

## **REUSE WATER SUPPLY CONTRACT**

**1. Parties.** The parties to this contract (the CONTRACT) are New Braunfels Utilities (NBU), the operator of the water system of the City of New Braunfels as authorized under Section 11.09 of the City Charter of the City of New Braunfels, with its principal office in New Braunfels, Comal County, Texas, and Sundance Property Owners, Association, Inc., a Texas corporation, with its principal office in New Braunfels, Comal County, Texas. (User).

**2. Recitals.** User intends to continue to use Reuse Water as a substitute for potable water to maintain lake levels and irrigate certain parts of the Sundance Subdivision located within the City of New Braunfels. As used in this Contract, "Reuse Water" is defined as domestic wastewater which has been treated to a quality suitable for beneficial use. User has requested NBU continue to sell User Reuse Water. User has determined that the purchase and use of and use of Reuse Water is economically feasible for it under the terms of this Contract. NBU and User agree that the use of Reuse Water promotes conservation and helps insure an adequate supply of water resources for present and future needs. In consideration of the mutual promises and covenants contained in this Contract and other good and valuable consideration, the parties mutually agree as set forth in the following paragraphs.

**3. Design, Construction and Maintenance of Delivery Facilities.** "Onsite" as used in this contract means within the property owned by User. NBU and User agree that the onsite infrastructure related to the Reuse water system was designed and constructed in accordance with NBU's requirements. User represents that it holds fee simple title to the land inundated by water stored in the three ponds located within the Sundance Subdivision pursuant to a deed filed as Document No. 200906003970 in the Public Records of Comal County. User agrees to operate, maintain, repair, and replace the onsite infrastructure related to the Reuse water system in accordance with applicable regulatory requirements and any requirements that NBU may impose in accordance with the provisions of NBU's reuse authorization. No connection between User's Reuse water system and User's potable water system will be allowed.

**4. Point of Diversion.** The Point of Diversion as used in this Contract will continue to be located near the northeast corner of tract of land designated as Parcel No. 146316 by the Comal County Appraisal District:

**5. Permits.** User agrees the Reuse water system must be operated and maintained in conformance with Reuse Water Authorization Number R 10232-002, issued by the Texas Commission on Environmental Quality (TCEQ). User and NBU will conform to all requirements imposed by the TCEQ, including all signage and storage requirements.

**6. Sale and Delivery of Reuse Water.** Subject to any terms or conditions specified in this Contract, NBU agrees to sell and deliver to User available Reuse Water produced at NBU's Gruene waste water treatment facility located in New Braunfels, Texas, after consideration of all discharge requirements imposed upon NBU by NPDES permits and other applicable law and

regulations. The maximum monthly withdrawal of Reuse Water available to User under this Contract is 2,000,000.00 gallons with a maximum withdrawal rate not to exceed 200 gallons per minute, provided, however, upon User's request, NBU will consider an increase in the monthly maximum amount.

**7. Rates.** User will pay NBU for Reuse Water actually delivered to the Point of Diversion in accordance with the customary NBU billing procedures. The parties acknowledge that the rate and that the rate terms of this Contract are the same rate and terms that were previously approved by the City Council of the City of New Braunfels, Texas pursuant to a prior agreement between NBU and User's assignor and predecessor in title. Both NBU and User agree to the rate provisions set out below.

- a. User will continue to pay 75% of the NBU commercial water rate for Reuse Water.
- b. User understands and agrees that the NBU commercial water rate may change from time to time during the term of this Contract and User's rate will be adjusted based on the prevailing commercial water rate at the time a rate change takes effect.
- c. User understands and agrees that the NBU may adopt a rate for Reuse Water that is separate and apart from NBU's commercial water rate.

**8. Use of Water.** Reuse Water provided by NBU must be used exclusively by User for irrigation purposes or for other uses permitted by 30 TAC 310.9. User may store Reuse Water on its premises in accordance with applicable rules and ordinances. User is not permitted to resell Reuse Water. However, User shall be permitted to apportion the cost of Reuse Water used by tenants within the subdivision. User shall bear all costs related to sub-metering and billing of its tenants.

