

INTERLOCAL COOPERATION AGREEMENT FOR WATER SUPPLY FACILITIES

This Interlocal Cooperation Agreement for Water Supply Facilities (“Agreement”) is made and entered into by and between the Brushy Creek Municipal Utility District (“BCMUD”), a political subdivision of the State of Texas, and the City of Georgetown, Texas, a Texas home-rule municipal corporation (“Georgetown”) on this _____ (the “Effective Date”). BCMUD and Georgetown are sometimes referred to jointly in this Agreement as the “Parties.”

WHEREAS, BCMUD owns a water distribution system (the “BCMUD System” as hereinafter defined), including the 20-inch/24-inch transmission main generally located as shown in **Exhibit “A”** attached hereto and by this reference made a part hereof (the “BCMUD Pipeline”);

WHEREAS, Georgetown owns a water treatment and distribution system (the “Georgetown System” as hereinafter defined);

WHEREAS, on June 30, 2005, the Williamson County Park Foundation, Inc., Trustee, as predecessor-in-title to Williamson County, granted to BCMUD via Document Number 2006031264 an Easement for Water Facilities to install, operate, and maintain the BCMUD Pipeline, which is attached to this Agreement as **Exhibit “B”** and by this reference incorporated within it (the “Easement”);

WHEREAS, the Easement granted BCMUD the right to install a second water line (“the Second Line”) in a location depicted in the Easement (the “Reservation Area”) along with the BCMUD Easement Rights (as hereinafter defined);

WHEREAS, BCMUD and Georgetown desire to enter into this Agreement for Georgetown to install, own and operate the Second Line for the Assignment Term (as hereinafter defined), and to subsequently convey the Second Line to BCMUD;

WHEREAS, this Agreement is entered into under authority of State law, including, but not limited to, *Section 791.026, Texas Government Code*.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BCMUD and Georgetown hereby contract, covenant and agree as follows:

Section 1. Recitals. The above and foregoing recitals are incorporated herein verbatim and made a part of this Agreement for all purposes.

Section 2. Definitions. The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

(a) **“Assignment Term”** means fifteen (15) years from the Effective Date of the Partial Assignment, unless mutually extended by the Parties by a written amendment to the Partial Assignment, plus five (5) years if Georgetown exercises its option in the Partial Assignment to extend the term accordingly.

(b) **“BCMUD Easement Rights”** means the rights granted to BCMUD in the Easement, including but not limited to (1) the right at any time to construct, install, operate, maintain, inspect, repair, reconstruct and rebuild one additional water transmission line and related equipment and appurtenances in the future, within the Reservation Area; (2) the right of ingress and egress to the Easement Area for the purposes of exercising all rights under the Easement; and (3) the right to clear-cut all trees, brush, vegetation, or other debris within thirty (30) feet of the western boundary of the Easement Area.

(c) **“BCMUD Pipeline”** means a water transmission line and related equipment and appurtenances that are located within the Easement Area that runs through the Property pursuant to the Easement.

(d) **“BCMUD System”** means all water treatment, transmission and distribution facilities, lines, mains, valves, pipes, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of BCMUD.

(e) **“Commission”** means the Texas Commission on Environmental Quality, or its successor agency.

(f) **[Intentionally Omitted]**

(g) **“Easement”** means that certain Easement for Water Facilities granted by Williamson County Park Foundation, Inc., Trustee to BCMUD, dated June 30, 2005 and recorded as Document Number 2006031264 in the Official Records of Williamson County, Texas.

(h) **“Easement Area”** means the 40-foot wide utility easement area over, under, and across the Property, being more particularly described in the Easement.

(i) **“Georgetown System”** means the water lines, mains, valves, pipes, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components owned or controlled by Georgetown.

(j) **“Grantor Covenants”** means the covenants made by Grantor to BCMUD in the Easement, including but not limited to (1) the requirement for Grantor to include in subsequent conveyances of easement rights within the Easement Area to any other person or entity that all actions taken by such person or entity shall be subject to, and will not interfere with, BCMUD’s rights granted therein, and that such person or entity is prohibited from installing any improvements or performing any construction within the Easement Area without obtaining BCMUD’s prior written consent; (2) the promise that Grantor shall not excavate or make substantial changes in the

grade, elevation or contour of the Easement Area without obtaining the prior written approval of BCMUD; and (3) the requirement that Grantor shall not place any water impoundment, buildings, or dwellings in the Easement Area.

(k) **“Partial Assignment”** means the Partial Assignment of Easement for Water Facilities made and entered into by and between the Parties, in a form substantially similar to **Exhibit “C”** attached hereto and by this reference incorporated herein.

