

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT (the "Agreement" or "Settlement Agreement") is made and executed to be effective as of the date signed before a notary public by the last signatory hereto. (the "Effective Date") by and between Plaintiffs and Defendant (each hereinafter defined). Plaintiffs and Defendant are each a "Party" and collectively, the "Parties."

RECITALS:

I.

PARTIES

1.01 Plaintiffs, Kevin Skonnord, Keith C. Strimple, Clark P. Weldon, Raymond Thomas, Grant McFarland, Robert L. Worth, Jr., Peter Badger, Robert Sims, John Ewald, and Jim C. Daniell (collectively, "Plaintiffs"), are and at all relevant times have been citizens and residents of the State of Texas and owners of the real and personal property located on the waterfront of either Lake McQueeney or Lake Placid, which such lakes are each part of the Guadalupe River basin and within the jurisdiction of the GBRA (collectively "Plaintiffs' Property").

1.02 Plaintiffs, Kevin Skonnord, Keith C. Strimple, Clark P. Weldon, Raymond Thomas, and Grant McFarland, own real and personal property located on the waterfront property on Lake Placid (collectively, the "Placid Plaintiffs"). Plaintiffs, Robert L. Worth, Jr., Peter Badger, Robert Sims, John Ewald, and Jim C. Daniell, own real and personal property located on the waterfront of Lake McQueeney (collectively, the "McQueeney Plaintiffs").

1.03 Defendant, Guadalupe-Blanco River Authority ("GBRA" or "Defendant"), is a conservation and reclamation district, governmental agency, and political subdivision of the State of Texas created by special act of the Texas Legislature in 1933 as the Guadalupe River Authority under Article XVI, Section 59, of the Texas Constitution and reauthorized by special act of the Texas Legislature as the Guadalupe-Blanco River Authority and codified in Article 8280-106 V.T.C.S.

II.

BACKGROUND

2.01 On August 15, 2019, GBRA sent notice to 1,454 lakeside residents advising that it intended to engage in a systematic drawdown of Lake Placid, Lake McQueeney, (collectively, the "Hydro Lakes"), and certain other lakes within its jurisdiction commencing on September 16, 2019, in the interest of public safety due to the risks associated with aging spill gates and the fact that two spill gates had already failed.

2.02 On September 5, 2019, Plaintiffs filed suit against GBRA in Cause No. 19-2053-CV, styled *Kevin Skonnord, Keith C. Strimple, Clark P. Weldon, Raymond Thomas, Grant McFarland, Robert L. Worth, Jr., Peter Badger, Robert Sims, John Ewald, and Jim C. Daniell v.*

Guadalupe-Blanco River Authority in the 438th Judicial District Court, Bexar County, Texas (the “Lawsuit”).

2.03 In the Lawsuit, Plaintiffs (A) allege causes of action for (i) inverse condemnation and unconstitutional taking of Plaintiffs’ real and personal property in violation of Article I, Section 17 of the Texas Constitution, (ii) statutory taking under Section 2007 of the Texas Government Code, (iii) request for declaratory judgment that GBRA’s failure to perform a takings impact assessment invalidates government action to drawdown the Hydro Lakes, and (B) filed an application for a temporary and permanent injunction to temporarily and permanently enjoin GBRA from drawing down lake water levels. Plaintiffs further alleged that Plaintiffs’ claims are not barred by the doctrine of sovereign immunity and seek the recovery of economic and pecuniary damages along with attorney’s fees.

2.04 According to Plaintiffs, this lawsuit was funded by lake organizations, Citizens United for Lake Placid (“CULP”) and Friends of Lake McQueeney (“FOLM”) which is an IRC 501(c)(3) entity, in accordance with their respective Charters and for the purposes of preserving Lake Placid and Lake McQueeney for public benefit, which FOLM, CULP and the Plaintiffs cite as promoting the following:

1. The importance of protecting the environment.
2. The importance of protecting downstream properties.
3. The importance of promoting hydroelectricity, a clean source of energy, which decreases reliance on fossil fuels.
4. The importance of protecting property values and the other economic, social and recreational benefits that the Hydro Lakes provide to the community.

2.05 On or about September 10, 2019, GBRA filed Defendant’s Answer generally denying Plaintiffs’ claims and Defendant’s Plea to the Jurisdiction alleging that the Plaintiffs lack standing to bring a takings claim. Plaintiffs have disputed and contested GBRA’s Plea to the Jurisdiction.

2.06 On or about September 16, 2019, the Plaintiffs and GBRA executed an Agreed Temporary Injunction, which was entered by the Court and provided, in part:

“...It is further Ordered, Adjudged, and Decreed that, during the pendency of a full trial on the merits of this case:

a. Defendants and their officers, agents servants employees attorneys and all persons in active concert or participation with them are hereby enjoined from dewatering, drawing down, or draining Lake Placid Lake McQueeney ..., except as otherwise permitted by this Order and that the water levels of the lakes shall remain the same as they were on September 11, 2019;

.....

b. Notwithstanding anything here in to the contrary, the GBRA is not prohibited herein from lowering the spill gates on the Guadalupe Valley Lakes as part of its reasonable ordinary course of operations (including without limitation, allowing water to pass downstream in response to, or in anticipation of increased flow in the river, for debris removal, for necessary maintenance on generators, or for other reasonable and necessary periodic operations),

.....

j. As soon as reasonably practicable, but in no event later than thirty (30) days from the date of this Order, (the "Initial Determination Period"), the Independent Expert Panel shall provide to the Court and all of the parties to this suit, which such report shall include the Independent Expert Panel's determination of designated "unsafe zones," if any, not suitable for activity or recreation on the Guadalupe Valley Lakes . . . ;

k. If and when "unsafe zones" are identified by the Independent Expert Panel, the parties to this suit shall use those safety measures prescribed by Independent Expert Panel regarding appropriate warnings and this Order shall be deemed amended to provide that access, activity and recreation, including but not limited to, boating, skiing, fishing from watercraft, swimming, kayaking, tubing, canoeing or wading, shall be prohibited in such designated "unsafe zones" on the Guadalupe Valley Lakes;

.....

o. Notwithstanding anything herein to the contrary, the GBRA is not prohibited from lowering this spill gates in the event of a flood event, permanent spill gate failure, or other bona fide emergency..."

2.07 The Parties to this Agreement wish to establish a path forward that, if successful, would allow them to resolve all differences and disputes of any nature between or among them and regardless of when occurring or accruing.

2.08 In order to facilitate the desired resolution, lakefront property owners on Lake Placid have taken the steps to create a Water Control and Improvement District (the "Placid WCID") that will be formed no later than July 14, 2020. Similarly, lakefront property owners on Lake McQueeney have also taken steps to form a Water Control and Improvement District (the "McQueeney WCID"). As part of a collective effort to provide a source and mechanism for the joint funding of the necessary future replacement, repairs, operation and maintenance of the Hydro Lakes' dams and spill gates, representatives of GBRA have met with board members of both WCIDs to outline major terms for a Term Sheet dated July __, 2020 ("Placid WCID Term Sheet"), between GBRA and Placid WCID and a Term Sheet dated July __, 2020 Between GBRA and McQueeney WCID ("McQueeney WCID Term Sheet"). GBRA representatives have also met with Plaintiffs and representative members of CULP, and

representative members of FOLM as part of a collective effort in negotiating this Agreement. The Plaintiffs are not receiving any compensation or personal pecuniary or financial benefit and the landowners and lakeside residents within each WCID and the surrounding communities are receiving all benefits provided herein.

