

AMENDMENT NO. 1
TO
FIRST AMENDED AND RESTATED REGIONAL PROJECT AGREEMENT BETWEEN
CITY OF SAN MARCOS AND GUADALUPE-BLANCO RIVER AUTHORITY

This Amendment No. 1 is entered into by and between the City of San Marcos, Texas, (the “City”) and the Guadalupe-Blanco River Authority (“GBRA”) and modifies, supplements and amends that certain First Amended and Restated Regional Project Agreement dated to be effective as of September 30, 2019 (the “Regional Project Agreement”) between the City and GBRA.

RECITAL:

In consideration of the mutual benefits to be received by the City and GBRA as a result of the continuation of the Regional Project Agreement, and other related agreements, the City and GBRA agree to amend the Regional Project Agreement as set forth below.

AMENDMENTS:

1. Section 1, Definitions, is hereby amended to read as follows:

Section 1. *Definitions.*

The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

- (1) “Annual Payment Period” means the period beginning on October 1 of each calendar year and ending on the last day of September of the next calendar year.
- (2) “Canyon Lake Water” means the water to be delivered to the City by GBRA pursuant to the City’s Raw Water Contract.
- (2A) “Carrizo Ground Water Project Facilities” or “Carrizo Facilities” means all equipment, assets and other infrastructure agreed to by the Parties which is located on the Plant Site to receive, store, and pump treated Carrizo Ground Water to or for the Parties. The Carrizo Facilities, while constructed on the Plant Site alongside the surface water treatment plant facilities, shall not be considered a component of the Raw Water Delivery System or the Plant.
- (2B) “Carrizo Facilities Operation and Maintenance Expenses” means all costs and expenses of operation and maintenance of the Carrizo Facilities, including without limitation, repairs and replacements, non-debt financed capital expenditures, the cost of utilities, supplies, services, and equipment necessary for proper operation and maintenance of the Carrizo Facilities. The Carrizo Facilities

Operation and Maintenance Expenses shall not be considered a component of the Operation and Maintenance Expenses for the Raw Water Delivery System or the Plant.

- (2C) “Carrizo Ground Water” or “Ground Water” means treated ground water from the Carrizo Aquifer that is delivered to, stored in or pumped through the Carrizo Ground Water Project Facilities.
- (3) “City’s Raw Water Contract” means that certain contract dated October 10, 1989 by and between GBRA and the City, as amended, providing the City with a commitment of stored water from Canyon Reservoir of up to 10,000 acre-feet per year. A copy of such contract, and amendments thereto, is attached as Exhibit 1.
- (4) “City Customer” means any individual or entity that contracts with the City for treated water service from the Project whether on a wholesale or retail basis.
- (5) “GBRA Customer” means any individual or entity that contracts with GBRA for treated water service from the Project whether on a wholesale or retail basis.
- (6) “GBRA Raw Water” means raw water delivered to the Plant for treatment and delivery to GBRA.
- (7) “Management Committee” means the committee established pursuant to Section 14 of the Agreement.
- (8) “MGD” means million gallons per day.
- (9) “Minimum Plant Expansion” means a 3 MGD increment of Plant treatment capacity.
- (10) “Operation and Maintenance Expenses” means all costs and expenses of operation and maintenance of the Raw Water Delivery System or the Plant, as the case may be, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements which are not paid from a special fund created in the Bond Resolutions or other Project Debt Instruments, the charges of the bank or banks where the Bonds are payable, non-debt financed capital expenditures, operating personnel, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, supplies, services, administrative and general expenses of the Raw Water Delivery System or the Plant, and equipment necessary for proper operation and maintenance of the Raw Water Delivery System or the Plant.

