

**INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF LITTLE ELM AND MUSTANG
SPECIAL UTILITY DISTRICT FOR
EMERGENCY WATER SUPPLY**

This Interlocal Agreement ("Agreement") is effective as of the ____ day of _____, 2023 by and between the **Town of Little Elm**, a Texas Home Rule Municipal Corporation, (hereinafter referred to as "**LITTLE ELM**") and **Mustang Special Utility District**, a governmental entity under Article XVI, Section 59 of the Texas Constitution, organized and operating pursuant to chapters 49 and 65 of the Texas Water Code, (hereinafter referred to as "**MUSTANG**") each acting herein by and through its respective governing body.

WHEREAS, Chapter 791 of the **TEXAS GOVERNMENT CODE**, also known as the **INTERLOCAL COOPERATION ACT**, allows local governments to contract with each other to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, LITTLE ELM, a home-rule municipality organized under the laws of the State of Texas, holds the Certificate of Convenience and Necessity to provide water service in the territorial boundaries of the Town of Little Elm; and

WHEREAS, MUSTANG, a governmental entity created under Section 59, Art. XVI of the Texas Constitution, holds the Certificate of Convenience and Necessity No. 11856 (water) by which Mustang is authorized to provide retail water services within its certified area in Denton County and Grayson County, Texas; and

WHEREAS, the parties desire to enter into an Interlocal Agreement for the purposes of providing for the delivery and distribution of emergency treated water supply in the event of an equipment and/or system failure and during other appropriate emergency conditions; and

WHEREAS, LITTLE ELM and **MUSTANG** propose to establish water system interconnections and interconnection improvements between the **LITTLE ELM** municipal water system and the **MUSTANG** water system in locations determined from time to time by the **LITTLE ELM** Town Manager and **MUSTANG** General Manager for the purpose of providing emergency water flow to assist either party in the event of a system and/or equipment failure and during other appropriate emergency conditions; and

WHEREAS, LITTLE ELM and **MUSTANG** agree that each system is required to meet minimum requirements for supply per Texas Administrative Code Title 30 Part I Chapter 290 Subchapter D; and

WHEREAS, it is to the mutual benefit of **LITTLE ELM** and **MUSTANG** to provide reciprocal terms and conditions for an emergency supply of water in advance of actual needs;

NOW, THEREFORE the parties herein enter into this Agreement to outline the joint participation of **LITTLE ELM** and **MUSTANG** as follows:

ARTICLE I: DEFINITIONS

- 1.1 For the purposes of the Agreement, when not consistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in the Agreement shall be given their common and ordinary meaning.
- 1.2 For the purpose of the Agreement, the following words, terms, phrases, and their derivatives shall have the meaning given below:
- 1.2.1 **Town Manager:** the Town Manager of Little Elm, or the Manager's designated representative.
- 1.2.2 **Little Elm:** the Town of Little Elm, Texas, a home rule municipal corporation in the County of Denton, State of Texas.
- 1.2.3 **Emergency Condition:** any equipment or facility failure, or operational event beyond the control of one of the parties in which the water system of either party cannot maintain the minimum water pressure necessary to meet TAC 30.1 §290 Subchapter D. The emergency connection and supply of water will not occur for the purpose of compensating for system deficiencies, general drought, or high usage by customers.
- 1.2.4 **General Manager or Manager:** The General Manager of the Mustang Special Utility District or the General Manager's designated representative.
- 1.2.5 **Interconnection:** a system of pipes, valves, meters and backflow prevention devices, allowing water to flow by system pressure differential through a facility from the **LITTLE ELM** water system into the **MUSTANG** water system, or from the **MUSTANG** water system into the **LITTLE ELM** water system.
- 1.2.6 **Mustang Special Utility District:** the Mustang Special Utility District, a Texas governmental entity established under Section 59, Article XVI of the Texas Constitution, in the County of Denton, State of Texas.
- 1.2.7 **Water System:** the pipes, facilities, and other appurtenances owned, operated, and maintained by a party to this Agreement to provide potable water to the party's territory.
- 1.2.8 **Renewal Date:** Ten years after the effective date of this Agreement and thereafter, every five years. Agreement can only be cancelled with 180 day notice prior to end of agreement or at anytime with 365 day notice.
- 1.2.9 **Unit Rate:** the cost for each one thousand (1,000) gallons of water supplied.

ARTICLE II: EMERGENCY WATER TRANSFER

2.1 *Transfer and Point(s) of Delivery*

2.1.1 In the event an Emergency Condition exists in either **LITTLE ELM** or **MUSTANG**, each party agrees to provide available treated water to the requesting party through a manually operated interconnection(s) at the point(s) of delivery identified in Exhibit A, and other locations as agreed to the parties in a written amendment to this Agreement.

