

TANK/GROUND LEASE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF HAYS §

WHEREAS, City of Kyle (“City”) is the owner of an elevated storage tank ("Tank") located at 1100 Roland Lane, Kyle Texas, in the City of Kyle, Texas on the real estate described and shown by location in EXHIBIT "A" ("Property") (consisting of 1 page), which is attached hereto, incorporated herein, and made a part hereof for all purposes, such Tank and Property collectively hereinafter referred to at times as the "Leased Premises"; and

WHEREAS, Guadalupe – Blanco River Authority ("GBRA") desires to lease space on the Tank and Property for the purpose of installing and maintaining a communications point for the IH 35 corridor treated water distribution system; and

WHEREAS, City of Kyle has agreed to lease space to GBRA and GBRA has agreed to lease said space and the parties desire to reduce their agreement to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS this lease agreement authorized by the CITY and GBRA and agree as follows:

1. **Grant of Lease.** CITY does hereby lease to GBRA, and GBRA leases from the CITY sufficient space on, in and around the Tank to attach the necessary equipment for the purpose of installing and maintaining a communications point for the IH 35 corridor treated water distribution system. The lease agreement covers any required wiring and cables from the antennas down the Tank to the base of the Tank and such space in the Tank as may be required by GBRA to properly and efficiently conduct the communications point for the IH 35 corridor treated water distribution system. GBRA agrees to provide notice to the City of any replacement of any equipment on the Tank. GBRA further agrees to exercise industry-standard safe climbing practices in the installation and maintenance of the equipment. GBRA, while on the Property (except as needed to install or remove equipment), or upon leaving the Property, will leave the

Property in as good condition as when GBRA first entered onto the Property under this lease agreement.

The CITY shall provide access as may be required to GBRA, for the purposes of servicing GBRA's equipment. GBRA shall not permit the Leased Premises to be used for any purpose not approved in this Agreement, without written consent of the CITY. If any of the equipment become fixtures, they shall nevertheless be and remain the property of GBRA and GBRA shall have the right to remove all or part of them upon the termination or expiration of this lease agreement.

2. **Term.** The term of this lease agreement shall be for ten (10) years commencing on the date this Agreement is approved by the City; provided that the lease agreement shall automatically be extended for additional one (1) year periods under the same terms and conditions, unless either party notifies the other party of termination or proposed amendment in writing six (6) months before the expiration of this agreement.

3. **Reciprocal Services.** In reciprocation for Grant of Lease for the Leased Premises, GBRA at its own expense, shall install and maintain a security camera at the site which will feed images on a 24-hour basis into GBRA's Seguin Control room. A minimum of 7 days of video archive shall be kept and made available upon request.

4. **Governmental Authorizations.** GBRA is responsible for obtaining and maintaining current any and all permits and other governmental authorizations required for the construction, attachment, modification and operation of their equipment.

5. **Physical Interference; Required City Maintenance.** GBRA shall not use the Leased Premises in any way which interferes with the use of the Leased Premises by the CITY for CITY'S primary purpose of storage and transport of water ("Water Operations"). GBRA shall not use, nor shall it permit its lessees, licensees, employees, invitees or agents to use, any portion of the Leased Premises in any way that interferes with the Water Operations of the CITY. Such interference shall be deemed a material breach by GBRA, which shall, upon written notice from the CITY, be responsible for terminating such interference. In the event any such interference does not cease within five (5) working days, the parties acknowledge that continuing interference may cause irreparable injury

and, therefore, the CITY shall have the right to terminate this lease agreement immediately upon written notice and require GBRA to remove its equipment from, and vacate the Leased Premises within a reasonable period of time not to exceed thirty (30) days.

In the event the CITY needs to make any repairs or modifications to the Leased Premises, the CITY agrees to use its best efforts to assure that there is no interruption to or interference with GBRA's equipment. In the event any repairs or maintenance to be undertaken by or on behalf of the CITY are reasonably likely to cause interruption to or interference with GBRA's equipment, then the following shall apply: (i) the CITY shall provide GBRA with at least thirty (30) days advance written notice thereof, (ii) the CITY shall use its best efforts to afford GBRA the use, on substantially the same terms as provided herein, of satisfactory alternative premises on which to locate its equipment, and (iii) the CITY shall cause such repairs and/or maintenance to be completed as expeditiously as reasonably possible and in a manner that minimizes the interruption to and interference with GBRA's normal operations.

6. **Electronic Interference.** GBRA agrees to install equipment of a type and frequency that will not cause interference to existing equipment that is located on the Leased Premises as of the date of this agreement. In the event GBRA's equipment causes such interference, even if resulting from operations in full compliance with any applicable Federal Communications Commission ("FCC") regulations, and after the CITY has notified GBRA of such interference, GBRA will use its best efforts to correct and eliminate the interference.