(a) Operation and Maintenance Expenses of the Plant more specifically includes:

(i) the Base Fee, as defined under Section 10.3 of the Service Contract for Water Treatment Facilities Operations and Asset Management (the “Plant Operating Agreement”) as adjusted in accordance with the terms of the Plant Operating Agreement, as amended from time to time, paid to the operator of the Plant under said agreement for so long as such Plant Operating Agreement is in effect. The version of Section 10.3 of the Plant Operating Agreement in effect as of the date of this First Amended and Restated Agreement is attached hereto as Attachment “B” for reference, but any amendments to Section 10.3 of the Plant Operating Agreement shall apply to this First Amended and Restated Agreement unless otherwise agreed by the parties;

(ii) the Pass Through Cost Component as defined in Section 10.4 of the Plant Operating Agreement, as amended from time to time. The version of Section 10.4 of the Plant Operating Agreement in effect as of the date of this First Amended and Restated Agreement is attached hereto as Attachment “C” for reference, but any amendments to Section 10.4 of the Plant Operating Agreement shall apply to this First Amended and Restated Agreement unless otherwise agreed by the parties;

(iii) an administrative fee of ten percent (10%) of the Net Plant Operating and Maintenance Costs as defined below; and

(iv) a franchise fee of ~~nine~~ seven percent (97%) of the Net Plant Operating and Maintenance Costs as defined below.

(b) Operation and Maintenance Expenses of the Plant excludes the following expenses (the “Exclusions”):

(i) any costs included as part of the Base Fee or Pass Through Cost Component incurred to own, operate or maintain the City’s ground water system, which City groundwater system shall not include the Carrizo Ground Water Project Facilities;

(ii) electrical costs to operate the City’s high service pumps ~~station~~ for delivering treated water to the City’s

distribution system ~~after the date~~ as such costs are rendered by electrical sub-meters and related equipment are installed at the sole cost and expense of the City or GBRA, as relevant, on all treated water delivery pumps; and

(iii) depreciation.

- (10A) The “Net Plant Operating and Maintenance Costs” means the Operation and Maintenance Expenses of the Plant minus the Exclusions.
- (11) “Plant” means all facilities for treating surface water designed and constructed by the City pursuant to the terms of this Agreement and all facilities for pumping and transporting treated surface or ground water to the Point of Delivery, as such facilities may be expanded from time to time pursuant to this Agreement; and the Plant Site.
- (11A) “GBRA Plant Expansion” means all facilities resulting from an expansion of the Plant designed and constructed by the City at the request of GBRA pursuant to the terms of this Agreement.
- (12) “Plant Annual Requirement” means the total amount of money required for the City to pay all Operation and Maintenance Expenses of the Plant, to pay the debt service on any City-issued Plant Project Debt Instruments or GBRA Plant Expansion Debt Instruments, and to maintain balances in any special or reserve funds required by the provisions of any City issued Plant Project Debt Instruments or GBRA Plant Expansion Debt Instruments.
- (12A) “GBRA Plant Expansion Debt Instruments” means all notes, bonds, or other financial obligations made by the City to construct, complete, improve or repair the Plant at the request of GBRA pursuant to this Agreement.
- (13) “Plant Operator” means the individual or entity hired by the City as provided herein to operate and maintain the Plant and the Carrizo Facilities.
- (14) “Plant Site” means that tract of land described on Exhibit 2 on which all facilities comprising the Plant will be located. The Carrizo Facilities shall also be located on the Plant Site.
- (14A) “Plant Site Facilities” means all facilities located on the Plant Site including the Plant and the Carrizo Facilities.

- (15) “Point of Delivery” means the point on the Plant Site at which the City will deliver to GBRA treated surface and ground water supplied hereunder, as such point is described on Exhibit 2.
- (16) “Point of Diversion” means the point on the Guadalupe River at which GBRA will divert raw water to be supplied hereunder, as such point is described on Exhibit 3.
- (17) “Project Debt Instruments” means all notes, bonds, or other financial obligations made to construct, complete, improve, or repair the Raw Water Delivery System or the Plant. The City or GBRA may be the obligor on these instruments.
- (18) “Project” or the “San Marcos Regional Water Supply Project” means the regional surface water supply project contemplated by this Agreement, which consists of the Raw Water Delivery System and the Plant.
- (19) “Raw Water Delivery System” means all facilities designed and constructed by GBRA for diverting water from Guadalupe River at the Point of Diversion to the Plant pursuant to this Agreement, all other facilities that may be agreed upon by the Parties designed and constructed by GBRA for diverting water from other sources to the Plant or for storage of raw water prior to treatment, together with all lands and interests in land on which such facilities are located.
- (20) “Raw Water Delivery System Annual Requirement” means the total amount of money required for GBRA to pay all Operation and Maintenance Expenses of the Raw Water Delivery System, to pay the debt service on any Raw Water Delivery System Project Debt Instruments, and to maintain balances in any special or reserve funds required by the provisions of any Raw Water Delivery System Project Debt Instruments.
- (21) “Surface Water” means water from the Guadalupe River or other surface water sources supplied to the Plant pursuant to the Water Purchase Contract between GBRA and the City, dated October 10, 1989, as amended.