2.09 Nothing in this Agreement is intended to interfere with or requires GBRA to seek Plaintiff's permission or approval to implement measures GBRA, in its sole discretion, determines are required to respond to any notice of violation, notice of enforcement or order issued by any federal, state or local regulatory authority or the courts.

NOW, THEREFORE, in consideration of the premises herein set out, including, without limitation, the mutual agreements, understandings, stipulations, representations, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agreed to and confessed by each of the Parties hereto, the Parties hereby make the following representations and agreements:

III. **AGREEMENTS**

3.01 Each Party Denies Wrongdoing and Liability. Plaintiffs and Defendant hereby acknowledge that bona fide disputes and controversies exist between them, both as to liability and the amount thereof, if any, and, by reason of such disputes and controversies, Plaintiffs and Defendant desire to compromise and settle all claims and causes of action of whatever kind and nature, known or unknown, which in any way whatsoever arise from, grow out of, relate to, or result from, in whole or in part, the Lawsuit. This is a compromise of disputed claims, and nothing contained herein shall be construed as an admission or waiver of liability by or on behalf of any Party or a waiver or admission of any affirmative defense by or on behalf of any Party, all such liability and waivers being expressly denied. Plaintiffs and Defendant enter into this Agreement for the sole purpose of avoiding the time, expense and uncertainty, which would accompany further litigation. By executing this Agreement, Plaintiffs and GBRA do not concede any legal or factual contentions of any other Party or make any admissions, but rather, each Party denies any contrary contention made by any other Party and denies any liability to any other Party and enters into this Agreement solely in an effort to settle their differences, avoid the inherent risks of litigation, minimize costs, expenses, ongoing attorneys' fees, assure the repair, replacement, operation, and maintenance of the Hydro Lakes' dams and spill gates so that, to the extent practicable, the normal operating water levels for Lake McQueeney and for Lake Placid as described in Section 3.05 hereof are maintained during the life of the replacement spill gates. Notwithstanding the settlement, all Parties reserve all claims, defenses and immunities whether pled or not in the underlying lawsuit.

3.02 Memoranda of Understanding between GBRA and Placid WCID and GBRA and McQueeney WCID. In consideration for Plaintiffs' execution of this Agreement and release of Defendant, Defendant hereby covenants and agrees to also enter into and execute this Agreement within five (5) business days after the Board of Directors of the Placid and McQueeney WCIDs approve the two Term Sheets incorporating the terms in Exhibit A (the

"Placid WCID Term Sheet") and Exhibit B (the "McQueeney WCID Term Sheet"), incorporated herein as if fully set out at length.

a. GBRA and the Placid Plaintiffs acknowledge and accept all terms and provisions contained in the Placid WCID Term Sheet. GBRA acknowledges and agrees that (i) the Placid Plaintiffs are relying upon GBRA's performance and compliance with all of GBRA's obligations under the Placid WCID Term Sheet; (ii) GBRA's agreement to enter into and timely perform all of its obligations under the Placid WCID Term Sheet in strict accordance therewith is a material inducement for the Placid Plaintiffs to enter into this Agreement and release their claims against GBRA; and (iii) but for GBRA's agreement to enter into and perform all its obligations under the Placid WCID Term Sheet in strict accordance therewith, the Placid Plaintiffs would not enter into this Agreement or release any of their claims against GBRA in the Lawsuit. The Placid Plaintiffs acknowledge and agree that (i) GBRA is relying upon the Placid WCID's performance and compliance with all of its obligations under the Placid WCID Term Sheet; (ii) the Placid WCID's agreement to enter into and perform all of its obligations under the Placid WCID Term Sheet in strict accordance therewith is a material inducement for Placid Plaintiffs to enter into this Agreement and release its claims against GBRA; and (iii) but for the Placid WCID's agreement to enter into and perform all its obligations under the Placid WCID Term Sheet in strict accordance therewith, GBRA would not enter into this Agreement with the Placid Plaintiffs or release any of their claims against the Placid Plaintiffs.

b. GBRA and the McQueeney Plaintiffs acknowledge and accept all terms and provisions contained in the McQueeney WCID Term Sheet. GBRA acknowledges and agrees that (i) the McQueeney Plaintiffs are relying upon GBRA's performance and compliance with all of GBRA's obligations under the McQueeney WCID Term Sheet; (ii) GBRA's agreement to enter into and perform all of its obligations under the McQueeney WCID Term Sheet in strict accordance therewith is a material inducement for the McQueeney Plaintiffs to enter into this Agreement and release its claims against GBRA; and (iii) but for GBRA's agreement to enter into and perform all its obligations under the McQueeney WCID Term Sheet in strict accordance therewith, the McQueeney Plaintiffs would not enter into this Agreement or release any of their claims against GBRA in the Lawsuit. The McQueeney Plaintiffs acknowledge and agree that (i) GBRA is relying upon the McQueeney WCID's performance and compliance with all of its obligations under the McQueeney WCID Term Sheet; (ii) the McQueeney WCID's agreement to enter into and perform all of its obligations under the McQueeney WCID Term Sheet in strict accordance therewith is a material inducement for McQueeney Plaintiffs to enter into this Agreement and release its claims against GBRA; and (iii) but for the McQueeney WCID's agreement to enter into and perform all its obligations under the McQueeney WCID Term Sheet in strict accordance therewith, GBRA would not enter into this Agreement with the McQueeney Plaintiffs or release any of their claims against the McQueeney Plaintiffs.

c. The Parties understand and agree that if GBRA and the Placid WCID freely enter into a Financing and Operating Agreement that is approved by the

governing bodies of both GBRA and the WCID, and such agreement as a whole is on terms that are substantially similar to Exhibit A, GBRA's obligations under Section 3.02(a) shall be deemed fulfilled. The Parties further understand and agree that if Placid Dam is operated and lake levels maintained in accordance with the said Financing and Operating Agreement, GBRA's obligations relating to normal operating levels under this Settlement shall also be deemed fulfilled.

d. The Parties understand and agree that if GBRA and the McQueeney WCID freely enter into a Financing and Operating Agreement that is approved by the governing bodies of both GBRA and the WCID, and such agreement as a whole is on terms that are substantially similar to Exhibit B, GBRA's obligations under Section 3.02(b) shall be deemed fulfilled. The Parties further understand and agree that if McQueeney Dam is operated and lake levels maintained in accordance with the said Financing and Operating Agreement, GBRA's obligations relating to normal operating levels under this Settlement shall also be deemed fulfilled.

e. GBRA and the two WCIDs are currently negotiating the terms and provisions of the two (2) Financing & Operating Agreements between GBRA and the Placid WCID and the McQueeney WCID. The Parties agree that these agreements will be in substantially final form, subject to approval by the respective entities' governing bodies in time for the WCID's to order their elections for November, 2020.

