters of the WCID at an election held on November 3, 2020; furthermore, Section 10.8.B. of the Contract provides that "*[i]n accordance with the authority set forth in Section 49.108(b) of the Texas Water Code, this Contract may be modified or amended by the Board of Directors of the WCID without voter approval*"; accordingly, it is not necessary for this First Amendment to be approved by the voters of the WCID.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Amendments to Section 2.2.B. Section 2.2.B of the Contract is hereby amended to read in its entirety as follows:

- B. Construction. Upon satisfaction of all conditions precedent set forth herein, GBRA followed all legal requirements applicable to the advertisement, bidding, and award of one or more contracts for construction of the Initial Improvements. GBRA is satisfied with the bids or proposals received, and subject to the WCID's participation described in Sections 2.3 and 3.8.B, GBRA shall award a contract for construction of the Initial Improvements promptly after receiving approval from the Texas Water Development Board for its execution and shall then proceed with such construction with diligence following the sale of the Bonds and

authorization of the "WCID Lake Remediation Bonds" (described and defined in Section 3.8.B below) and the receipt of sufficient funds to pay the estimated Capital Costs of the Initial Improvements.

Section 2. Amendment to Clause (i) of Section 2.2.E. Clause (i) of Section 2.2.E of the Contract is hereby amended to read in its entirety as follows:

- (i) Availability of sufficient proceeds of the Bonds and WCID Lake Remediation Bonds to fund Capital Costs;

Section 3. Amendments to Section 3.8. Section 3.8 of the Contract is hereby amended to read in its entirety as follows:

Section 3.8. **Sale of Bonds by WCID.**

A. **General Statement.** The WCID reserves the right to sell WCID bonds in the future as long as it is in compliance with the bond covenants for the Bonds and applicable law.

B. **WCID Lake Remediation Bonds.**

- (i) *Voted WCID Lake Remediation Bonds.* Without limiting the generality of subsection (A) above, voters of the WCID approved at a bond election held within the WCID on May 6, 2023, authorization for the WCID to issue up to \$18,000,000 in principal amount of ad valorem tax bonds for the purpose of financing ". . . the purchase, construction, acquisition, development, design, improvement, management, repair, replacement, operation, and maintenance, inside and outside the District's boundaries, of the water storage and preservation facility known as Lake McQueeney and the Lake McQueeney dam and any and all related works, structures, equipment, facilities, appliances, improvements, interests in land, and contract rights necessary or convenient therefor and administrative facilities needed in connection therewith in order to store and preserve the waters within Lake McQueeney," the payment for which shall be secured with the annual levy and collection by the WCID of a sufficient tax upon all taxable property with the WCID (the "WCID Lake Remediation Bonds").

For purposes of clarity, all WCID Lake Remediation Bonds issued by the WCID are not, and shall not be, considered to be "Bonds" as defined in this Contract. All provisions set forth in this Contract relating to Bonds issued by GBRA to finance the Initial Dam Facilities Improvements shall not be applicable with respect to the issuance by the WCID of its WCID Lake Remediation Bonds to provide additional funding for the Initial Dam Facilities Improvements or for any other authorized purpose, except as otherwise set forth in this Section 3.8 and elsewhere in this Contract.

- (ii) *Approval of Capital Cost Budget.* GBRA will provide to the WCID for approval a Capital Cost Budget for the Initial Dam Facilities Improvements. The Capital Cost Budget shall include the Construction Contract Cost, contingencies for change orders and rain/flood events,

engineering design and inspections costs, and issuance costs for the Bonds and the WCID Lake Remediation Bonds. The Capital Cost Budget can be amended by agreement of the Parties.

- (iii) *Sale of WCID Lake Remediation Bonds to TWDB.* Subsequent to WCID approval of the Capital Cost Budget, the WCID agrees to use good faith efforts to promptly sell its WCID Lake Remediation Bonds to the Texas Water Development Board in the principal amount mutually determined by the Parties to be sufficient (subject to the \$18,000,000 voted limitation described in paragraph (i) above) to provide GBRA with the additional funding over the Maximum Principal Amount of \$40,000,000 that is required by GBRA to pay costs to plan, design, acquire, construct, repair, and equip the Initial Dam Facilities Improvements. Prior to issuance of such WCID Lake Remediation Bonds adequate to provide the additional funding needed for all Capital Costs in the approved Capital Cost Budget, the WCID shall provide GBRA with an executed copy of the resolution of the Board of Directors of the WCID which authorized the issuance thereof, the executed IRS Form 8038-G related thereto, and any other documents related thereto reasonably requested by GBRA.