**9. Metering.** The meters and recording devices must permit the accurate determination of quantities of Reuse Water delivered. User must maintain all meters and recording devices in operating condition and must recalibrate, at User's expense all, all such metering and recording equipment from time to time, if required by NBU. A meter registering not more than five percent (5%) above or below calibration test results if deemed to be accurate. NBU must have free access to the meters and recording devices at all reasonable times.

**10. No Guarantee of Reuse Water.** NBU makes no guarantee that Reuse Water will be available at any particular time or place or that the Gruene wastewater treatment facility will be producing Reuse Water at any specific flow at any particular time. Both parties to this Contract acknowledge that the flow of Reuse Water will vary and that this Contract is merely an agreement to allow use of Reuse Water from the Gruene wastewater treatment plant when and if Reuse Water is present and available. User has a priority right to purchase up to a maximum of 24,000,000.00 gallons of Reuse Water each year during the term of this Contract at the withdrawal rates specified in Paragraph 6.

**11. Priority Rights.** NBU and the User agree and understand that NBU cannot guarantee actual delivery of a specific quantity of water. Nevertheless, NBU will use its best efforts to provide Reuse Water to the User the monthly and annual priority amounts of Reuse Water specified in this Contract.

- a. NBU agrees that User has a priority right to 24,000,000 gallons of Reuse Water per year produced at the Gruene wastewater treatment facility subject to the use limitations outlined in Paragraph 6. The priority attaches to all Reuse Water whenever produced at that facility up to the priority amount for the applicable year. The rights of any third party to Reuse Water shall be subject to User's priority rights. NBU agrees that during the term of this Contract, or extension hereof, NBU will not grant to a third party any right, title, or interest to the Reuse Water that has a higher priority right than User. User's priority rights are subject to the discharge and other obligations imposed upon NBU by applicable state and federal law, ordinances of the City of New Braunfels, rules of the Texas Commission on Environmental Quality, and current contractual obligations with the Guadalupe-Blanco River Authority and its water permits.
- b. In the event the User requires more than 24,000,000 gallons a year of Reuse Water and Reuse Water is available in excess of that amount, User has a non-exclusive right to purchase such additional available quantities of Reuse Water at the same rates set forth in Paragraph 7.B. No priority attaches to the User's right to purchase such additional quantities.

**12. Indemnity.** User indemnifies and will save NBU harmless from any and all claims or demands whatsoever to which NBU may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all actions and activities (or failure to act) or User or NBU under this Contract.

NBU indemnifies and holds User harmless from any and all claims or demands whatsoever to which User may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of NBU or User under this Contract.

In no event is either party required to indemnify the other party for injury, death or property damage caused by such other party's own negligence, and further provided User does not indemnify NBU against any damage, injury, or loss caused in whole or in part by reason of the failure of the Reuse Water to meet the quality standards set forth herein.

**13. Quality of Water.**

A. The water to be supplied under this Contract is Reuse Water meeting the standard of 30 TAC 310.9 which relates to use as a source of water supply in a landscape impoundment, restricted recreational impoundment, or ornamental fountain. NBU is not obligated to supply Reuse Water to the extent that such water is of a quality that cannot reasonably be treated to such standard. In the event it is determined that NBU supplied Reuse Water from its Gruene Wastewater

treatment facility which fails to meet the standards of 30 TAC 310.9, User will not be responsible for payment for such water, and is entitled to a reimbursement for any amounts which it may have paid for such substandard Reuse Water. NBU is not liable to User for any damages, direct or indirect or consequential resulting from the delivery of water which fails to meet the standards of 30 TAC 310.9.

B. The parties recognize that treatment standards for use of Reuse Water may be changed. The User may terminate this Contract if the Reuse Water is treated to a less stringent standard than currently provided by 30 TAC 310.9, and the User determines that the change will have a material adverse effect on the User's irrigation activities. In the event the User elects to terminate the Contract under the provisions of this section, the User must give NBU written notice not less than one hundred eighty (180) days prior to such termination.