3.03 Payment of Engineering Design Costs. On or before July 17, 2020, GBRA shall hire a qualified engineer to begin design of the replacement for and installation of the Hydro Lakes' spill gates and hardening of the Hydro Lakes' dams as part of the "30% Design & Construction Documents". The engineering design costs incurred by GBRA for each Lake shall be included in the financing amount to be borrowed by each WCID. GBRA's payment of engineering design costs prior to each WCID's receipt of funding shall be fully reimbursed to GBRA within 45 days of the receipt of such funding by each respective WCID. If either the Texas Water Development Board ("TWDB") bonds or market rate financing is not obtained by a WCID or the initial election held by a WCID is unsuccessful, whichever occurs first, GBRA may immediately discontinue all work on and payments toward the design of the replacement for and installation of the that respective Lake's spill gates and hardening of the dams. If all of a WCID's elections as provided for under Section 3.04 fail, any payment(s) made under this provision by GBRA shall not be reimbursed or refunded to GBRA by the WCID whose elections failed. In the event that the elections and financing are successful, after a WCID provides full reimbursement to GBRA for sums expended to pay amounts due under this provision, the remaining amounts due the engineering firm for the engineering design costs associated with the Hydro Lakes' dams and spill gates shall be paid by GBRA when due as their work is completed. In addition, GBRA shall pay One Hundred Percent (100%) of the debt service related to the Engineering Costs reimbursed to GBRA out of the WCID Financing.

3.04 Agreement Regarding Gates and Water Levels. Except as otherwise authorized herein, Plaintiffs and GBRA agree that:

a. Prior to the time period to hold WCID elections provided in Paragraph 3.04.f. II.

below or prior to the commencement of repair construction on the Hydro Lakes' dams and spill gates, GBRA shall not intentionally dewater, draw down, or drain Lake Placid or Lake McQueeney and the water levels of the Hydro Lakes shall generally be maintained in normal operating water levels as defined in Paragraph 3.05(a),(b), and Paragraph 3.01.

- b. GBRA shall not initiate steps to decommission Placid Dam unless:
 - (I) Voters fail to confirm the creation of Placid WCID in an election described in Section 3.04.f.II within the time provided therein;
 - (II) Voters fail to approve taxes to fund bond issues for Placid Dam design and construction expenses in an election described in Section 3.04.f.II within the time provided therein; or
 - (III) Below-market financing or Market rate financing for Placid Dam design and construction expenses is not obtained by Placid WCID within the time provided in Section 3.04.f. III.
- c. GBRA shall not initiate steps to decommission McQueeney Dam unless:
 - (I) Voters fail to confirm the creation of McQueeney WCID in an election described in Section 3.04.f. II within the time provided therein;
 - (II) Voters fail to approve taxes to fund bond issues for McQueeney Dam design and construction expenses in an election described in Section 3.04.f.II within the time provided therein; or
 - (III) Below-market financing or Market rate financing for McQueeney Dam design and construction expenses is not obtained by McQueeney WCID within the time provided in Section 3.04.f.III.
- d. Notwithstanding anything herein to the contrary, the GBRA may lower the spill gates on Lake Placid or Lake McQueeney and draw down water levels on either Lake as part of its reasonable ordinary course of operations including without limitation, allowing water to pass downstream in response to, or in anticipation of increased flow in the Guadalupe River, for debris removal, for necessary maintenance on generators, for electricity generation, for other reasonable and necessary periodic operations to conduct evaluations related to spill gate replacement or dam hardening. GBRA also may lower the spill gates of the two Hydro Lakes' Dams in the event of a spill gate failure or bona fide emergency;
- e. In the event the spill gates are opened and the lake water levels are lowered in accordance with paragraph 3.04(d) above, GBRA will use its reasonable efforts to return the Hydro Lakes' water level to normal operating water levels as defined in Paragraph 3.05, below.

- f. The operational limitations in paragraphs 3.04 a), b), c), d) terminate upon the occurrence of any of the following events:
- I. In the event TWDB does not fund below market rate financing for a WCID, or if other market rate financing is not obtained by a WCID (at the WCIDs' sole option), on or before one (1) year after obtaining voter approval of financing.
 - II. In the event voter approval of a WCID is not obtained through duly held elections through December 31, 2021. Provided however, this date may be extended if the May or November elections are cancelled or postponed as described in paragraph 3.14 below.
 - III. To the extent one WCID does not obtain TWDB issued bonds or other market rate financing, or in the event one WCID does not obtain voter approval through duly held elections through December 31, 2021 as permitted by Paragraph 3.04.f. II, above, the contractual provisions stated above shall continue to apply to GBRA's obligation to the other WCID.
 - IV. If the events described in paragraph 3.04.f. I. or 3.04.f. II. do not occur for either WCID, nothing in this Agreement prevents Plaintiffs or others, including the two WCIDs, from seeking another temporary injunction against GBRA from dewatering, drawing down or draining Lake Placid or Lake McQueeney, and nothing prevents GBRA from pursuing decommissioning of the Hydro Lake dams or asserting its defenses, including governmental immunity.
 - V. If the events described in paragraph 3.04.f. I. or 3.04.f. II. do not occur for either WCID, or in the event that GBRA initiates steps to dewater or decommission a dam, each WCID shall have the right to purchase the Placid Dam/Spill Gates or the McQueeney Dam/Spill Gates for \$1 plus out of pocket engineering costs, provided that the any sale will be "as is" with no warranties, express or implied and under terms that the WCID shall accept full responsibility for the dams. This provision shall be incorporated into the Financing & Operating Agreements between GBRA and the Placid WCID and the McQueeney WCID.
 - VI. In the event that the above described financing and elections are successful and GBRA thereafter elects to sell either or both the Placid Dam/Spill Gates or the McQueeney Dams/Spill Gates, the respective WCIDs of each Lake shall have the right of first refusal to purchase the respective dams on terms that the same or similar to the offer(s) received by GBRA from a bone fide purchaser, and provided that the

any sale will be "as is" with no warranties, express or implied and under terms that the WCID shall accept full responsibility for the dams. In the event GBRA sells a Dam/Spill Gate to an entity other than the respective WCID, the Financing and Operating Agreement shall run with the Dam/Spill Gate and will be binding on subsequent purchaser. This provision shall be incorporated into the Financing & Operating Agreements between GBRA and the Placid WCID and the McQueeney WCID.

- g. Notwithstanding the foregoing, the Parties understand and agree that levels on Lake Placid and Lake McQueeney will be lowered as necessary for construction on the dams as may be contemplated under the Financing and Operating Agreements between GBRA and the two WCIDs.

3.05 Normal Operating Levels.

- a. For Lake Placid, the normal operating level shall be approximately 497.5 feet above mean sea level at Placid Dam.

- b. For Lake McQueeney, the normal operating level shall be approximately 528.7 feet above mean sea level at McQueeney Dam; provided however, that until repairs are completed as contemplated under this Settlement Agreement and the Financing and Operating Agreement between GBRA and the McQueeney WCID, the Parties Agree and understand that Lake McQueeney shall remain at approximately the level it was at McQueeney Dam on September 11, 2019, which was approximately 12 inches lower or 527.7 feet above mean sea level at the dam.

3.06 The Parties shall execute and file the Non-Suit Without Prejudice in the form attached hereto as Exhibit C within 5 business days of the Effective Date.

3.07 Plaintiffs shall not be in any way responsible or liable, directly or indirectly, for any flood related or personal injuries, wrongful death, property damage or economic harm allegedly sustained by third parties as a result of dam and spill gate ownership, operations, dam failures or otherwise.

3.08 The terms and conditions set forth in this Agreement constitute a written, binding contract, including, without limitation, the provisions contained in the Placid WCID Term Sheet and McQueeney WCID Term Sheet attached as Exhibits A and B, respectively, and Financing & Operating Agreements attached as Exhibit A1 and B1, respectively, and may be enforced in this Lawsuit or in a separate lawsuit by any of the Parties hereto. However, in the event of any disputes arising from the enforcement and/or interpretation of any of the terms and provisions of this Agreement (including, without limitation, the prospective Placid WCID Term Sheet or McQueeney WCID Term Sheet), the Parties shall first mediate their disputes with a qualified mediator mutually acceptable to the Parties.