- (iv) *WCID Lake Remediation Bonds Issued on Tax-Exempt Basis.* In order to achieve the lowest possible borrowing costs for the WCID, the Parties intend that WCID Lake Remediation Bonds issued to provide additional funding to GBRA for the Initial Dam Facilities Improvements will be issued by the WCID in a manner in which the interest thereon is excludable from the gross income of the owners thereof for federal income tax purposes. The Parties hereto acknowledge their understanding that the federal income tax laws impose certain restrictions on the use and investment of proceeds of such tax-exempt bonds and on the use of the property financed therewith and the output produced therefrom. Accordingly, the Parties agree and covenant that if such WCID Lake Remediation Bonds are offered to investors with the understanding that the interest will be exempt from federal income taxation, then the Parties, and their assigns and agents, will take such action to assure, and refrain from such action which will adversely affect, the treatment of such WCID Lake Remediation Bonds as obligations described in section 103 of the Code. Should either Party fail to comply with such covenant, the effect of which being that such WCID Lake Remediation Bonds no longer qualify as obligations described in section 103 of the Code, such defaulting Party shall be liable for all costs resulting from the loss of the tax-exempt status of such WCID Lake Remediation Bonds. The Parties hereby agree and covenant to comply with all of the representations and covenants relating to such exemptions which are set out in any resolution authorizing the issuance of such WCID Lake Remediation Bonds. The Parties further agree and covenant that in the event such WCID Lake Remediation Bonds issued are intended to be tax-exempt, they will modify such agreements, make such filings, restrict the yield on investments, and take such other action necessary to fulfill the applicable provisions of the Code. For these purposes, the Parties may rely on the respective opinion of any firm of nationally recognized bond attorneys selected by them. In the event that a conflict arises in the opinions of the respective firms of each of the Parties,

the Parties will identify a different firm that is mutually acceptable to both Parties, in order to resolve the conflict of opinion.

- (v) WCID Lake Remediation Bond Proceeds Fund. In addition to the funds GBRA is obligated to establish pursuant to Section 8.1 of the Contract, as needed, GBRA shall establish a separate fund generally known as the *Lake McQueeney WCID Lake Remediation Bond Proceeds Fund* (the "*WCID Bond Proceeds Fund*") into which GBRA shall deposit all proceeds of any WCID Lake Remediation Bonds transferred to GBRA by or at the direction of the WCID. Within 15 days after being requested in writing to do so by GBRA, the WCID shall, from time to time, transfer to GBRA, for deposit in the WCID Bond Proceeds Fund, proceeds of WCID Lake Remediation Bonds in the amount determined by GBRA to be reasonably sufficient to meet GBRA's obligations to fund the Initial Dam Facilities Improvements. Funds on deposit in the WCID Bond Proceeds Fund shall be disbursed by GBRA to pay for costs related to plan, design, acquire, construct, repair, and equip the Initial Dam Facilities Improvements without further direction from, or approval of, the WCID, subject to any change orders resulting from a change in scope to the Initial Dam Facilities Improvements which shall require WCID approval. GBRA shall first use all available proceeds of the Bonds to pay such costs before using any funds on deposit in the WCID Bond Proceeds Fund for such purpose. All funds remaining on deposit in the WCID Bond Proceeds Fund upon completion of the Initial Dam Facilities Improvements shall be returned to the WCID.