(l) **“Property”** means the 882.77-acre tract of land owned by Williamson County, being more particularly described in Document No. 2006065107 of the Official Public Records of Williamson County, Texas.

(m) **“Reservation Area”** means the location depicted in the Easement wherein BCMUD, or its successors or assigns, may exercise its right to construct the Second Line.

(n) **“Second Line”** means one additional 16-inch to 24-inch water transmission line and related equipment and appurtenances, to be constructed in the Reservation Area.

Section 3. Term and Early Termination.

(a) The term of this Agreement shall begin on the Effective Date and remain in effect until the expiration of the Assignment Term, as it may be extended, and subsequent conveyance of the Second Line by City to BCMUD as provided in Section 4 below.

(b) BCMUD may terminate this Agreement by providing written notice of termination to Georgetown if Georgetown does not initiate construction of the Second Line required to be constructed by Georgetown pursuant to this Agreement within twenty-four (24) months after the Effective Date and thereafter diligently continue construction until completion.

(c) BCMUD may additionally terminate this Agreement by providing written notice of termination to Georgetown if Georgetown, after written notice and thirty (30) days' opportunity to cure, due to a material breach by Georgetown that is not due to the actions, or failure to act, of BCMUD or of its officer(s), employee(s), agent(s), consultant(s), or contractor(s).

(d) Georgetown may terminate this Agreement by providing written notice of termination to BCMUD at any time by giving twelve (12) months' advance notice to BCMUD in writing.

(e) Georgetown may additionally terminate this Agreement by providing written notice of termination to BCMUD, after written notice and thirty (30) days' opportunity to cure, due to a material breach by BCMUD that is not due to the actions, or failure to act, of Georgetown or of its officer(s), employee(s), agent(s), consultant(s), or contractor(s).

(f) Upon termination of this Agreement for any reason, the Partial Assignment shall automatically terminate. Either Party may unilaterally record an instrument in the Official Public

Records of Williamson County, Texas evidencing such termination, and the other Party shall fully cooperate with respect thereto.

Section 4. Rights after Expiration or Termination.

(a) Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon expiration or termination of this Agreement; provided, however, that termination shall not affect the liabilities accrued prior to termination.

(b) Upon expiration or termination of the Assignment Term or this Agreement, Georgetown shall, within thirty (30) days of said expiration or termination execute an instrument in a form approved by the Parties, which approval shall not be unreasonably withheld or delayed, evidencing transfer of ownership of the Second Line to BCMUD free and clear of all liens, claims and encumbrances. Notwithstanding the foregoing, the Parties agree that upon expiration or termination of the Assignment Term or this Agreement for any reason, the Second Line shall be deemed owned by BCMUD for all purposes (provided, however, any liabilities or expenses related thereto accruing prior to termination shall remain the sole responsibility of Georgetown).

Section 5. Partial Assignment of Easement Rights. Within thirty (30) days of the Effective Date of this Agreement, the Parties shall execute and record within the Official Public Records of Williamson County, Texas a Partial Assignment, in a form substantially similar to **Exhibit “C”**, subject to the terms, conditions, and limitations set forth in this Agreement. Failure of the Parties to timely execute and record the Partial Assignment shall immediately render this Agreement null and void.

Section 6. Georgetown to Construct the Second Line.

(a) Georgetown, at its sole discretion and control, shall finance, design, construct, and install at Georgetown’s sole expense a Second Line within the Reservation Area pursuant to this Agreement and in accordance with applicable law.

(b) The design plans and specifications for the Second Line shall be subject to the review and approval of BCMUD, not to be unreasonably withheld. BCMUD shall approve or raise specific objections to the design plans and specifications for the Second Line, or identify the additional information required by BCMUD to make a determination, within thirty (30) days of Georgetown’s transmittal of the plans and specifications to BCMUD for review. Georgetown shall not commence construction of the Second Line until BCMUD has approved the final plans and specifications therefor.

(c) Georgetown’s construction and/or operation of the Second Line shall in no way interfere with the operation of, or damage, the existing BCMUD Pipeline. BCMUD makes no representation or warranty regarding the physical location of the BCMUD Pipeline, and Georgetown shall identify such location prior to commencement of any construction of the Second Line. In the event that Georgetown damages the BCMUD Pipeline in connection with construction of the Second Line, Georgetown shall be responsible for all costs and expenses

associated with repair of such damage, and shall provide payment within thirty (30) days of receipt of a written invoice for payment from BCMUD.

(d) BCMUD shall have the right to inspect Georgetown's installation of the Second Line at all times.