3.09 Releases by Plaintiffs ("Plaintiffs' Released Claims"). Plaintiffs, in all capacities, for themselves and for their spouses, heirs, beneficiaries, assigns, attorneys, representatives, executors, agents, and descendants hereby release, acquit, and forever discharge (i) Guadalupe-Blanco River Authority and its respective predecessors, successors, agents, representatives, employees, officers, directors, affiliates, parents, attorneys, and assigns (collectively, the "GBRA Released Parties"), from and against any and all claims, demands, damages, actions, causes of action, suits, contracts, agreements, duties, obligations, accountings, and liabilities of any form or nature whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity, whether based on fiduciary duty or any other duty imposed by law or contract which they, or any of them, ever had, now have, or might hereafter have whether such claims now exist or may hereafter arise, exist, or accrue that involve in any way or relate directly or indirectly to claims brought or raised against, or that could be or have been raised or brought against any of the GBRA Released Parties by the Plaintiffs, it being the intention of the Plaintiffs to grant the releasees herein named the broadest, most comprehensive release permitted by law; *provided however*, this Release does not release any GBRA Released Parties from any obligations under this Agreement, the Placid WCID Term Sheet, the McQueeney WCID Term Sheet, the Placid WCID Financing & Operating Agreement, the McQueeney WCID Financing & Operating Agreement, or any other contractual, statutory and regulatory obligations.

3.10 Release by Defendant. GBRA, in all capacities and its respective predecessors, successors, agents, affiliates, parents, attorneys, and assigns hereby release, acquit, and discharge Plaintiffs ("Plaintiff Released Parties"), jointly and severally, in all capacities, and their respective spouses, heirs, assigns, attorneys, representatives, executors, agents and descendants, from and against any and all claims, damages, causes of action, and liabilities of any form, known or unknown, which they ever had, now have, or might hereafter have, it being the intention of GBRA to grant the releasees herein named the broadest, most comprehensive release permitted by law.

3.11 Attorneys' Fees and Costs. All Parties shall bear their own attorney's fees, expenses and court costs incurred by such Party in connection with the Lawsuit and the negotiation of this Agreement. Notwithstanding anything herein to the contrary, if any Party hereto institutes a suit against the other Party for violation of or to enforce any covenant or condition of this Agreement, or if either Party intervenes in any suit in which the other is a Party to enforce or protect its interest or rights, the prevailing Party shall be entitled to recover from the non-prevailing Party all of its costs and expenses incurred in the enforcement of this Agreement, including, without limitation, reasonable attorneys' fees in an amount to be determined by the court. The "prevailing party" shall mean the Party obtaining substantially the relief sought (whether affirmatively or by means of a successful defense) as determined by the court.

3.12 Further Assurances. Each Party hereto, upon receipt of written notice from the any other Party, shall sign or cause to be signed, all further documents, do, or cause to be done, all further acts and provide all assurances as may be reasonable to give effect to the terms of this Agreement.

3.13 CHOICE OF LAW. THIS INSTRUMENT SHALL BE GOVERNED, INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS OF ANY JURISDICTION AND THE PARTIES SPECIFICALLY WAIVE THE APPLICATION OF THE LAW OF ANY STATE OTHER THAN TEXAS.

3.14 Force Majeure. The obligations of either party to perform under this Agreement will be excused during each period of delay caused by acts of God, war or terrorism, Covid-19 or similar pandemic, or by shortages of power or materials or government orders which are beyond the reasonable control of the party obligated to perform, or a court order which prevents the party from being able to perform ("Force Majeure Event"). In the event that either Party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such Party shall: (a) promptly notify the other Party in writing of such Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible.

3.15 Venue. The Parties signatory hereto (in all capacities) stipulate and agree that the District Court of Guadalupe County, Texas, shall be the mandatory, proper and exclusive venue for any lawsuit or claims of any nature between the parties arising out of, relating to or in any way involving this Agreement.

3.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and each of their respective agents, executors, personal representatives, attorneys, heirs, descendants, employees, successors, and assigns.

3.17 Entire Agreement. This Agreement (including the Exhibits attached hereto) constitutes the entire agreement and understanding between the Parties with respect to the subject matter herein, and supersedes and replaces all prior and contemporaneous agreements, understandings, representations and statements, whether written or oral, express or implied, which are merged herein.

3.18 Amendment. This Agreement may not be amended or modified, and no waiver of any provision of this Agreement shall be valid, unless in writing and signed by all parties to this Agreement.

3.19 Severability. Excepting for the provisions of Section 3.02, above, in the event that one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal, void or unenforceable, the Parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

3.20 Survival. All obligations of the Parties contained herein shall survive the execution of this Agreement.

3.21 Construction. All Parties acknowledge and agree that all Parties have participated in the drafting of this Agreement and no one Party shall be considered the drafter of this Agreement and, therefore, no presumptions shall be made for or against any other Party on the basis that any one Party was the drafter of this Agreement.

3.22 Multiple Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all Parties hereto as if all parties signed the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

KEVIN SKONNORD

Signed: 

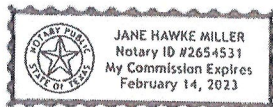
Date: 07/23/2020


STATE OF TEXAS

COUNTY OF BEXAR

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This instrument was acknowledged before me on this 23rd day of July, 2020,
by KEVIN SKONNORD in all capacities herein.




Notary Public, State of Texas

KEITH C. STRIMPLE

Signed:

Date:

Keith C. Strimple
July 24, 2020

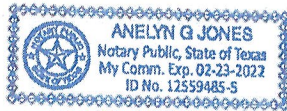
STATE OF TEXAS

GUADALUPE

COUNTY OF ~~BEXAR~~

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This instrument was acknowledged before me on this 24th day of July, 2020,
by **KEITH C. STRIMPLE** in all capacities herein



Anelyn G. Jones
Notary Public, State of Texas

CLARK P. WELDON

Signed:

Date:

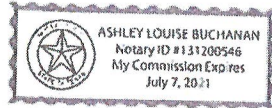
Clark P. Weldon
7/23/2020

STATE OF TEXAS

COUNTY OF ~~BEXAR~~ ^{AB}
Guadalupe

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This instrument was acknowledged before me on this 23rd day of July, 2020,
by CLARK P. WELDON in all capacities herein.



Ashley Louise Buchanan
Notary Public, State of Texas

RAYMOND THOMAS

Signed:

Date:

[Signature]
7/24/2020

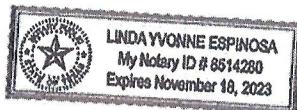
STATE OF TEXAS

COUNTY OF ~~DEKALB~~

HIDALGO

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This instrument was acknowledged before me on this 24th day of July, 2020,
by RAYMOND THOMAS in all capacities herein.



Linda Y. Espinosa
Notary Public, State of Texas

GRANT MCFARLAND

Signed:
Date:

7-27-2020

STATE OF TEXAS
COUNTY OF BEXAR

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This instrument was acknowledged before me on this 24th day of July, 2020,
by GRANT MCFARLAND in all capacities herein.


Mirna Hernandez Quick
Notary Public, State of Texas



ROBERT L. WORTH, JR.