2.1.2 During the Emergency Condition, the supplying party agrees to transfer water to the requesting party through the interconnection at the available pressure maintained in the supplying party's distribution system. The parties understand and agree that the supplying party is under no obligation to furnish pressurized water to any connection between the point of delivery and the other party's facilities for sustaining and increasing pressure. The requesting party may utilize the pressure maintained in the supplying party's system for movement of water from the point of delivery to the point where the requesting party has facilities for sustaining or increasing pressure.

2.2 *Quality.* The water delivered to the requesting party at the interconnect will be of the same or similar quality as the water delivered to the supplying party's customers, and in compliance with all applicable State and Federal water standards.

2.3 *Quantity.*

2.3.1 Subject to availability, the supplying party will deliver emergency water supply to the requesting party at a quantity not exceeding 2,100 gallons per minute or 3.0 million gallons per day necessary to meet TCEQ minimum supply requirements.

2.3.2 Neither party has requested a firm availability of water. If a party does not have the ability to provide the quantity of emergency water supply requested by the other party for whatever reason, the supplying party has the right and authority to limit the emergency water supply provided to the requesting party. The supplying party will notify the requesting party of the quantity of emergency water supply provided if less than the amount requested.

2.3.3 If the supplying party has an emergency in its system at a time the requesting party has requested or is receiving emergency water supply, the supplying party has the right to deny or terminate the emergency supply to the requesting party.

2.3.4 The delivery of emergency water supply to the requesting party shall not exceed sixty (60) calendar days per event without the approval of the governing body of the supplying party.

ARTICLE III: UNIT RATE PRICE

- 3.1 The unit rate per one thousand (1,000) gallons of water transferred through any interconnection will be calculated using the **LITTLE ELM** wholesale rate for the purchase of treated water during the timeframe that the Emergency Condition(s) exist. **LITTLE ELM** evaluates the wholesale rate annually and includes the updated figures in the annual rate ordinance that is adopted by **LITTLE ELM** Council. The current rate for Fiscal Year 2023 is \$4.03/1000 gallons.
- 3.1.1 It is understood by both parties that water rates are subject to change based on approval by either the **LITTLE ELM** Council or the **MUSTANG** Board of Directors.

ARTICLE IV: TRANSFER INITIATION AND TERMINATION

- 4.1 The Parties acknowledge that transfers of treated water through interconnections consisting of piping and valves **will not be operated** without an authorized representative from both parties being present.
- 4.2 The following are contact phone numbers for each party:
- | | | |
|-------------------|---|--------------------------------|
| LITTLE ELM | Municipal Service Center (Day)
Emergency | (972) 377-5556
(same) |
| MUSTANG | Mustang Special Utility District
Emergency | (940)440-9561
(972)948-9358 |
- 4.3 The party's agree that the termination of water transfer during emergency fire flow conditions will only occur after consultation between the Town Manager and/or designee and General Manager. The decision to terminate the transfer of water during emergency conditions will take into consideration the following items listed in the enumerated order of importance:
1. Protection of Life
 2. Protection of Exposed Property
 3. Protection of Buildings
 4. Interruption of Water Service
- 4.4 The parties agree that the party receiving emergency water will use its best efforts to resolve the emergency situation as soon as possible.

ARTICLE V: CONSTRUCTION, OPERATION AND MAINTNANCE OF THE INTERCONNECTION(S)

- 5.1 *Interconnection Facilities*
- 5.1.1 The parties at the beginning of this Agreement shall cause the design and construction of the connection necessary for delivery of emergency water supply under this Agreement. **LITTLE ELM** is responsible for serving as Project Manager

and will contract for the engineering and construction of the interconnection; **LITTLE ELM** shall provide **MUSTANG** an opportunity to review, comment and/or agree on the design, bids and specifications. The parties anticipate the engineer and construction contractor will issue progress billing statements. **LITTLE ELM** shall provide **MUSTANG** a copy of the progress billing received; within thirty (30) days of receiving the billing statement, **LITTLE ELM** agrees to pay for all costs associated with the design and construction of the Interconnection, up to and including the connection to **MUSTANG**'s water pipe(s).

5.1.2 As Project Manager, **LITTLE ELM** assumes responsibility for necessary permits and/or approvals, i.e., Texas Department of Transportation, Texas Commission on Environmental Quality, Town of Little Elm, Town of Oak Point etc.

5.1.3 The parties may agree to the design and construct additional interconnection facilities at other points of delivery. The parties shall amend this Agreement should the parties determine additional interconnection points of delivery are necessary.

5.2 *Access, Use, and Right-of-Way.* The parties agree to furnish any rights-of-way necessary for the connection and metering facilities. **LITTLE ELM** and **MUSTANG** agree to provide unlimited access and use to the connection and areas along the routes of the delivery facilities as necessary to maintain the facilities and operate the facilities during the period of emergency.

