

## **RETAIL WATER SERVICE AREA AGREEMENT**

This Retail Water Service Area Agreement (“Agreement”) is entered into by and between the City of Bryan (“Bryan”) and Wellborn Special Utility District (“Wellborn SUD”) (collectively, the “Parties,” and individually depending upon the context, a “Party”) and is effective upon execution by the second Party to sign (“Effective Date”).

### **RECITALS**

WHEREAS, Bryan is municipal corporation in Texas and holds water Certificate of Convenience and Necessity (CCN) No. 10187 (Bryan Water CCN);

WHEREAS, Wellborn SUD is a special utility district organized under Chapters 49 and 65 of the Texas Water Code and holds water CCN No. 11340 (Wellborn SUD Water CCN);

WHEREAS, Bryan and Wellborn SUD find it mutually advantageous to amend their respective CCN service area boundaries by agreement pursuant to Texas Water Code § 13.248, in order to achieve and maintain efficient and affordable retail public water service to their respective customers; and

WHEREAS, Wellborn SUD holds federal debt and intends to seek approval from its lenders regarding the terms of any CCN transfers related to this agreement; and

WHEREAS, pursuant to Texas Water Code § 13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission of Texas (“PUC”), are valid and enforceable and are incorporated into the appropriate CCNs; and

WHEREAS, the Bryan and Wellborn SUD mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will 1) transfer the CCN for the Transfer Area; and 2) cooperate regarding future customers and CCN transfers for the Joint Planning Area, all of which is more specifically described by the following terms; and

WHEREAS, the purpose of the Joint Planning Area is for the Parties to cooperate to address future growth in the area so that Bryan will design infrastructure to become the primary retail water supplier, and in doing so will work to relieve Wellborn SUD of its future service obligations.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bryan and Wellborn SUD hereby contract and agree as follows:

### **ARTICLE I.** **TERM AND TRANSFER AREA**

1.1. Recitals. The recitals set forth above are true and correct and are incorporated herein and shall compose together with the terms agreed upon herein, the Agreement.

1.2. Term. This Agreement shall remain valid and enforceable until 11.59 PM on the date which is five (5) years following the Effective Date (the “Term”), after which the Agreement

shall automatically expire, except as provided in Section 2.3. The Term may be extended by mutual written agreement of the Parties. Except as expressly agreed upon herein, following the Effective Date and during the Term, neither Party shall seek to amend the other Party's existing certificated service area boundaries within the Joint Planning Area.

1.3. Transfer Area. Subject to the approval of the PUC, the Wellborn SUD Water CCN area that is to be transferred to Bryan by this Agreement is the approximately 323- acre area identified as "Transfer Area" shown on Exhibit "A".

1.4. PUC Approval. As soon as practical, but in no event later than thirty (30) days after the Effective Date, the parties agree to jointly file this Agreement with the PUC pursuant to Texas Water Code § 13.248, along with a written petition as required by 16 Texas Administrative Code § 24.253, and such other documents and mapping that may be required to complete the transfer of the CCN for the Transfer Area from Wellborn SUD to Bryan ("PUC Application"). In the event the PUC requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to obtain PUC approval. Bryan shall be responsible for preparing the required mapping and shapefiles for the Transfer Area and for drafting and filing necessary documents at the PUC and in complying with all subsequent processing of those documents at the PUC, all at no cost to Wellborn SUD.

1.5. Interim Service. Wellborn SUD hereby consents to Bryan, at its sole risk, providing retail water service to the Transfer Area beginning on the Effective Date of this Agreement and during the pendency of the PUC Application.

1.6. Customers. Parties agree that no customers or facilities will be transferred between the Parties as a result of the transfer of the Transfer Area.

1.7. Compensation to Wellborn SUD. Bryan shall pay to Wellborn SUD an amount equal to \$800 per acre (Base Compensation Amount) for the area of the Transfer Area, which the Parties agree equals \$258,400 (the "Transfer Area Compensation Amount"). The Base Compensation Amount is agreed by the Parties to additionally apply to any future CCN transfer within the Joint Planning Area, and shall be adjusted annually on January 1<sup>st</sup> during the term of the Agreement. The adjustment shall be based on the change in the CPI-U (or similar index, if discontinued) since the last adjustment. "CPI-U" shall mean the Consumer Price Index for All Urban Consumers (1982-1984 = 100): U.S. City Average, published by the Bureau of Labor Statistics of the U.S. Department of Labor. The Parties agree that the Base Compensation Amount shall not be considered a precedent for CCN compensation purposes for any future CCN area transfers outside of the Joint Planning Area.

1.8. No later than thirty (30) days after the Effective Date, Wellborn SUD shall submit a request to the United States Department of Agriculture, Rural Utilities Service ("RUS") requesting consent or non-objection by RUS to the transfer of the Transfer Area as contemplated by this Agreement (the "RUS Approval"). Wellborn SUD agrees to use its reasonable efforts to diligently secure the RUS Approval. Wellborn SUD warrants that there are no liens granted by Wellborn SUD on its CCN within the Joint Planning Area other than that held by RUS which

would preclude the transfer of the Transfer Area, and that no additional liens which would preclude the transfer of the Joint Planning Area will be granted to its CCN within the Joint Planning Area during the term of this Agreement without Bryan's consent.

