

**INTERLOCAL AGREEMENT REGARDING
RELOCATION OF WATER SYSTEM IMPROVEMENTS**

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON §

THIS INTERLOCAL AGREEMENT REGARDING RELOCATION OF WATER SYSTEM IMPROVEMENTS (“Agreement”) is entered into between Brazos River Authority (“BRA”), Williamson County, a political subdivision of the State of Texas (the “County”), the City of Round Rock, Texas (“Round Rock”), the City of Georgetown, Texas (“Georgetown”), and Brushy Creek Municipal Utility District (“BCMUD”), collectively referred to as the “Parties”.

WHEREAS, the BRA operates the Williamson County Regional Raw Water Line (“WCRRWL”), which consists of approximately 28 miles of pipeline, needed to convey water from Stillhouse Hollow Lake to Lake Georgetown;

WHEREAS, the County is and has been in the process of improving County Road 305 at IH 35 (the “CR 305 Project”) and Ronald Reagan Boulevard at IH 35 (the “RRB Project”), collectively referred to herein as the “Projects”; and

WHEREAS, the re-alignment of roads contemplated by the Projects will necessitate the relocation of certain sections of the WCRRWL; and

WHEREAS, Round Rock, Georgetown, BCMUD, and BRA are parties to the Williamson County Regional Raw Water Line Agreement, which sets forth the agreements relating to oversight, operations and maintenance of the WCRRWL;

WHEREAS, in an effort to facilitate the Projects, the County desires to relocate portions of the WCRRWL into new right-of-way; thus, this Agreement sets forth the terms and conditions for the relocation of portions of the WCRRWL.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**I.
STATEMENT OF INTENT**

1.01 General. The purpose of this Agreement is to set forth the responsibilities and obligations of the Parties relating to relocation of the WCRRWL.

1.02 Relocation of Waterline. The County will, at its sole expense, relocate the impacted sections of the WCRRWL (hereinafter the “Waterline Adjustments”), in accordance with construction plans and specifications set forth in “Exhibit A” for the CR 305 Project and “Exhibit B” for the RRB Project, both of which are attached hereto and incorporated by reference herein.

1.03 County's Responsibilities. To accomplish the Waterline Adjustments, the County will perform the following tasks:

(a) Obtain and provide twenty (20) foot easements, including providing title insurance acceptable to BRA on all easement areas, to the BRA for the relocated sections of the WCRRWL;

(b) In the event WCRRWL easements are in areas where the County will be abandoning roadways for the Projects, the County shall ensure that the BRA's easements remain intact;

(c) Grant the BRA a permanent waterline easement, including providing title insurance acceptable to BRA on all easement areas, in all County owned areas where the WCRRWL is located and currently located in a utility agreement between BRA and the County;

(d) Prepare design and construction plans and specifications for the Waterline Adjustments, signed and sealed by a professional engineer licensed in the State of Texas;

(e) Manage the design and construction of the Waterline Adjustments;

(f) Pay any and all design and utility relocation costs;

(g) Contract for construction of the Waterline Adjustments with a contractor meeting the requirements set forth in "Exhibit ____";

(h) Reimburse Round Rock for inspection services within 30 days of receipt of proof of payment by Round Rock;

(i) Acquire ownership of all materials, debris and components, resulting from the Waterline Adjustments, and accept responsibility for proper disposal unless otherwise noted in "Exhibit ____"; and

(j) Provide a Resident Project Representative for the Projects acceptable to the Parties to perform the activities set forth on "Exhibit ____".

1.04 BRA's Responsibilities. BRA will perform the following with respect to the Waterline Adjustments:

(a) Review and approve all easement documents and potential title issues prior to any relocation activities. If BRA discovers a title issue, BRA shall notify the County and provide the County an opportunity to cure the defect.

(b) Provide comments on review of designs submitted for consideration by the other Parties within 21 calendar days of receipt;

(c) Designate a point of contact for review of designs and agreements submitted by the County;

(d) Unless otherwise noted in “Exhibit ”, transfer ownership of all materials, debris and components, resulting from the Waterline Adjustments to the County for disposal.

1.05 Round Rock’s Responsibilities. Round Rock will perform the following with respect to the Waterline Adjustments:

(a) Provide review of designs submitted for approval by the other Parties within 21 calendar days of receipt;

(b) Provide a construction inspector OR acquire professional construction inspection services on behalf of the WCRRWL parties for the Projects and, in that regard, perform the activities set forth on “Exhibit _____”.