5.3 *Operations and Maintenance.*

5.3.1 At least on an annual (once a calendar year) basis, the parties will inspect, test, and perform any routine maintenance to the interconnection(s). The parties agree to share equally in the cost of the inspection, testing, and maintenance of the interconnection(s), including the costs and expenses for repair and replacement of interconnection components. The entity conducting the inspection, testing, and maintenance shall calculate the associated costs, and provide an itemized report. The parties shall provide payment for its portion of the inspection, testing, and routine maintenance. **LITTLE ELM** shall be responsible for setting up and invoicing **MUSTANG** for their portion.

5.3.2 The parties agree to provide a minimum of seventy-two (72) hours of advanced notification prior to any testing or maintenance being performed on the interconnection(s), when applicable.

5.3.3 The parties agree to share in the costs for major repairs or rehabilitation of the connection not considered within the scope of routine maintenance. Unless an emergency situation, the parties shall mutually determine and agree on major repairs or rehabilitation of the connection or metering facilities prior to the repairs or rehabilitation.

5.3.4 Upon the execution of this Agreement, the parties will establish a mutually agreeable schedule for inspection, testing, and maintenance, which may be amended as necessary from time to time upon mutual written agreement.

5.3.5 **LITTLE ELM** assumes no responsibility for the operation or maintenance of any portion of **MUSTANG's** water system, and **MUSTANG** assumes no responsibility for the operation or maintenance of any portion of **LITTLE ELM's** water system.

ARTICLE VI: DELEGATION OF ADMINISTRATIVE AUTHORITY

6.1 The Town Council of **LITTLE ELM** and the Board of Directors of **MUSTANG** hereby delegate the following administrative functions to the Town Manager and General Manager respectively, in this Agreement:

1. To modify, move, or install new interconnections provided that costs for such modifications, relocations or installations are within the spending authority of the Town Manager and the General Manager.
2. Any decisions regarding routine maintenance and operation of the interconnection.

ARTICLE VII: GENERAL PROVISIONS

7.1 Except as otherwise provided therein, the terms and conditions of this Agreement may be modified at any time by the mutual written consent of both parties. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and approved by the governing body of each party.

7.2 Any notice required or permitted between the parties must be in writing, and shall be delivered in person, or by certified mail, return receipt requested, or via facsimile to the following:

LITTLE ELM:	TOWN OF LITTLE ELM Attention: Town Manager 100 W. Eldorado Parkway Little Elm, Texas 75068
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MUSTANG	Mustang SUD Attention: General Manager 7985 FM 2931 Aubrey, Texas 76227
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7.3 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

7.4 This Agreement has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Denton County, Texas. The Parties expressly agree that venue and jurisdiction of any action filed in connection with this Agreement shall be brought exclusively in the State District Court located in Denton County, Texas.

- 7.5 **To the extent permitted by law and without waving each respective party's governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act, LITTLE ELM and MUSTANG agree to hold each other harmless from and against any and all claims or causes of action arising out of or in connections with the provision of water.**
- 7.6 It is understood that this Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. Not verbal agreement or conversation with any officer, agent or employee of either party, either before or after the execution of this Agreement, shall affect or modify any terms or obligations hereunder.
- 7.7 The initial term of this Agreement is for ten (10) years from the later of the following: (i) the date the **LITTLE ELM** Town Council approves the Agreement, and (ii) the date the **MUSTANG** Board of Directors approves the Agreement. This Agreement shall automatically renew thereafter for successive terms of five (5) years unless either party terminates this Agreement by providing written notice to the non-canceling party at the address listed in Section 7.2 of this Agreement not less than 180 days in advance of the cancellation date. A party may terminate this Agreement with thirty days' notice in the event the other party fails to perform an obligation under this Agreement or breaches a provision of this Agreement, and has not cured same within sixty (60) days of notice of the breach or failure to comply.
- 7.8 Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.
- 7.9 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other difference or subsequent breach.
- 7.10 This Agreement and all rights and obligations contained herein may not be assigned without the prior written approval of the other party.
- 7.11 If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

- 7.12 This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties. It is expressly understood and agreed that, in the execution of this Agreement, neither **MUSTANG** nor **LITTLE ELM** waives, nor shall be deemed hereby to have waived, any immunity or defense available to it by law.
- 7.13 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.
- 7.14 The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

SIGNED this the _____ day of _____, 2023

TOWN OF LITTLE ELM

MUSTANG SUD

Curtis Cornelious, Mayor

Michael Walker, President

ATTEST:

ATTEST:

Caitlan Biggs, Town Secretary

Mike Gauntt, Vice President