Signed:

Date:


July 16, 2020

STATE OF TEXAS

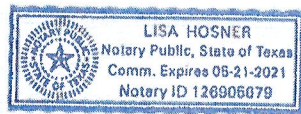
§

COUNTY OF BEXAR

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This instrument was acknowledged before me on this 16 day of July, 2020,
by ROBERT L. WORTH, JR. in all capacities herein.




Notary Public, State of Texas

PETER BADGER

Signed:

Date:

Pd WB
7/23/20

STATE OF TEXAS

§

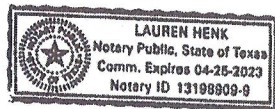
COUNTY OF ~~Brewer~~

§

Guadalupe

§

This instrument was acknowledged before me on this 23rd day of July, 2020,
by PETER BADGER in all capacities herein.



Lauren Henk
Notary Public, State of Texas

ROBERT SIMS

Signed:

Date:

Robert Sims
7-23-2020

STATE OF TEXAS

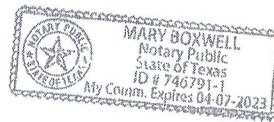
COUNTY OF BEXAR

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This instrument was acknowledged before me on this 23rd day of July, 2020,
by **ROBERT SIMS** in all capacities herein.



Mary Boxwell
Notary Public, State of Texas



JOHN EWALD

Signed: _____

Date: 7-23-2020

STATE OF TEXAS

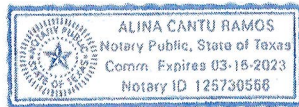
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COUNTY OF BEXAR

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This instrument was acknowledged before me on this 23 day of July, 2020,
by JOHN EWALD in all capacities herein.



Alina Cantu Ramos
Notary Public, State of Texas

JIM C. DANIELL

Signed:
Date:

Jim Daniell
7/23/2020

STATE OF TEXAS

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COUNTY OF BEXAR

This instrument was acknowledged before me on this 23 day of July, 2020,
by JIM C. DANIELL in all capacities herein.

Richard L. Schmitt
Notary Public, State of Texas



GUADALUPE-BLANCO RIVER AUTHORITY

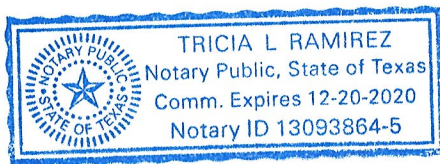
Signed:
By/Title:
Date:

[Signature]
General Manager / CEO

Approved Legal
[Signature]

STATE OF Texas §
COUNTY OF Guadalupe §
§

This instrument was acknowledged before me on this 29th day of July, 2020,
by Kevin Patteson, General Manager / of GUADALUPE-BLANCO
RIVER AUTHORITY in all capacities. CEO



Tricia L. Ramirez
Notary Public, State of Texas

FINAL
Term Sheet Between GBRA & Lake Placid WCID
Lake Placid Dam
July 15, 2020

Spill Gate Replacement

- GBRA to initiate the engineering design for a hydraulic crest spill gates, dewatering system and dam hardening with Board approval/authorization in July 2020.
- GBRA shall be responsible for all costs for preparation of engineering plans and specifications
- GBRA will immediately discontinue all engineering design activities if TWDB bonds or market rate financing is not obtained by WCID or the initial election held by the WCID is unsuccessful
- GBRA to complete and submit both the initial (June 15th deadline) and final applications for funding of the financing of proposed construction (with best efforts) utilizing the TWDB loan program
- GBRA to pledge contract revenues from Lake Placid WCID (WCID) for repayment of the debt with WCID contractually obligated for all debt service with tax revenues of the WCID
- GBRA will use best efforts to obtain grant funds from TCEQ, GLO, and TWDB to pay for the dam hardening costs

Dam and Spill Gates (together “spill gates”)

- GBRA will own and operate the spill gates
- Prior to the replacement of the spill gates on Lake McQueeney Dam, GBRA will operate the spill gates consistent with the terms of the settlement agreement in *Skonnord v. Guadalupe-Blanco River Authority*, Cause No. 19-2053 CV in the 25th District Court of Guadalupe County (the “Settlement Agreement”). After replacement of the spill gates on Lake McQueeney Dam, GBRA will operate the spill gates as part of its reasonable ordinary course of operations.
- In the event the spill gates are lowered for a flood event, GBRA will use its best efforts to return the spill gates to the normal operating level.
- WCID is responsible for GBRA’s operation and maintenance expenses for operating the spill gates which includes the same administrative and general (A & G) rate as part of labor that GBRA applies to all of its customers. WCID anticipate these costs to be paid with WCID tax revenue
- WCID is responsible for repairs and replacements that will be required
- A true-up will be completed each year for the actual costs

Electric Generation and Transmission Facilities (together “hydroelectric facilities”)

- GBRA will own and operate the hydroelectric facilities
- GBRA will provide all Placid Hydro revenues to the WCID

- WCID is responsible for GBRA's operation and maintenance expenses for operating the hydroelectric facilities which includes the same administrative and general (A & G) rate as part of labor that GBRA applies to all of its customers
- WCID is responsible for the cost of all repairs and replacements that will be required
- WCID can decide at any time when to permanently discontinue hydroelectric generation
- A true-up will be completed each year for the actual costs

Electric Generation Revenues

- The Lake Placid Hydro revenues are presumed herein to be based on terms of an agreement with Guadalupe Valley Electric Cooperative (GVEC), that is yet to be negotiated, but are similar to terms in effect prior to failure of the spill gate at Dunlap
- GBRA to provide all gross revenues from Placid Hydro revenues to the WCID within thirty (30) days of receipt.
- WCID will establish uses and restrictions for those funds with the following priority:
(Estimated Average Annual Revenue: \$520,000)
 1. Dedication of \$370,000 annually for debt service
 2. Dedication of \$100,000 annually to be deposited into a reserve fund (with a max cap) for capital repairs and replacement
 3. Dedication of remaining revenue to be deposited into a reserve fund (with a max cap) for debt service in low electric generation years and repayment of GBRA loan
- If hydro revenues are less than \$350,000 in any year, then for as long as the bonds are outstanding, GBRA will use other funds to supplement the hydro revenues to the WCID to achieve a total of \$350,000 if the WCID does not have sufficient revenues in Fund 3 to achieve the \$350,000.
- Any supplement by GBRA will be repaid by the WCID out of funds subsequently accumulated in Fund 3 plus interest. The interest rate will be the interest rate on the Bonds but not less than 1%.
- Establishing these funds and restricted uses could help reduce large tax rate changes by the WCID and would provide GBRA assurances that GBRA would be reimbursed for funds used for unplanned and unbudgeted capital repairs and replacement.
- A possible scenario for the WCID's use of gross revenues from electricity sales:
 1. First \$370,000 annually for debt service
 2. From \$370,001 to \$470,000 annually deposited into a fund for capital repairs and/replacements with a potential maximum accumulated total of \$750,000.
 3. In excess of \$470,000 annually deposited into a fund for debt service in low electric generation years to achieve \$370,000 in debt service and repayment of the GBRA loan in number 3 above, up to a maximum accumulated total of \$500,000.

