

AGREEMENT RELATING TO RIGHT OF WAY

WILLIAMSON COUNTY, a political subdivision of the State of Texas ("COUNTY"), and BRUSHY CREEK MUNICIPAL UTILITY DISTRICT, a political subdivision of the State of Texas ("District"), enter into this Agreement Relating to Right of Way ("Agreement") on this the 13th day of December 2007, upon the terms and conditions set forth below.

Recitals

A. Whereas, the County is a political subdivision of the State of Texas that is responsible for, among other things, the construction, ownership, operation and maintenance of public roadways and rights-of-way within unincorporated areas of Williamson County, including those located within the District;

B. Whereas, the District is a political subdivision of the State of Texas that is responsible for, among other things, the provision of water, wastewater, drainage, solid waste, and park and recreational facilities to its residents;

C. Whereas, Section 49.461 et seq. of the Texas Water Code specifically authorizes the District to construct, improve, manage, maintain and operate public right-of-way beautification projects;

D. Whereas, the District and the County previously entered into that certain "Interlocal Agreement for the Maintenance of Medians" dated July 11, 2000 (the "Median Maintenance Agreement"), setting forth the terms and conditions pursuant to with the District agreed to perform certain maintenance of the

Great Oaks Drive median on behalf of the County, and the County agreed to provide payment to the District for such services; and

E. Whereas, the District now desires to install certain signs within public rights-of-way within the District pursuant to its right-of-way beautification powers, and the parties desire to enter into this Agreement in order to set forth their respective rights and obligations relating to the installation, operation, and maintenance of the median signs and other improvements to the public rights-of-way within Brushy Creek Municipal Utility District (the "Right-of-Way Areas").

Agreement

Now, therefore, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Purpose

1.1 The COUNTY hereby agrees that pursuant to the District's right-of-way beautification powers, the District may install, operate, manage, and maintain landscaping, lighting, fencing, entry way monuments, signage, sidewalks and irrigation (hereafter, the "Beautification Activities") within the Right-of-Way Areas.

1.2 The District agrees that all Beautification Activities shall be done in compliance with all applicable County, State and/or Federal police, traffic, building, health and safety ordinances, laws and regulations existing at the time said

construction and maintenance is performed.

II. PAYMENT

2.1 The COUNTY and the District agree that no annual fee or payment of any kind shall be assessed or applicable with respect to the Beautification Activities undertaken by the District pursuant to this Agreement.

III. COUNTY AUTHORITY AS TO RIGHT-OF-WAY AREAS

3.1 Except as to any rights granted to the District under the laws of the State of Texas relating to the Right-of-Way Areas, this Agreement is expressly subject and subordinate to the present and future right of the COUNTY, its successors, assigns, lessees, grantees and licensees, to construct, install, establish, maintain, use, operate and renew any public utilities facilities, franchised public utilities, roadways or streets on, beneath or above the surface of the Right-of-Way Areas.

3.2 Nothing in this Agreement shall be construed to limit, in any way, the power of the COUNTY to widen, alter or improve any Right-of-Way Areas subject to this Agreement pursuant to official action by the governing body of the COUNTY or its successors. COUNTY does, however, agree to give the District at least thirty (30) days' written notice of such action and shall cooperate with the District to effect the relocation of the District's installations and improvements in the event of such widening, altering or improvement of such street areas and,

further, to cooperate with the District wherever possible, to effect such widening, altering or improving of such street areas so that the District's operations and improvements on the Right-of-Way Areas will not be materially affected thereby.

3.3 Notwithstanding any provision in this Agreement to the contrary, the COUNTY retains the right to enter upon the Right-of-Way Areas, at any time and without notice, assuming no obligation to the District, to remove any of the improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the COUNTY'S rights or duties with respect to the Right-of-Way Areas; (b) protecting persons or property; or (c) the public health or safety with respect to the Right-of-Way Areas. The County will endeavor to give prior reasonable notice to the District under such circumstances, but has no duty to do so when circumstances require immediate action by the County.

IV. RELEASE AND HOLD HARMLESS

4.1 The District agrees to release and hold harmless the County from and against any and all claims, demands, debts, suits, causes of action, losses, damages, judgments, fines, penalties, liabilities and costs, including reasonable attorneys' fees and defense costs incurred by the District related to or arising out of the Beautification Activities undertaken by the District in the Right-of-Way Areas.

4.2 The County agrees to release and hold harmless the

District from and against any and all claims, demands, debts, suits, causes of action, losses, damages, judgments, fines, penalties, liabilities and costs, including reasonable attorneys' fees and defense costs incurred by the County related to or arising out of the activities undertaken by the County in the Right-of-Way Areas.

V. CONDITIONS

5.1 District's Responsibilities. The District will be responsible for any damage to or relocation of existing COUNTY facilities. The District shall repair any property of the COUNTY which was damaged or destroyed as a result of activities authorized under this Agreement by, or on behalf of, the District.

5.2 Maintenance. The District shall maintain any improvements that it installs in proper condition. Removal of dead or dying plants installed by the District shall be handled by the District at its expense.