**14. Term.**

A. This Contract is for a term of fifteen (15) years from the date it is signed by authorized representatives of NBU and the User unless the Contract is terminated sooner or extended in accordance with the terms of this Contract. This Contract may be terminated immediately at NBU's option by delivery of written notice to the User (1) if the User fails to pay any monthly statement for Reuse Water as required by this Contract and the applicable customer service policies of NBU, (2) if required by an order, directive, or regulation of the Texas Commission on Environmental Quality (TCEQ), or any state or federal agency. (3) This Contract may be terminated upon 30 days written notice if User at any time fails to comply fully with any other term or condition of this Contract after receiving notice required by this Contract or by the NBU policy in effect at that time and fails to remedy the non-compliance with the term or condition within the 30 day period. This Contract may be terminated by NBU at any time during its term, or any extension thereof, bu providing written notice to User of NBU's intent to terminate this Contract in writing not more than two hundred seventy (270) days or less than ninety (90) days prior to any termination date.

B. The User shall have the option to extend this Contract for successive one (1) year terms. The provisions and agreements contained in this Contract shall remain in effect during any extension. User must notify NBU in writing not more than two hundred seventy (270) days or less than ninety (90) days prior to any termination date of its intent to exercise its option to extend the term of this Contract.

**15. Modification of Contract.** The provisions of this Contract may be modified or altered only by written agreement of the parties signed by authorized representatives.

**16. Assignment.** No assignment of the Contract shall be permitted.

**17. Captions.** All titles of the sections of this Contract have been inserted for convenience and reference only, are not considered part of this Contract and in no way are they to affect the interpretation of any provisions of this Contract.

**18. Force Majeure.** In the event either party is rendered unable, wholly or in part, by

force majeure, to carry out any of its obligations under this Contract, then the obligations of the party, to the extent they are affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused as to the extent provided, but for no longer period. Such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "Force Majeure" as used herein includes, but is not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests, and restraints of governments and people, explosions, breakage or damage to machinery, pipelines or canals, and any other liabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

**19. Binding Agreement.** This Contract binds and benefits the respective parties and their legal successors.

**20. Change in Law.** This Contract is subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction over the matters contained herein. In the event any change is required in NBU's operations materially affecting its performance under this Contract as a result of a change in laws, orders, rules and regulations and if the User deems such changes to materially and adversely affect the User's operation, the User has the right to terminate this Contract with ninety (90) days prior written notice to NBU.

**21. Waiver.** The failure of either party hereto to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

**22. Entire Agreement.** This Contract, together with the NBU Commercial Service Agreement signed by User and filed with NBU, constitute the sole and only agreements of the parties. It supersedes any prior understandings or written or oral agreements between parties concerning the subject matter of this Contract, other than the NBU Commercial Service Agreement signed by User. This Contract cannot be changed except by written agreement of the parties.

**23. Notices.** All notices required by this Contract shall be sent by certified, United States Mail, return receipt requested, or by delivery during normal business hours to the parties at the address set out below for each :

**New Braunfels Utilities**  
Attention: Chief Executive Officer  
263 Main Plaza  
New Braunfels, Texas 78130

**Sundance Property Owners Association, Inc.**

Attention: Juanita C. Seekins  
Senior Community Manager  
Associa Hill Country  
300 E. Sonterra Blvd., Ste. 250  
San Antonio, Tx 78258

Either party may change its address by written notice to the other party. EXECUTED this \_\_\_\_\_ of \_\_\_\_\_, 2023, in multiple original counterparts.

ATTEST:

**New Braunfels Utilities**

By: \_\_\_\_\_  
Chief Executive Officer

**Sundance Property Owners Association, Inc.  
A Texas Corporation**

By: \_\_\_\_\_  
Larry Church,  
Its President