Possible Contract Items

General

- GVEC has indicated a new agreement will only be with GBRA for the sale of electricity. GBRA will include provisions in the financing and operating agreement with the WCID for the WCID to receive all revenues from Placid electricity sales and for the WCID to be included in any future discussions or modifications of that agreement with GVEC (including but not limited to participating in all rate negotiations and renewals.)
- WCID and GBRA shall meet at least annually to develop projected budget related to infrastructure condition and needs, planned repairs, and planned improvements. GBRA will prepare a projected five-year capital budget
- Termination Clause(s) prior to Bond issuance
 - Lack of approved TWDB funding, unless WCID agrees to use market rate financing
 - Lack of voter approval of WCID. If requested by the WCID, additional elections would be allowed (through December 31, 2021, subject to extensions for the force majeure events consistent with the Settlement Agreement) before termination
 - Inability of WCID to generate necessary debt-service payments based on TWDB funding terms (too high interest rate, etc.)
 - Inability of contract revenue pledge to pass bond tests/AG approval

Audit

After the end of each Fiscal Year (August 31st for GBRA and May 31st for WCID), each Party will have an audit by a certified public accountant, not in the regular employ of such Party, for its last Fiscal Year, which shall be submitted to the other Party within one hundred and twenty (120) days after the end of the Fiscal Year. With respect to GBRA, the audit shall include debt service payments on the bonds and operation and maintenance expenses, and hydro revenues collected by GBRA during its Fiscal Year.

Following the audit, GBRA will provide a detailed schedule of operating and maintenance expenses related to the Placid spill gates and hydroelectric facilities.

Accounts, Records and Accounting Records

The Parties covenant and agree that they shall each maintain books of records and accounts in which full, true and proper entries will be made of all dealings, transactions, business, and any other matters which in any way affect or pertain to the Project and the Funds, including earnings from investments. Such books and accounts will be available for inspection by the other Party at reasonable hours and under reasonable circumstances.

Annual Expenditure Requirement

The Parties acknowledge and agree that payments by the WCID to GBRA under this Contract will be the sole source of funds available to GBRA to use for the annual expenditure requirement. The WCID will be obligated to pay the full amount of the annual expenditure

requirement to GBRA. The annual expenditure requirement shall be identified in each annual budget of GBRA and shall at all times be not less than an amount sufficient to pay or provide for the payment of the following during the applicable annual fiscal year:

- the debt service requirement; and
- the reserve requirement (if any as required by the Bonds); and
- the capital repair and replacement requirement; and
- the operation and maintenance requirement.

Annual Budgets

WCID Budget

Each annual budget of the WCID shall provide for amounts sufficient to pay the annual expenditure requirement. The WCID hereby acknowledges its obligation to pay the annual expenditure requirement from available funds budgeted therefor.

GBRA Budget

Not later than sixty (60) days before the commencement of each fiscal year beginning after completion and acceptance of the spill gates, GBRA shall prepare and furnish to the WCID an annual preliminary budget which shall contain the following information:

- the total debt service requirement on the bonds for the fiscal year after allowance for fund balances resulting from any capitalized interest;
- the total reserve fund requirement (if any) as required by the bonds;
- any amounts required for repayment to GBRA for GBRA funds used for capital repair and replacement plus accrued interest that were not included in the annual adjustment for the prior fiscal year;
- the total projected operation and maintenance expenses projected for the upcoming fiscal year; (including a detail of expense categories)
- the projected capital repair and replacement costs;
- summary of all amounts due from the WCID for the upcoming fiscal year and the dates on which such amounts are due and payable; and
- the projected amount of hydro revenues from the sale of electricity generated at Placid.

Quarterly Updates

During the term of the agreement, GBRA agrees to provide updates to the WCID related to the then current fiscal year operations costs, actual expenditures for capital repairs and replacement, and actual electricity generated so that the WCID may make adjustments it deems necessary to its own budget. GBRA agrees to provide updates on a quarterly basis.

Annual Adjustments

Within 60 days following the end of each fiscal year, GBRA shall compile the total annual expenditures incurred during the fiscal year just completed and the total WCID payments of budgeted annual expenditures during the Fiscal Year just completed. If the total annual expenditures incurred by GBRA exceed the total payments made by the WCID, GBRA shall bill

the WCID the difference within 30 days of such annual adjustment compilation and the WCID shall remit payment of such bill within 30 days of bill receipt. If the total annual expenditures incurred by GBRA during the fiscal year just completed are less than the total payments made by the WCID during the fiscal year just completed, GBRA shall reimburse the WCID the difference within 30 days of such annual adjustment compilation.

GBRA Board Approval

If the WCID disputes any information in the GBRA preliminary budget, it shall submit written comments, questions or requests for clarification to GBRA not less than thirty (30) days before the commencement of the Annual Payment Period. The Board may adopt the preliminary budget or may make such amendments it deems proper; provided, however, no change or amendment to the preliminary budget will be made without resubmitting such amended preliminary budget to the WCID not less than 10 days prior to the date of the Board meeting scheduled for approval of the annual budget.

Billing

GBRA shall promptly render monthly bills to the WCID for debt service requirements and for 1/12 all other budgeted annual expenditures. GBRA will work with lender to establish GBRA payment dates with recommendations from the WCID.

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 the contract.

Unconditional Obligation to Pay

For GBRA to secure financing, the WCID shall be unconditionally obligated to pay the annual expenditure requirement without set-off, counterclaim, abatement, suspension or diminution, and this Contract shall not terminate while the bonds are outstanding.

Authorized Uses

Certain payments by the WCID shall be deposited by GBRA into the following funds, and may only be used by GBRA as follows:

- the debt service requirement component of the annual WCID payment shall be deposited into the Debt Service Fund to pay the debt service requirement on outstanding Bonds when due;
- the capital repair and replacement requirement of the annual WCID payment (excluding any portion thereof collected and used to reimburse GBRA for any previously unreimbursed GBRA funds used for capital repairs and replacement plus interest) shall be deposited by GBRA into a dedicated fund to pay capital repair and replacement costs only; and

- the reserve requirement component (if any) of the annual WCID payment shall be deposited into the appropriate fund established and maintained pursuant to the bond resolutions.

Participation by WCID in Spill Gates

In recognition of the WCID's role and funding of the Project, GBRA shall provide for the following minimum WCID participation in the design and construction of the spill gates:

- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, meetings relating to the review and evaluation of proposals and bids received from contractors for the dam facilities, including scoring meetings, contractor interviews, and other meetings regarding the selection of spill gates contractors.
- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, periodic design review meetings with the spill gates design engineers;
- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, scheduled meetings with spill gates contractors during dam facilities construction;
- GBRA shall schedule and conduct dam facilities review meetings with WCID's representatives on a regular basis but not less than monthly until the construction is complete and the spill gates are in operation. Such meetings shall include review of actual costs compared to budget, design and construction status, design modifications/change order review, key project issues, permitting status, and safety; and
- The WCID shall have reasonable access to copies of all spill gates design documents, construction documents, all correspondence with design engineers and contractors whether complete or in draft process.

Ownership of Spill Gates and Hydroelectric Facilities

GBRA shall be the owner of the spill gates and hydroelectric facilities constructed and acquired by GBRA, including all related appurtenances, sites, rights-of-way, easements and all enlargements, extensions improvements. Notwithstanding the foregoing, to the extent that it is determined that the WCID must have an ownership interest or contract rights in the spill gates and hydroelectric facilities in order to lawfully fund any payments for which it is responsible hereunder, GBRA agrees to convey to the WCID such undivided ownership interest or contract rights in the facilities constructed. Any such conveyance shall not alter GBRA's right and authority to operate and maintain the spill gates in its sole and absolute discretion. (WCID will be able to provide direction to GBRA for spill gate level changes not caused by flood events.) Under such circumstances, GBRA shall cause the WCID to be named as an additional insured on all insurance and risk pool coverages that pertain to the dam facilities. WCID shall have a Right of First Refusal and an option to purchase the dam consistent with the terms of the Settlement Agreement.