2. Section 3, Rights after Termination, is hereby amended to read as follows:

Section 3. Rights after Termination.

Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect the

rights or liabilities accrued prior to such termination, including the equity ownership interests acquired by the Parties in the Plant, Carrizo Facilities, and the Raw Water Delivery System, respectively, as provided herein.

3. Section 4, Design, Construction, Operation and Maintenance, and Ownership of the Plant, is hereby amended to read as follows:

Section 4. *Design, Construction, Operation and Maintenance, and Ownership of ~~the~~ Plant Site Facilities.*

(1) *~~Plant~~ Design and Construction of Plant Site Facilities.*

(a) The City shall design, acquire and construct the Plant. The Plant shall be designed and constructed in phases, so that the completed initial phase can be easily expanded from time to time by the Minimum Plant Expansion (3 MGD) or a multiple thereof. The design capacity of the initial phase of the Plant shall be 6 MGD, unless either Party specifies a greater initial capacity as set forth below, or unless the Parties agree otherwise. The amount of any increase in the initial phase capacity of the Plant shall be 1 MGD or a multiple thereof. If either Party desires a greater initial phase capacity, it shall give the other Party notice of the amount of increase before the final Plant design is fifty percent (50%) complete. If either Party desires to increase the initial phase capacity after the final Plant design is fifty percent (50%) complete, the Party requesting the increase in capacity shall be obligated to pay all increases in the cost of design, engineering and construction actually incurred as a result of designing the Plant to include the requested increased capacity in the initial phase. Provided, however, that no change in the final design of the initial phase capacity of the Plant shall be authorized after the final design is fifty percent (50%) complete if such design change could delay the anticipated completion date for the construction of the initial phase of the Plant which is projected for December 31, 1999. After construction of the initial phase, the City shall expand the capacity of the Plant from time to time upon the request of either Party. The amount of any such expansion shall be the Minimum Plant Expansion or a multiple thereof. The cost of any such expansion shall be borne by the Parties in accordance with the percentage of the additional capacity they intend to utilize. In the event only one of the Parties requests the expansion, that Party shall be solely responsible for all costs for design changes, engineering and construction of such expansion in the full multiple increments of the Minimum Plant Expansion.

(b) Subject to the execution of a separate interlocal agreement (the "Carrizo Project Agreement") entered into by the Parties contemporaneously with this Agreement and pursuant to its terms, the City shall design and construct the Carrizo Facilities on the Plant Site. The Carrizo Project Agreement shall include the rights and responsibilities of each Party and at a minimum include provisions related to the relative

capacity desired by each Party, and the respective funding requirements of each Party.

(2) *Plant and Carrizo Facilities Operation and Maintenance*

The City shall be responsible for the operation and maintenance of the Plant and the Carrizo Facilities pursuant to the terms and conditions of this Agreement.

The City shall select a Plant Operator after a competitive procurement process and consideration of any Management Committee recommendations. GBRA and the City may themselves submit proposals for Plant Operator. The City will review the Plant Operator's performance at least once every five years, but may review the Plant Operator's performance more frequently in the City's sole discretion. The City may select another Plant Operator using the same procedure as the original selection. The City may hire a consultant to provide start-up services for the Plant.