5.3 Removal or Modification. The District agrees that removal or modification of any improvements now existing or to be later replaced by the District shall be at the District's expense. Said removal or modification shall be at the District's sole discretion, except where otherwise provided by this Agreement.

5.4 Default. In the event that the District fails to maintain its improvements or otherwise comply with the terms or conditions as set forth herein, then the COUNTY shall give the District written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. The District shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of and, if the District does not satisfactorily remedy the same within the 30-day period, the COUNTY may terminate this Agreement.

VI. COMMENCEMENT: TERMINATION BY ABANDONMENT

6.1 This Agreement shall begin with the date set forth in the introductory paragraph of this Agreement, and continue thereafter for so long as the Right-of-Way Areas shall be used for the purposes set forth herein. If the District abandons the use of all or any part of the Right-of-Way Areas for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days' written notice to the District if such abandonment has not been remedied by the District within such period; the COUNTY shall thereafter have the same complete title to the Right-of-Way Areas so abandoned as though this Agreement had never been made and shall have the right to enter on the Right-of-Way Areas and terminate the rights of the District, its successors and assigns hereunder. To the extent authorized by law, all installations of the District not removed

shall be deemed property of the COUNTY as of the time abandoned.

VII. TERMINATION

7.1 Termination By the District. This Agreement may be terminated by the District by delivering written notice of termination to the COUNTY not later than thirty (30) days before the effective date of termination. If the District so terminates, then its rights and duties with respect to the Right-of-Way Areas shall be those specified by applicable laws of the State of Texas.

7.2 Termination By County. This Agreement may be terminated at any time by resolution of the Williamson County Commissioners Court if such revocation is reasonably required by the public interest (as hereinafter set forth), after providing thirty (30) days' written notice to the District.

Subject to prior written notification to the District or its successors-in-interest, this Agreement is terminable by the COUNTY and deemed to be in the public interest if:

1. the Beautification Activities, or a portion of them, interfere with the COUNTY'S right-of-way;
2. use of the Right-of-Way Areas becomes necessary for a public purpose;
3. the improvements installed by the District in the Right-of-Way Areas, or a portion of them, constitute a danger to the public which the COUNTY deems not to be remediable by alteration or maintenance of such improvements;

4. despite thirty (30) days' written notice to the District, maintenance or alteration necessary to alleviate a danger to the public has not been made; or

5. The District fails to comply with the terms and conditions of this Agreement.

If the District abandons or fails to maintain the Right-of-Way Areas, and the COUNTY receives no substantive response within thirty (30) days following written notification to the District, then the COUNTY may terminate this Agreement. Notwithstanding any provision of this Agreement to the contrary, the rights and duties of the parties with respect to the Right-of-Way Areas upon termination of this Agreement shall be determined by the laws of the State of Texas.

VIII. APPLICATION OF LAW

8.1 This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

IX. VENUE

9.1 Venue for all lawsuits concerning this Agreement will be in Williamson County, Texas.

X. SUCCESSORS AND ASSIGNS; WAIVER OF DEFAULT

10.1 The terms and conditions set forth this Agreement shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XI. ASSIGNMENT

11.1 The District shall not assign, sublet or transfer its interest in this Agreement without the written consent of the COUNTY, which consent shall not be unreasonably withheld. The District shall furnish to the COUNTY a copy of any such assignment or transfer of any of the District's rights in this Agreement, including the name, date, address and contact person.

XII. NOTICES

12.1 All notices, demands and requests for delivery of documents or information hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as of the time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage prepaid, or as of the time of delivery to Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed:

To the District at:

Brushy Creek Municipal Utility District
16318 Great Oaks Drive
Round Rock, Texas 78681

And To COUNTY at:

Williamson County Judge
Dan A. Gattis (or successor)
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to: Williamson County Attorney
Jana Duty (or successor)
405 M.L.K. Street, Box #7
Georgetown, Texas 78628

or to such other addresses which either party may so designate by
sending notice as aforesaid.

XIII. EFFECT ON PRIOR AGREEMENT

13.1 This Agreement shall have no impact upon the Median
Maintenance Agreement, which shall remain in effect according to
its terms.

TERMS AND CONDITIONS ACCEPTED, this the _____ day of
_____, 20____.

WILLIAMSON COUNTY

By: _____
Name: Judge Dan A. Gattis
Title: Williamson County Judge

APPROVED AS TO FORM:

By: _____
Hal C. Hawes
Assistant Williamson County Attorney

By: _____
James Gilger, CPA,
Williamson County Contract
Management Auditor

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this the
_____ day of _____, 20____, by Dan A. Gattis, as
County Judge of WILLIAMSON COUNTY, a political subdivision of the
State of Texas on behalf of said political subdivision.

NOTARY PUBLIC, State of Texas

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT:

By: Paul J. Tisch
Name: Paul Tisch
Title: President

Bruce Allen
District Secretary

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this the 13th
day of December, 2007, by Paul Tisch, President of the
Board of Directors of Brushy Creek Municipal Utility District, a
conservation and reclamation district, on behalf of said
district.

Margie Anthes
NOTARY PUBLIC, State of Texas