7. **Equipment.** GBRA shall have the right, at its expense, to erect and maintain its equipment on the Leased Premises and to replace and upgrade its equipment at any time during the term of this lease agreement. GBRA shall cause all construction it undertakes on the Leased Premises to occur lien-free and in compliance with all applicable laws and ordinances. The equipment shall remain the exclusive property of GBRA and GBRA shall have the right to remove its equipment at any time during and upon termination of this lease agreement. Due to its proximity with sensitive water distribution equipment, GBRA shall

provide the City with forty-eight (48) hours prior notice of access, or in the case of an emergency, by the next business day of access to the Premises.

8. **Termination.** Except as otherwise provided herein, this lease agreement may be terminated, without any penalty or further liability as follows:

(a) Upon thirty (30) days written notice by either party if the other party commits a non-monetary default and fails to cure or commence curing default within that thirty (30) day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30) day period;

(b) Immediately upon written notice by GBRA, if the Tank facilities are destroyed or damaged so that in GBRA's reasonable judgment GBRA's effective use of its equipment is substantially or adversely affected, in such event the rights and obligations of the parties relating to use and payment for the Leased Premises shall cease as of the date of the damage or destruction;

(c) GBRA shall remove all equipment and apparatus from the Leased Premises within thirty (30) days following termination or expiration of this Lease. Any damage caused by the removal of said equipment will be the sole responsibility of GBRA. If any of GBRA's antenna structures, fixtures, personal property or equipment remain on the Premises for more than ninety (90) days after termination of this Agreement, or if GBRA fails to restore the Property to its original condition (reasonable wear and tear excepted) within ninety (90) days after expiration/termination of this Agreement, GBRA shall pay a license fee of double the then existing monthly rate until such time as the removal of GBRA's equipment building, antenna structures, fixtures and all personal property are completed and the Property is restored to its original condition.

9. **Insurance.** GBRA will provide Commercial General Liability Insurance Coverage in an aggregate amount of ONE MILLION AND NO /100 DOLLARS (\$1,000,000.00) and cause the CITY to be listed as an additional insured under the terms of said policy and provide a copy thereof to the CITY. GBRA may satisfy this requirement by

obtaining the appropriate endorsement to any master policy liability insurance GBRA may maintain.

10. **Indemnity.**

(a) TO THE EXTENT ALLOWED BY LAW. GBRA SHALL INDEMNIFY, DEFEND AND HOLD THE CITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL JUDGMENTS, PENALTIES, FINES AND EXPENSES (INCLUDING WITHOUT LIMITATION, INTEREST, PENALTIES, REASONABLE ATTORNEY'S FEES) ARISING FROM FINAL JUDGMENTS AWARDED TO ANY PERSON OR ENTITY FOR PERSONAL OR BODILY INJURIES, DEATH OR DAMAGE TO PROPERTY ARISING FROM OR IN ANY MANNER GROWING OUT OF OR ATTRIBUTABLE TO ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF GBRA, ITS AFFILIATES, OR GBRA'S OR ITS AFFILIATES' EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND/OR AGENTS RELATING (1) TO GBRA'S ACTIVITIES UNDER THIS LEASE AGREEMENT INCLUDING BUT NOT LIMITED TO GBRA'S OPERATIONS OR EQUIPMENT: OR (2) THE FAILURE OF GBRA TO COMPLY WITH ANY APPLICABLE LAW, STATUTE, ORDINANCE, GOVERNMENTAL ADMINISTRATIVE ORDER OR RULE.

(b) Each Party shall give the other Party prompt notice of any claim for which indemnification is or will be sought under this Section and shall cooperate and assist the Indemnitor in the defense of the claim. The provisions of this section shall survive termination or expiration of this agreement.

11. **Assignment.** GBRA shall not have the right to assign or otherwise transfer this lease to any person or business entity without written approval of the CITY.

12. **Severability.** Nothing contained in this agreement shall be construed to require commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any law, such law shall prevail; provided however, that in such event, the affected provisions of this agreement shall be modified to the minimum

extent necessary to permit compliance with such law and all provisions of this agreement shall continue in full force and effect. In the event that any one or more of the provisions contained in this agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and the agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained in it.

13. **Entire Agreement.** This lease agreement constitutes the entire agreement and understanding the parties, and supersedes all offers, negotiations and other agreements, with respect to the subject matter and property covered by this lease agreement.

14. **Texas Law / Defenses and Immunities.** This lease agreement and the performance of this lease agreement shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Texas and Hays County. Nothing herein shall be construed to waive or compromise the defenses or immunities of either party to this lease agreement, their officials, officers, management, employees, or agents.

Guadalupe – Blanco River Authority:

Signature

Date

Kevin Patteson, General Manager / CEO
Guadalupe – Blanco River Authority
933 East Court Street
Sequin, TX 78155

City of Kyle

Signature

Date

Mr. J Scott Sellers, City Manager
City of Kyle
PO Box 40
Kyle, TX 78640