(3) *Plant and Carrizo Facilities Ownership*

The City shall hold legal title to the Plant and the Carrizo Facilities including all properties, rights of way, easements and any other interest in real property acquired for the Plant, during the existence of: A) any Project Debt Instruments issued by the City for the acquisition and construction of the initial phase of the Plant, or B) any GBRA Plant Expansion Debt Instruments. GBRA shall have the right to prepay or defease any GBRA Plant Expansion Debt Instruments in accordance with the terms of such Instruments. After the Project Debt Instruments issued by the City for the initial phase of the Plant and the initial GBRA Plant Expansion Debt Instruments have been fully paid, redeemed or defeased, such that the City has no outstanding debt on the initial phase of the Plant or the initial GBRA Plant Expansion, the City shall convey to GBRA, at no cost to GBRA, legal title to an undivided interest in the Plant equal to GBRA's percentage interest in the total treatment capacity of the Plant at that time. The City shall convey to GBRA, at no cost to GBRA, legal title to an undivided interest in the Carrizo Facilities equal to GBRA's percentage interest in the total capacity of the Carrizo Facilities at that time as determined by the Carrizo Project Agreement. Such conveyance shall be by written instrument in recordable form. After the transfer of legal title contemplated by this Section 4, title to the undivided interests of any future expansions in the Plant ~~following each future expansion of the Plant and the Carrizo Facilities~~ shall be owned by the Parties based upon the proportionate amount of Plant and Carrizo Facilities expansion capacity that each Party, respectively, has requested and paid for, and the Parties agree to execute and record, at no cost to one another, written conveyances of undivided interests in the Plant and Carrizo Facilities expansion upon completion of construction and payment of the cost of such expansions.

4. A new Section 7A, Carrizo Facilities Capacity for GBRA, is hereby added to read as follows:

Section 7A. Carrizo Facilities Capacity for GBRA.

The City shall reserve for GBRA through the term of this Agreement capacity, in the initial Carrizo Facilities, determined by the Parties in accordance with the Carrizo Project Agreement described in Section 4(1)(b). Additional reserved capacity for GBRA in the Carrizo Facilities shall be subject to mutually agreed terms approved by the Parties in writing, unless otherwise specified in the Carrizo Project Agreement.

5. Section 12, Delivery of Treated Water to GBRA, is hereby amended to read as follows:

Section 12. Delivery of Treated Surface Water to GBRA.

The City shall treat all raw water delivered to the Plant by GBRA for treatment and delivery back to GBRA to the extent that treatment capacity in the Plant is reserved and/or installed for GBRA pursuant to the terms of this Agreement. The City shall deliver such treated surface water to GBRA at the Point of Delivery in volumes desired by GBRA up to the treatment capacity reserved and/or installed for GBRA at such time. The obligation of the City to supply treated surface water to GBRA under this Agreement shall be limited to water provided by GBRA that is in addition to the water that is committed to the City under the City's Raw Water Contract, as such Contract may be amended from time to time.

6. A new Section 12A, Delivery of Treated Groundwater to GBRA, is hereby added to read as follows:

Section 12A. Delivery of Treated Groundwater to GBRA.

Subject to the execution of the Carrizo Project Agreement and pursuant to its terms, the City shall deliver treated ground water to GBRA at the Point of Delivery in volumes equal to GBRA's allocable amount of treated ground water metered through the Carrizo Facilities. The amount of ground water allocable to GBRA during any period shall be based upon agreements between the Parties and the Alliance Regional Water Authority (ARWA).

7. Section 13, Additional Canyon Water and Other Sources of Raw Water, is hereby amended to read as follows:

Section 13. ~~Additional Canyon Water and Other Sources of Raw~~ or Treated Water.

(1) Additional Canyon Water

~~At the time of execution of this Agreement, the City and GBRA are discussing entering into a new contract, or amending the City's Raw Water Contract, to provide the City with an additional commitment of stored water from Canyon Reservoir, for as much as an additional 5,000 acre-feet per year. If the Parties reach agreement on such an additional commitment of stored water, the new or amended contract shall provide that payment for the additional amount of stored water committed shall not commence until the date of expiration of the GBRA Reservation, or the date that GBRA first delivers water to the City under the additional commitment, whichever occurs first.~~

(2) ~~Other Sources of Raw~~ or Treated Water

The City and GBRA further agree to work together in an effort to evaluate the joint development and utilization of other sources of supply of raw or treated water for the Plant for the mutual benefit of the Parties and in the best interests of the region. Possible benefits resulting from the joint development and use of such additional sources of supply include stretching and conserving the limited supply of stored water available in Canyon Reservoir, and reducing the overall cost of treated water supplied to all users from the Plant.