(e) Georgetown shall reimburse BCMUD for its actual costs to review and approve the design plans and specifications for the Second Line, as well as for its actual costs to inspect the installation of the Second Line. Georgetown shall provide reimbursement within thirty (30) days of receipt of an invoice for payment from BCMUD, which shall provide documentation in reasonable detail supporting the payment cost(s) for which reimbursement is sought. BCMUD shall invoice Georgetown for reimbursement not more frequently than quarterly. Upon request by Georgetown prior to commencement of engineering review or inspection services by BCMUD's engineer, the Parties may agree upon a "not to exceed" amount for each task. If the Parties are unable to reach agreement after good faith efforts, then either Party may terminate this Agreement, and the Partial Assignment, by providing written notice thereof to the other Party.

Section 7. Cooperation. BCMUD will reasonably cooperate with Georgetown's pursuit of all necessary permits and approvals needed from time to time as a result of, with respect to, or growing out of, this Agreement, including compliance with any requirements arising hereunder. Notwithstanding the foregoing, BCMUD shall in no way be responsible for any costs associated with the pursuit of any such permits or approvals.

Section 8. Regulatory Requirements. This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the Commission, or any successor agency.

Section 9. Source of Payments from Georgetown.

(a) Georgetown represents and covenants that all funds and moneys required to be paid by Georgetown under this Agreement shall constitute reasonable and necessary operating expenses of the Georgetown water utility system as authorized by the Constitution and laws of the State of Texas.

(b) All payments required to be made by Georgetown to BCMUD under this Agreement shall be payable from the revenues of the Georgetown water utility system; provided that the Georgetown governing body shall have the discretion to use any funds available to Georgetown. BCMUD shall never have the right to demand payment by Georgetown of any obligations assumed by or imposed upon it under or by virtue of this Agreement from any funds raised or to be raised by taxation and the Georgetown obligation under this Agreement shall never be construed to be a debt of Georgetown of such kind as to require Georgetown, under the Constitution and laws of the State of Texas, to levy and collect a tax to discharge such obligation.

Section 10. Waiver and Amendment.

(a) Failure to enforce or the waiver of any provision of this Agreement or any breach of nonperformance by Georgetown or BCMUD shall not be deemed a waiver by BCMUD or Georgetown of the right in the future to demand strict compliance and performance of any provision of this Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or remedy or any default under this Agreement shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of the default.

(b) No officer or agent of Georgetown or BCMUD is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document approved by the respective governing bodies of the Parties and signed by Georgetown's and BCMUD's authorized representatives.

Section 11. Remedies. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by either party hereto and shall be cumulative. Recognizing, however, that failure in the performance of either party's obligations hereunder could not be adequately compensated in money damages alone, each party agrees in the event of any default on its part that each party shall have available to it the equitable remedy of mandamus and specific performance, in addition to any other legal or equitable remedies which also may be available.

Section 12. Force Majeure. If for any reason of force majeure, either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if the affected Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the affected Party, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemy; orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; severe storms, floods, washouts, or droughts; or any inability on the part of Georgetown to construct the Second Line under this Agreement on account of any similar other cause not reasonably within the control of Georgetown.

Section 13. Non-Assignability. Neither party may assign this Agreement without the written consent of the other party, except to a successor of the duties and functions of that party.

Section 14. Sole Agreement. This Agreement, together with the Partial Assignment, constitutes the sole and only agreement of BCMUD and Georgetown and supersedes any prior understanding or oral or written agreements between Georgetown and BCMUD, with respect to the subject matter of this Agreement.

Section 15. Severability. The provisions of this Agreement are severable and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

Section 16. Captions. The section captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

Section 17. No Third-Party Beneficiaries. This Agreement does not create any third-party benefits to any person or entity other than the signatories hereto and is solely for the consideration herein expressed.

Section 18. Notices. All notices, payments and communications ("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) business 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:

Brushy Creek Municipal Utility District
Attention: General Manager
16318 Great Oaks Drive
Round Rock, Texas 78681_

City of Georgetown
Attention: City Manager
P.O. Box 409
Georgetown, Texas 78627

With copy to:
City of Georgetown
Attention: City Attorney
P.O. Box 409
Georgetown, Texas 78627

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.

Section 19. Duplicate Originals. BCMUD and Georgetown, acting under authority of their respective governing bodies, execute this Agreement in several counterparts, each of which shall be an original. Georgetown and BCMUD shall each submit to the other party an original written resolution authorizing the execution of this Agreement and specifying the name and authority of each such representative to sign this Agreement.

[Signatures on the following page(s)]

Executed the _____ day of _____, 2021.

Attest:

City of Georgetown, Texas

By: _____
Name: Robyn Densmore
Title: City Secretary

By: _____
Name: Joshua Schroeder
Title: Mayor

Approved as to Form:

By: _____
Name: Skye Masson
Title: City Attorney

Attest:

Brushy Creek Municipal Utility District

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____