1.9. Payment to Wellborn SUD. Bryan shall pay Wellborn SUD the Transfer Area Compensation Amount not later than thirty (30) days after receipt by Bryan of a copy of the RUS Approval. If the Transfer Area Compensation Amount is not timely paid to Wellborn SUD, Wellborn SUD may terminate this Agreement without recourse by Bryan, and thereafter Wellborn SUD shall have no further obligations to Bryan.

1.10. Payment Default. Any payment required by the Agreement which is not paid within ten (10) days after receipt of a notice of default is overdue and will be subject to interest on the unpaid balance at a rate of 12% per annum, but in no event at a rate exceeding the amount allowed by law. Additionally, if any unpaid amount is placed with an attorney for collection, the Party seeking collection shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to reasonable attorney fees.

## **ARTICLE II. JOINT PLANNING AREA**

2.1. Joint Planning Area. The Parties have identified the CCN area shown as the "Joint Planning Area" on Exhibit "B" (specifically, comprised of Area 1 (2883.02 acres) and Area 2 (2004.15 acres)) whereby they agree to cooperate on retail water service planning, with the intent that Bryan will design infrastructure to become the primary retail water supplier, and in doing so will work to relieve Wellborn SUD of its future service obligations in the area. At any time during the Term, Bryan may provide written notice to Wellborn SUD that it desires a transfer of the Wellborn SUD Water CCN for all or a portion of the Joint Planning Area (each a "Transfer Notice"). However, any such notice must include the entirety of every requested tract of land, without reducing any tract size, or seeking the CCN area on only a portion of a tract, in an effort to shortchange the amount of payment due to Wellborn SUD. Following Wellborn SUD's receipt of a Transfer Notice, the Parties agree to cooperate regarding the CCN transfer, including 1) preparation of a CCN transfer agreement, or amendment to this Agreement; 2) providing compensation to Wellborn SUD using the (adjusted) Base Compensation Amount; and 3) following the terms and procedures used by the Parties for the Transfer Area as to the basis for each transfer initiated by a Transfer Notice.

2.2. Customer Transition Plan. If at any time during the Term, Bryan provides a Transfer Notice which includes any existing Wellborn SUD customer or if Bryan has provided Transfer Notices which, when added to the Transfer Area in Article I, cumulatively request the transfer of the Wellborn SUD Water CCN for 75% or more of the area of the Joint Planning Area, then (in either case) the Parties shall cooperate to prepare a Customer Transition Plan, as part of the subject CCN transfer. The Customer Transition Plan shall set forth the timing and basis for Bryan to assume the retail service obligations from Wellborn SUD for all customers in the Joint Planning Area, and the amount of the mutually agreed compensation to Wellborn SUD for the

loss of such customers and facilities. The additional compensation amount shall not be less than One Thousand Dollars (\$1000) per residential customer equivalent (based on a 5/8 inch meter), which amount is stated in 2025 dollars and subject to annual increase based on the change in the CPI-U ("Additional Compensation"), and which amount is in addition to the Base Compensation Amount, but the amount of the Additional Compensation in excess of \$1,000 per residential customer equivalent (in 2024 dollars) shall not be more than the amount needed to prevent Wellborn SUD from having to increase rates to its remaining customers as a result of the loss of the customers and facilities subject to the Customer Transition Plan. The Customer Transition Plan may additionally include the transfer of water facilities and easements to Bryan and provisions to allow Wellborn SUD to provide water to Bryan on a temporary, wholesale basis. Once approved by the Parties, the Customer Transition Plan shall be filed with the PUC along with the CCN transfer which triggered the plan, and following approval by the PUC (and appropriate customer and public notices) shall be implemented by the Parties.

2.3. Limited Extension of the Term. As to any CCN area which has been paid for by Bryan during the Term, the Parties agree to extend the provisions of this Agreement for the limited purpose of allowing for the filing and approval of the PUC for such CCN area, which extension shall in no event continue for more than 24 months beyond the Term.

### **ARTICLE III.** **MISCELLANEOUS**

3.1. No agreements other than this Agreement now exist between Bryan and Wellborn SUD concerning the subject matter of this Agreement.

3.2. This Agreement shall be binding on Bryan and Wellborn SUD and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.

3.3. This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.

3.4. The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Brazos County, Texas, except to the extent the PUC is made party to such action in which event venue may be in Travis County, Texas.

3.5. The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.

3.6. This Agreement may be executed in multiple originals, either copy of which shall be considered an original.

3.7. This Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.

3.8. No Party will be penalized for alleged authorship of a particular provision upon judicial construction of this Agreement.

3.9. No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties however fully reserve their rights to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

EXECUTED AND AGREED TO by the Parties hereto this \_\_\_\_ day of \_\_\_\_\_, 2025.

CITY OF BRYAN

WELLBORN SPECIAL UTILITY DISTRICT

APPROVED:

By: \_\_\_\_\_  
Printed Name: Bobby Gutierrez  
Title: Mayor

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
Printed Name: Melissa Brunner  
Title: City Secretary  
Date: \_\_\_\_\_

APPROVED TO FORM:

By \_\_\_\_\_  
Printed Name: Thomas Leeper  
Title: City Attorney

EXHIBIT "A"  
TRANSFER AREA

EXHIBIT "B"  
JOINT PLANNING AREA