It is the intent of the Parties through this provision to insure that neither the quality nor quantity of treated water produced by the Plant is impaired as a result of the introduction of such raw or treated water to the Plant or to the Raw Water Delivery Facilities. Accordingly, if any additional facilities, modifications to facilities, and/or modifications to the operation or maintenance of facilities are required in order to avoid any such impairment, then the full costs of such additional facilities and modifications shall be borne solely by the Party desiring to supply raw or treated water from ~~the~~ another source or jointly and proportionally borne if both Parties desire such raw or treated water supplies.

8. Section 15, Budgets, Audits, and Records, is hereby amended to read as follows:

Section 15. *Budgets, Audits, and Records.*

The Plant Operator will provide the Management Committee with the first annual Plant budget four months prior to Plant start-up and subsequent annual budgets by May 1st of each year. At the same time that the aforementioned Plant annual budget is provided, the Plant Operator shall also provide an annual budget

related to the Carrizo Facilities. The City and GBRA will also submit annual audited financial statements of the Plant and the Raw Water Delivery System to the Management Committee by December 1.

All books and records pertaining to this Agreement shall be open and available for copying, inspection, and audit by the City and GBRA. Appropriate retention schedules that comply with state laws shall be agreed upon by both Parties.

9. Section 23, Payments for Water Treatment and Delivery, is hereby amended to read as follows:

Section 23. Payments for Water Treatment and Delivery.

(1) *O&M Rate Charge.* The City shall annually establish a rate in accordance with accepted rate making practices to be charged to and paid by GBRA for the treatment and delivery of treated surface water, if any, to GBRA at the Point of Delivery (the "Operation and Maintenance Rate" or "O&M Rate"). The O&M Rate set by the City each year shall be a function of the total Net Plant Operating and Maintenance Costs estimated to be incurred and total treated surface water estimated to be delivered during the next City fiscal year. The annual O&M Rate shall be set by the City on or before the last day of July preceding the fiscal year to which it shall apply. The O&M Rate shall be calculated by dividing the total Net Plant Operating and Maintenance Costs estimated to be incurred by the total treated surface water estimated to be delivered by the Plant, in thousands (1,000) of gallons, during the next City fiscal year. The O&M Rate will then be assessed each month during the applicable fiscal year against every thousand gallons of treated surface water delivered to GBRA during the month preceding the bill ([O&M Rate times number of thousand gallons of treated surface water delivered to GBRA] = amount to be charged to and paid by GBRA). The determination of the amount of treated surface water delivered to GBRA during any month shall be the total water received at the Point of Delivery less the amount of ground water, if any, metered through the Carrizo Facilities and allocable to GBRA during the same time period.

(2) *Other Charges.* To the extent not already included in the Operation and Maintenance Expenses as part of the O&M Rate charged to GBRA under this Section 23, GBRA shall additionally be responsible for any of the following costs incurred by the City:

- (a) GBRA's pro rata share of the construction of any treatment capacity above the City's 9 MGD that is requested by GBRA as part of the initial phase of the Plant pursuant to Section 4(1)(a), above; and
- (b) GBRA's incremental share of the construction of any expansion treatment capacity that is requested by GBRA from time to time pursuant to Section 4(1)(a), above;

- (c) GBRA's pro rata share of the incremental cost of the construction of any expansion treatment capacity that is requested jointly by GBRA and the City from time to time pursuant to Section 4, above; and
- (d) GBRA's prorata share of the cost of the real estate acquisition of the Plant Site based upon the percentage ownership interest in the Plant held by GBRA.

