

FIRST AMENDED REGIONAL UTILITY FRANCHISE AGREEMENT

The purpose of this REGIONAL UTILITY FRANCHISE AGREEMENT (“Agreement”) is to provide for the controlled expansion of regional utility services by KENDALL WEST UTILITY, LLC (“Kendall West”) in and around the CITY OF BOERNE, a Texas home rule municipality (“City”) (collectively referred to as the “Parties”) and the use and enjoyment of certain property to fulfill this purpose.

Amendment as per Section V, 5.01 to the Regional Utility Agreement is as follows:

On August 9, 2016 a letter of agreement was signed by the City and Kendall West Utilities, see attached “**Exhibit A**” incorporated herein for all intents and purposes, regarding the institution of a franchise fee amount for provision of water service by Kendall West to the Service Areas cited below:

1.06.02 Exceptions to Service Area. If a request for service has been made to a Party (the “requested Party”) in the other Party’s (the “non-requested Party”) potential Service Area as delineated in Section 1.03 above, then the requested Party shall have the obligation to properly notify the non-requested Party in writing. In order to promote proper growth and protection of groundwater in Kendall County, both Parties shall work together to analyze the request and evaluate the benefits of the project. The non-requested Party shall have the right of first refusal in the agreed upon Service Area described in Section 1.03. The non-requested Party shall have fourteen (14) days to approve or deny such request. In the event the non-requested Party fails to respond in fourteen (14) days, the right of first refusal shall expire with respect to that particular request for service and the requested party shall have the right to provide service. The requested Party’s service shall not be provided if the non-requested Party elects to provide such service or the requested Party’s service will have a detrimental impact in the non-requested Party’s overall service plan. The non-requested Party’s consent shall not be unreasonably withheld if the non-requested party elects not to provide such service or such service does not have a detrimental impact on the non-requested Party’s overall service plan.

Amendment to Section 1.04 Kendall West’s Obligations is as follows:

1.04.7 Franchise Fee. In consideration for the rights and privileges herein granted, the administration of this Franchise by the City, beginning on August 9, 2016, a franchise fee equal to four percent (4.00%) of gross receipts of Kendall West within the City is instituted for providing water, wastewater, or other billable utility services in the Service Area as defined above;

1.04.8 Franchise Fee Payments. Such franchise fee payments described in the above section shall be calculated and paid to the City monthly on or before the 15th day of each month. Late payments shall accrue interest at six percent (6.00%), plus a late payment fee of \$50.00 per day.

1.04.9 Books of Account. Kendall West shall keep complete and accurate books of accounts and records of its business operations under and in connection with this Franchise. To the extent practicable, all such books of accounts and records shall be made available upon request by City of Boerne for review at the Kendall West local office.

1.04.10 Access by City. The City shall have access to all books of accounts and records of Kendall West, during regular business hours and with ten (10) business days’ notice, to the extent said books of accounts and records relate to and will assist the City in ascertaining the correctness of any and all payments or reports to the City.

1.04.11 Audits. The City may inspect the Kendall West’s books of accounts relative to the City at any time during regular business hours on ten (10) business days’ prior written notice and may audit the books from time to time. All records reasonably necessary for such audit shall be made available by Kendall West at

the Kendall West's local office. Kendall West agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within thirty (30) days of written request. If the results of any audit indicate that Kendall West (i) paid the correct Franchise Fee, (ii) overpaid the Franchise Fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by three percent (3.00%) or less, then the City shall pay the costs of the audit. If the results of the audit indicate Kendall West underpaid the Franchise Fee by more than three percent (3.00 %), then Kendall West shall pay the reasonable costs of the audit. The City agrees that any audit shall be performed in good faith. If the results of the audit indicate that Kendall West underpaid the Franchise Fee by more than three percent (3.00%), and Kendall West is unable to produce contrary evidence that in the City's reasonable judgment is satisfactory to demonstrate to the City that the results of the audit are not accurate, then Kendall West shall pay interest on the total amount of underpayment at an annualized interest rate of six percent (6.00%) and interest shall be calculated from the time the original amount is due. Any additional amount due to the City hereunder shall be paid within thirty (30) days from the date of invoice. Any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at an annualized interest rate of 6.00% on the entire amount from the date of invoice. Notwithstanding the above, if Kendall West's auditor disagrees with the City's determination that the additional amount due exceeds three percent (3.00 %), the City's auditor and Kendall West's auditor shall choose a neutral auditor who shall make a determination which is final and binding on both parties as to whether the three percent (3.00 %) amount was exceeded.

Executed in duplicate originals, each of which shall have the full force and effect of an original, on this _____ DAY OF _____ 2019.

SIGNATURES APPEAR ON THE FOLLOWING PAGE[S].

CITY OF BOERNE,

BY: _____
RON BOWMAN

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF KENDALL §

This instrument was acknowledged before me on the _____ day of
_____, 2019 A. D., by Ronald C. Bowman

Notary Public In and For

The State of Texas

My Commission Expires: _____

Printed Name of Notary:

KENDALL WEST UTILITY, LLC

BY: _____
JOHN MARK MATKIN, P.E.

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF KENDALL §

This instrument was acknowledged before me on the _____ day of
_____, 2019 A. D., by John Mark Matkin.

Notary Public In and For

The State of Texas

My Commission Expires: _____

Printed Name of Notary:
