

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