(3) *Plant Annual Requirement.* GBRA shall also be responsible for GBRA's share of the remainder of the Plant Annual Requirement ("GBRA's Share of Remainder of Plant Requirement") which includes any Plant costs not otherwise billed to and paid for by GBRA pursuant to other provisions of this Section. GBRA's Share of Remainder of Plant Requirement for any given period of time shall be based upon the amount of treated surface water, if any, actually delivered to GBRA at the Point of Delivery during that time period, relative to the total amount of treated surface water delivered by the Plant during that time period. GBRA's Share of Remaining Plant Requirement for any given period of time shall not include costs identified in Sections 23(1) and 23(2) nor include costs associated with the acquisition of any real property or the design, acquisition, installation, or construction of any facilities, other than costs associated with the construction of that amount of surface water treatment capacity, if any, then being reserved for and used by GBRA pursuant to Section 7, above, from and out of the 9 MGD treatment capacity constructed for the City in the initial phase. The City shall be responsible for the remainder of the Plant Annual Requirement.

(4) *Reconciliation of Actual Costs and Estimated Costs.* Within 60 days after the payment by GBRA of the last bill for the preceding City fiscal year billing period, the City shall provide to GBRA a statement of the actual Net Plant Operating and Maintenance Costs for such period. If GBRA's prorata share, based on relative amounts of treated surface water delivered to the Parties, of the actual Net Plant Operating and Maintenance Costs exceed the amounts billed to and paid by GBRA, GBRA shall pay the difference to the City. If GBRA's prorata share, based on relative amounts of treated surface water delivered to the Parties, of the actual Net Plant Operating and Maintenance Costs are less than the amounts billed to and paid by GBRA, the City shall refund the difference to GBRA. The actual Net Plant Operating and Maintenance Costs shall include any costs actually expended by the City due to Uncontrollable Circumstances under Section 12.2 of the Plant Operating Agreement (see Attachment "D").

(5) *Rates After Retirement of Project Debt Instruments and GBRA Plant Expansion Debt Instruments.* For budget years following the date on which the City fully pays and retires all of the Project Debt Instruments and the GBRA Plant Expansion Debt Instruments associated with the Plant, the rates charged by the City to GBRA for the treatment of GBRA's raw water at the Plant and conveyance to

the Point of Delivery shall be based solely upon GBRA's prorata share, based on relative amounts of treated surface water delivered to the Parties, of the Net Plant Operating and Maintenance Costs. No other person or entity shall be entitled to any equity interest in the Plant for any reason including, without limitation, the payments made to GBRA or the City under this Agreement or under any agreements between either Party and that Party's customers, except as mutually agreed between GBRA and the City.

(6) Carrizo Facilities Cost Allocation and Recovery. Prior to the construction of any Carrizo Facilities on the Plant Site, the Parties shall have agreed on the relative allocation of all costs related to the design and construction of the Carrizo Facilities through the Carrizo Project Agreement as described in Section 4(1)(b). The Parties also agree herewith that the annual Carrizo Facilities Operation and Maintenance Expenses shall be separately budgeted prior to each year and separately recorded throughout each Annual Payment Period. The City shall be responsible for the payment of all Carrizo Facilities Operation and Maintenance Expenses and shall bill GBRA monthly for one-twelfth of GBRA's prorata share of the then-current budgeted Carrizo Facilities Operation and Maintenance Expenses. Within 60 days after the payment by GBRA of the last bill for the preceding City Annual Payment Period, the City shall provide to GBRA a statement of the actual Carrizo Facilities Operation and Maintenance Costs for such period. If GBRA's prorata share, based on relative amounts of treated ground water delivered to the Parties, of the actual Carrizo Facilities Operation and Maintenance Costs exceed the amounts billed to and paid by GBRA, GBRA shall pay the difference to the City. If GBRA's prorata share, based on relative amounts of treated ground water delivered to the Parties, of the actual Carrizo Facilities Operation and Maintenance Costs are less than the amounts billed to and paid by GBRA, the City shall refund the difference to GBRA.

10. Section 23A, Payments for Plant Expansions, is hereby amended to read as follows:

Section 23A. Payments for Plant Expansions.