The WCID Bond Proceeds Fund shall be accounted for separately and apart from all other funds of GBRA. Any cash balance in the WCID Bond Proceeds Fund shall be continuously secured in the manner required by the applicable laws of the State of Texas as such laws now exist or may exist during the term of this Contract. Monies deposited into the WCID Bond Proceeds Fund may be invested or reinvested by GBRA in Authorized Investments as directed by a WCID Representative, all investments therein shall belong to the WCID Bond Proceeds Fund, and the interest accruing on, and any profits realized from investing monies in the WCID Bond Proceeds Fund, shall be credited to such Fund. GBRA shall provide to the WCID, no less frequently than quarterly, financial reports detailing the deposits, disbursements, and investments in the WCID Bond Proceeds Fund. The WCID shall be fully responsible for reporting investment earnings of funds on deposit in the WCID Bond Proceeds Fund, and to pay arbitrage rebate on such earnings, if any, in connection with its obligations under the Code relating to the issuance of tax-exempt obligations, if applicable. In the event the WCID determines that it is required to pay an arbitrage rebate payment to the federal government due to the earnings on the investment of funds on deposit in WCID Bonds Proceeds Fund, GBRA shall promptly transfer to the WCID from the WCID Proceeds Fund the amount requested in writing by the WCID for the purpose of making such payment to the extent sufficient funds are available within such Fund.

Section 4. Amendments to Subparagraph (i) of Section 6.2.A. Subparagraph (i) of Section 6.2.A of the Contract is hereby amended to read in its entirety as follows:

- (i) Each annual budget of the WCID (the "*WCID Budget*") shall provide for amounts sufficient to pay (i) the Debt Service Requirement, Operation and Maintenance Requirement, and Budgeted CRR Requirement components of the Annual Requirement, and (ii) the debt service coming due on its WCID Lake Remediation Bonds during the period covered by such Annual Budget. The WCID hereby acknowledges its obligation to pay the three components of the Annual Requirement and the debt service on its WCID Lake Remediation Bonds from available funds budgeted therefor.

Section 5. Amendments to Section 6.5. Section 6.5 of the Contract is hereby amended to read in its entirety as follows:

Section. 6.5. **Covenant to Maintain Sufficient Income.** The WCID recognizes its duty to, and covenants and agrees that at all times it will, levy taxes such that the gross revenues therefrom, together with funds received from any other lawful source, will be sufficient at all times to pay the WCID's obligations to GBRA under this Contract and its obligations to pay debt service on its WCID Lake Remediation Bonds.

Section 6. No Other Amendments Intended. Other than as specifically set forth herein, no other amendments to the Contract are intended, and the Contract remains in full force and effect except as amended herein.

Section 7. Counterpart Execution. This First Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement. Delivery of a signature to this First Amendment by facsimile transmission or electronic mail in "portable document format" shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, each Party hereto has signed this First Amendment or caused this First Amendment to be signed in its corporate name by its officer thereunto duly authorized, all as of the date first above written.

[Signature pages follow]

LAKE MCQUEENEY WATER CONTROL
AND IMPROVEMENT DISTRICT NO. 1

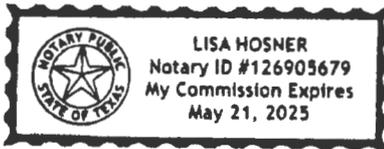
By: [Signature]
Name: Robert L. Worth, Jr.
Title: President

[Signature]
Secretary/Treasurer

ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on this 7 day of June, 2023, by Robert L. Worth, Jr. President of the Board of Directors of the Lake McQueeney Water Control and Improvement District No. 1, a Texas conservation and reclamation district, on behalf of said district.



[Signature]
Notary Public, State of Texas

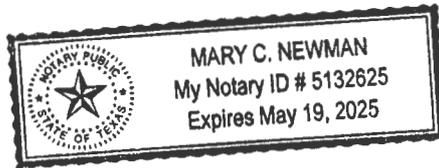
**GUADALUPE-BLANCO
RIVER AUTHORITY**

By: *Darrell Nichols*
Name: Darrell Nichols
Title: General Manager/CEO

ACKNOWLEDGEMENT

**STATE OF TEXAS §
COUNTY OF GUADALUPE §**

This instrument was acknowledged before me on this 7 day of June, 2023, by Darrell Nichols, General Manager/CEO of the Guadalupe-Blanco River Authority, a political subdivision of the State of Texas, on behalf of said political subdivision.



Mary C. Newman
Notary Public, State of Texas