Conditions to WCID Obligations

The obligations described herein shall be conditional upon the following:

- Successful negotiation of a financing and operating agreement between GBRA and GVEC

- Successful negotiation of an agreement substantially consistent with the terms described herein between GBRA and WCID
- Voter approval of necessary elections within the WCID
- Completion of design and bidding dam repairs.

FINAL
Term Sheet Between GBRA & Lake McQueeney WCID
Lake McQueeney Dam
July 15, 2020

Spill Gate Replacement

- GBRA to initiate the engineering design for a hydraulic crest spill gates, dewatering system and dam hardening with Board approval/authorization in July 2020.
- On or before July 17, 2020, GBRA shall hire a qualified engineer to begin design of the replacement for and installation of the Hydro Lakes' spill gates and hardening of the Hydro Lakes' dams as part of the "30% Design & Construction Documents"
- GBRA shall be responsible for all costs for preparation of engineering plans and specifications
- GBRA will immediately discontinue all engineering design activities if TWDB bonds or market rate financing is not obtained by WCID or the initial election held by the WCID is unsuccessful
- GBRA to complete and submit both the initial (June 15th deadline) and final applications for funding of the financing of proposed construction (with best efforts) utilizing the TWDB loan program
- GBRA to pledge contract revenues from Lake McQueeney WCID (WCID) for repayment of the debt with WCID contractually obligated for all debt service with tax revenues of the WCID
- GBRA will use best efforts to obtain grant funds from TCEQ, GLO, and TWDB to pay for the dam hardening costs

Dam and Spill Gates (together "spill gates")

- GBRA will own and operate the spill gates
- Prior to the replacement of the spill gates on Lake McQueeney Dam, GBRA will operate the spill gates consistent with the terms of the settlement agreement in *Skonnord v. Guadalupe-Blanco River Authority*, Cause No. 19-2053 CV in the 25th District Court of Guadalupe County (the "Settlement Agreement").
- After replacement of the spill gates on Lake McQueeney Dam, GBRA will operate the spill gates as part of its reasonable ordinary course of operations.
- In the event the spill gates are lowered for a flood event, GBRA will use its best efforts to return the spill gates to the normal operating level.
- WCID is responsible for GBRA's operation and maintenance expenses for operating the spill gates which includes the same administrative and general (A & G) rate as part of labor that GBRA applies to all of its customers. WCID anticipate these costs to be paid with WCID tax revenue
- WCID is responsible for repairs and replacements that will be required
- A true-up will be completed each year for the actual costs

Electric Generation and Transmission Facilities (together "hydroelectric facilities")

- GBRA will own and operate the hydroelectric facilities
- GBRA will provide all McQueeney Hydro revenues to the WCID
- WCID is responsible for GBRA's operation and maintenance expenses for operating the hydroelectric facilities which includes the same administrative and general (A & G) rate as part of labor that GBRA applies to all of its customers
- WCID is responsible for the cost of all repairs and replacements that will be required
- WCID can decide at any time when to permanently discontinue hydroelectric generation
- A true-up will be completed each year for the actual costs

Electric Generation Revenues

- The Lake McQueeney Hydro revenues are presumed herein to be based on terms of an agreement with Guadalupe Valley Electric Coop (GVEC), that is yet to be negotiated, but are similar to terms in effect prior to failure of the spill gate at Dunlap
- GBRA to provide all gross revenues from McQueeney Hydro revenues to the WCID within ten (10) days of receipt.
- WCID will establish uses and restrictions for those funds with the following priority:
(Estimated Average Annual Revenue: \$585,000)
 1. Dedication of \$430,000 annually for debt service
 2. Dedication of \$100,000 annually to be deposited into a reserve fund (with a max cap) for capital repairs and replacement
 3. Dedication of remaining revenue to be deposited into a reserve fund (with a max cap) for debt service in low electric generation years and repayment of GBRA loan
- If hydro revenues are less than \$400,000 in any year, then for as long as the bonds are outstanding, GBRA will use other funds to supplement the hydro revenues to the WCID to achieve a total of \$400,000 if the WCID does not have sufficient revenues in Fund 3 to achieve the \$400,000.
- Any supplement by GBRA will be repaid by the WCID out of funds subsequently accumulated in Fund 3 plus interest. The interest rate will be the interest rate on the Bonds but not less than 1%.
- Establishing these funds and restricted uses could help reduce large tax rate changes by the WCID and would provide GBRA assurances that GBRA would be reimbursed for funds used for unplanned and unbudgeted capital repairs and replacement.
- A possible scenario for the WCID's use of gross revenues from electricity sales:
 1. First \$430,000 annually for debt service
 2. From \$430,001 to \$530,000 annually deposited into a fund for capital repairs and/replacements with a potential maximum accumulated total of \$750,000.
 3. In excess of \$530,000 annually deposited into a fund for debt service in low electric generation years to achieve \$430,000 in debt service and repayment of the GBRA loan in number 3 above, up to a maximum accumulated total of \$500,000.

Possible Contract Items

General

- GVEC has indicated a new agreement will only be with GBRA for the sale of electricity. GBRA will include provisions in the financing and operating agreement with the WCID for the WCID to receive all revenues from McQueeney electricity sales and for the WCID to be included in any future discussions or modifications of that agreement with GVEC (including but not limited to participating in all rate negotiations and renewals.)
- WCID and GBRA shall meet at least annually to develop projected budget related to infrastructure condition and needs, planned repairs, and planned improvements. GBRA will prepare a projected five-year capital budget
- Termination Clause(s) prior to Bond issuance
 - Lack of approved TWDB funding, unless WCID agrees to use market rate financing
 - Lack of voter approval of WCID. If requested by the WCID, additional elections would be allowed (through December 31, 2021, subject to extensions for force majeure events consistent with the Settlement Agreement) before termination
 - Inability of WCID to generate necessary debt-service payments based on TWDB funding terms (too high interest rate, etc.)
 - Inability of contract revenue pledge to pass bond tests/AG approval

Audit

After the end of each Fiscal Year (August 31st for GBRA and May 31st for WCID), each Party will have an audit by a certified public accountant, not in the regular employ of such Party, for its last Fiscal Year, which shall be submitted to the other Party within one hundred and twenty (120) days after the end of the Fiscal Year. With respect to GBRA, the audit shall include debt service payments on the bonds and operation and maintenance expenses, and hydro revenues collected by GBRA during its Fiscal Year.

Following the audit, GBRA will provide a detailed schedule of operating and maintenance expenses related to the McQueeney spill gates and hydroelectric facilities.

Accounts, Records and Accounting Records

The Parties covenant and agree that they shall each maintain books of records and accounts in which full, true and proper entries will be made of all dealings, transactions, business, and any other matters which in any way affect or pertain to the Project and the Funds, including earnings from investments. Such books and accounts will be available for inspection by the other Party at reasonable hours and under reasonable circumstances.

Annual Expenditure Requirement

The Parties acknowledge and agree that payments by the WCID to GBRA under this Contract will be the sole source of funds available to GBRA to use for the annual expenditure

requirement. The WCID will be obligated to pay the full amount of the annual expenditure requirement to GBRA. The annual expenditure requirement shall be identified in each annual budget of GBRA and shall at all times be not less than an amount sufficient to pay or provide for the payment of the following during the applicable annual fiscal year:

- the debt service requirement; and
- the reserve requirement (if any as required by the Bonds); and
- the capital repair and replacement requirement; and
- the operation and maintenance requirement.