In accordance with the provisions of Section 23(2)(b), once per month during the term of this Agreement but only for as long as GBRA Plant Expansion Debt Instruments are outstanding, the City shall charge GBRA one-twelfth (1/12) of the annual amount required to cover the City's payment obligations under the GBRA Plant Expansion Debt Instruments, ~~related to the GBRA Plant Expansion as set forth in the May 2006 First Southwest Final Pricing Summary for the 2006 and 2006A Revenue Bonds, attached hereto as Attachment "E" and made a part hereof~~ plus a twenty percent (20%) debt coverage fee (the "Debt Service Charge"). As long as ~~the 2006~~ any GBRA Plant Expansion Debt Instruments are outstanding, the Debt Service Charge will be charged by the City and paid by GBRA whether or not any water is treated and delivered to GBRA during the previous month. For any future additional GBRA Plant Expansions, once per month, the City shall also charge GBRA one-twelfth (1/12) of the annual amount required to cover the City's

payment obligations under such future GBRA Plant Expansion Debt Instruments, including any applicable debt coverage fees.

11. Section 24, Measurement, is hereby amended to read as follows:

Section 24. *Measurement.*

For billing purposes, all raw water diverted from the Guadalupe River and delivered to the Plant will be metered at the Plant entrance with meters provided, operated, maintained, and read by GBRA. At its option and expense, GBRA may also meter the raw water diverted at the Guadalupe River at the Point of Diversion. The City shall provide, operate, maintain, and read meters which shall record treated water taken by GBRA at each GBRA Point of Delivery. The Parties also agree that the Carrizo Facilities shall include a meter or meters to measure the amount of treated ground water entering the Plant Site and that the City shall operate, maintain and read such meter(s) monthly.

Water shall be measured through conventional types of approved meter(s). The party responsible for metering shall keep accurate records of all measurements of water required under this Agreement, and the measuring device(s) and such records shall be open for inspection at all reasonable times. Measuring devices and recording equipment shall be accessible for adjusting and testing and the installation of check meter(s). If requested in writing and not less than once in each calendar year, on a date as near the end of such calendar year as practical, the party responsible for metering shall calibrate its water meter(s) in the presence of the other Party, and the Parties shall jointly observe any adjustments that shall be necessary. The Party responsible for metering shall give the requesting Party notice of the date and time when any such calibration is to be made and, if a representative of requesting Party is not present at the time set, calibration and adjustment may proceed in the absence of any representative of the requesting Party.

If upon any test of the water meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of five percent (5%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than period of six (6) months. If any meter(s) are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters(s) are out of service or out of repair shall be estimated and agreed upon by the City and GBRA upon the basis of the best data available, and, upon written request, the Party responsible for metering shall install new meters or repair existing meters at the cost of Party responsible for metering. If City and GBRA fail to agree on the amount of water

delivered during such period, the amount of water delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

12. Section 25, Quality, is hereby amended to read as follows:

Section 25. Quality.

The surface water to be supplied to City by GBRA is untreated water as it is found in the Guadalupe River at the Point of Diversion. The treated water to be delivered by City and ARWA received by GBRA at the Point of Delivery shall be potable water meeting applicable state and federal purity standards for potable water.

13. Section 37, Notices, is hereby amended to read as follows:

Section 37. Notices.

All notices, payments and communication (“notices”) required or allowed by this Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

City of San Marcos
Attention: City Manager
630 East Hopkins Street
San Marcos, Texas 78666

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

Either Party may change its address by giving written notice of the change to the other Party at least fourteen (14) days before the change becomes effective.

14. Exhibit 4, the City's Service Area Map, is hereby deleted and replaced with a new Exhibit 4 as shown in Attachment 1 to this Amendment No. 1.

15. All remaining terms of the Regional Project Agreement, as amended, remain in full force and effect.

16. This Amendment No. 1 may be executed in duplicate originals.

EXECUTED to be effective immediately upon the date of the last signature below.

CITY OF SAN MARCOS:

By: _____
Bert Lumbreras, City Manager

Date: _____

GUADALUPE-BLANCO RIVER AUTHORITY:

By: _____
Kevin Patteson, General Manager/CEO

Date: _____

ATTACHMENT 1
Amended Exhibit 4-City's Service Area Map
[following this page]