Annual Budgets

WCID Budget

Each annual budget of the WCID shall provide for amounts sufficient to pay the annual expenditure requirement. The WCID hereby acknowledges its obligation to pay the annual expenditure requirement from available funds budgeted therefor.

GBRA Budget

Not later than sixty (60) days before the commencement of each fiscal year beginning after completion and acceptance of the spill gates, GBRA shall prepare and furnish to the WCID an annual preliminary budget which shall contain the following information:

- the total debt service requirement on the bonds for the fiscal year after allowance for fund balances resulting from any capitalized interest;
- the total reserve fund requirement (if any) as required by the bonds;
- any amounts required for repayment to GBRA for GBRA funds used for capital repair and replacement plus accrued interest that were not included in the annual adjustment for the prior fiscal year;
- the total projected operation and maintenance expenses projected for the upcoming fiscal year; (including a detail of expense categories)
- the projected capital repair and replacement costs;
- summary of all amounts due from the WCID for the upcoming fiscal year and the dates on which such amounts are due and payable; and
- the projected amount of hydro revenues from the sale of electricity generated at McQueeney.

Quarterly Updates

During the term of the agreement, GBRA agrees to provide updates to the WCID related to the then current fiscal year operations costs, actual expenditures for capital repairs and replacement, and actual electricity generated so that the WCID may make adjustments it deems necessary to its own budget. GBRA agrees to provide updates on a quarterly basis.

Annual Adjustments

Within 60 days following the end of each fiscal year, GBRA shall compile the total annual expenditures incurred during the fiscal year just completed and the total WCID payments of

budgeted annual expenditures during the Fiscal Year just completed. If the total annual expenditures incurred by GBRA exceed the total payments made by the WCID, GBRA shall bill the WCID the difference within 30 days of such annual adjustment compilation and the WCID shall remit payment of such bill within 30 days of bill receipt. If the total annual expenditures incurred by GBRA during the fiscal year just completed are less than the total payments made by the WCID during the fiscal year just completed, GBRA shall reimburse the WCID the difference within 30 days of such annual adjustment compilation.

GBRA Board Approval

If the WCID disputes any information in the GBRA preliminary budget, it shall submit written comments, questions or requests for clarification to GBRA not less than thirty (30) days before the commencement of the Annual Payment Period. The Board may adopt the preliminary budget or may make such amendments it deems proper; provided, however, no change or amendment to the preliminary budget will be made without resubmitting such amended preliminary budget to the WCID not less than 10 days prior to the date of the Board meeting scheduled for approval of the annual budget.

Billing

GBRA shall promptly render monthly bills to the WCID for debt service requirements and for 1/12 all other budgeted annual expenditures. GBRA will work with lender to establish GBRA payment dates with recommendations from the WCID.

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 the contract.

Unconditional Obligation to Pay

For GBRA to secure financing, the WCID shall be unconditionally obligated to pay the annual expenditure requirement without set-off, counterclaim, abatement, suspension or diminution, and this Contract shall not terminate while the bonds are outstanding.

Authorized Uses

Certain payments by the WCID shall be deposited by GBRA into the following funds, and may only be used by GBRA as follows:

- the debt service requirement component of the annual WCID payment shall be deposited into the Debt Service Fund to pay the debt service requirement on outstanding Bonds when due;
- the capital repair and replacement requirement of the annual WCID payment (excluding any portion thereof collected and used to reimburse GBRA for any previously unreimbursed GBRA funds used for capital repairs and replacement plus interest) shall be deposited by GBRA into a dedicated fund to pay capital repair and replacement costs only; and

- the reserve requirement component (if any) of the annual WCID payment shall be deposited into the appropriate fund established and maintained pursuant to the bond resolutions.

Participation by WCID in Spill Gates

In recognition of the WCID's role and funding of the Project, GBRA shall provide for the following minimum WCID participation in the design and construction of the spill gates:

- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, meetings relating to the review and evaluation of proposals and bids received from contractors for the dam facilities, including scoring meetings, contractor interviews, and other meetings regarding the selection of spill gates contractors.
- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, periodic design review meetings with the spill gates design engineers;
- GBRA shall provide reasonable prior notice of, and allow the WCID's representatives to participate in, scheduled meetings with spill gates contractors during dam facilities construction;
- GBRA shall schedule and conduct dam facilities review meetings with WCID's representatives on a regular basis but not less than monthly until the construction is complete and the spill gates are in operation. Such meetings shall include review of actual costs compared to budget, design and construction status, design modifications/change order review, key project issues, permitting status, and safety; and
- The WCID shall have reasonable access to copies of all spill gates design documents, construction documents, all correspondence with design engineers and contractors whether complete or in draft process.

Ownership of Spill Gates and Hydroelectric Facilities

GBRA shall be the owner of the spill gates and hydroelectric facilities constructed and acquired by GBRA, including all related appurtenances, sites, rights-of-way, easements and all enlargements, extensions improvements. Notwithstanding the foregoing, to the extent that it is determined that the WCID must have an ownership interest or contract rights in the spill gates and hydroelectric facilities in order to lawfully fund any payments for which it is responsible hereunder, GBRA agrees to convey to the WCID such undivided ownership interest or contract rights in the facilities constructed. Any such conveyance shall not alter GBRA's right and authority to operate and maintain the spill gates in its sole and absolute discretion. (WCID will be able to provide direction to GBRA for spill gate level changes not caused by flood events.) Under such circumstances, GBRA shall cause the WCID to be named as an additional insured on all insurance and risk pool coverages that pertain to the dam facilities. WCID shall have a Right of First Refusal and an option to purchase the dam consistent with the terms of the Settlement Agreement.

Conditions to WCID Obligations

The obligations described herein shall be conditional upon the following:

- Successful negotiation of an agreement between GBRA and GVEC
- Successful negotiation of a financing and operating agreement substantially consistent with the terms described herein between GBRA and WCID
- Voter approval of necessary elections within the WCID
- Completion of design and bidding dam repairs

CAUSE NO. 19-2053-CV

KEVIN SKONNORD, KEITH C.
STRIMPLE, CLARK P. WELDON,
RAYMOND THOMAS, GRANT
MCFARLAND, ROBERT L. WORTH, JR.,
PETER BADGER, ROBERT SIMS,
JOHN EWALD and JIM C. DANIELL

Plaintiffs

V.

GUADALUPE-BLANCO RIVER
AUTHORITY

Defendant

IN THE DISTRICT COURT

25TH JUDICIAL DISTRICT

GUADALUPE COUNTY, TEXAS

PLAINTIFFS' NOTICE OF NON-SUIT WITHOUT PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs, Plaintiffs, Kevin Skonnord, Keith C. Strimple, Clark P. Weldon, Raymond Thomas, Grant McFarland, Robert L. Worth, Jr., Peter Badger, Robert Sims, John Ewald, and Jim C. Daniell ("Plaintiffs"), and hereby make and file this Notice of Non-Suit Without Prejudice pursuant to Rule 162 of the Texas Rules of Civil Procedure and request the Court to nonsuit all of Plaintiffs' claims and causes of action against Defendant in this cause without prejudice.

The clerk of the Court is requested to enter this notice into the minutes of the Court.

Respectfully submitted,

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By: /s/ Les J. Strieber

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was served upon all known counsel of record on the ____ day of July 2020 in accordance with the Texas Rules of Civil Procedure.

/s/ Les J. Strieber
Les J. Strieber