1.06 Georgetown’s Responsibilities. Georgetown will perform the following with respect to the Waterline Adjustments:

(a) Provide review of designs submitted for approval by the other Parties within 21 calendar days of receipt;

1.07 BCMUD’s Responsibilities. BCMUD will perform the following with respect to the Waterline Adjustments:

(a) Provide review of designs submitted for approval by the other Parties within 21 calendar days of receipt;

1.08 Continuation of Service. The County agrees that the Waterline Adjustments shall be undertaken so as to minimize any disruption of water service to existing customers of BRA, Round Rock, Georgetown, and BCMUD, and will not result in the loss of water service to any such customers for a period of no more than five (5) days. In addition, the County shall provide the Parties 30 days’ written notice of any scheduled disruption to water service caused by the Waterline Adjustments.

II. CONSTRUCTION OF PROJECT

2.01 General. The Parties mutually acknowledge and agree that the County shall, at its sole expense, complete and construct the Waterline Adjustments as set forth in this Agreement.

2.02 Construction Plans. The County shall submit the Waterline Adjustments project plans and specifications (the “Project Plans”) and all timelines and construction schedules, and any changes or modifications thereto, to the Parties for review prior to commencing construction.

2.03 Inspection. Round Rock shall inspect the Project Plans and the physical improvements related to Waterline Adjustments. If Round Rock determines that the construction by the County is not in accordance with the approved Project Plans, Round Rock shall provide notice to the County of any construction deficiencies. Upon receipt of such notification from Round Rock, the County shall cease construction until the problem and/or deficiency can be addressed and a corrective plan of construction implemented with approval of the Parties.

2.04 Other Costs. The County shall reimburse Round Rock for all costs that Round Rock incurs for inspections related to the Waterline Adjustments within 30 days of receipt of an invoice for those costs.

2.05 Insurance, Bonds and Warranties. The County shall require the contractor for the Waterline Adjustment to name BRA as an additional insured on all bonds and policies related to the Waterline Adjustment. The County shall require the contractor to provide maintenance, performance, **and payment** bonds in favor of BRA for the Waterline Adjustment. The County shall transfer all warranties for the Waterline Adjustments to BRA upon final completion and acceptance of the work. Warranties shall be for a period of not less than two (2) years after completion of the Waterline Adjustments.

2.06 Indemnification. To the extent allowed by law, Round Rock, Georgetown, and BCMUD agree to indemnify and hold BRA, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the design, construction, and relocation of the Waterline Adjustments.

To the extent allowed by law, the County agrees to indemnify, defend and hold harmless the BRA, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the acquisition of any and all easements by the County for the Projects and the design, construction, and relocation of the Waterline Adjustments including but not limited to delays in the BRA's ability to transport water using the WCRRWL to BRA customers.

III. DISPUTES

3.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This

applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

3.02 Equitable Relief. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agrees that after providing notice and an opportunity to cure in accordance with Section 4.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

3.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

IV. GENERAL PROVISIONS

4.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

4.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

4.03 Payments from Current Revenues. Any payments required to be made by a party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

4.04 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

4.05 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings

or representations, whether oral or written, regarding the subject matter and only relates to those portions of the County Project shown in the Project Plans.

4.06 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

4.07 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

4.08 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a party by hand-delivery; (ii) transmitted to a party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the party indicated below:

BRA: Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710
Attn: Trey Buzbee
Telephone: (254) 761-3168

COUNTY: Williamson County
710 Main Street, Suite 101
Georgetown, Texas 78626
Attn: Judge Dan Gattis
Telephone: (512) 943-1577

Round Rock: City of Round Rock
221 E. Main St.
Round Rock, Texas 78664
Attn: City Manager
Telephone: (512) 218-5400

Georgetown: City of Georgetown
113 E. 8th Street
Georgetown, Texas 78626
Attn: City Manager
Telephone: (512) 930-3652

BCMUD: Brushy Creek MUD
16318 Great Oaks Dr.
Round Rock, Texas 78681
Attn: Board President
Telephone: (512) 255-7871

4.09 Exhibit. The following exhibit is attached to this Agreement and incorporated herein by reference:

Exhibit A - CR 305 Waterline Adjustment Project Plans

Exhibit B - Ronald Reagan Blvd. Waterline Adjustment Project Plans

4.10 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

4.11 Authority. Each party represents and warrants that it has the full right, power and authority to execute this Agreement.

(SIGNATURES ON FOLLOWING PAGE)

ATTEST:

Secretary

BRAZOS RIVER AUTHORITY:

By: _____
Printed Name: Phillip J. Ford
Title: GM/CEO
Date: _____

ATTEST:

County Clerk

WILLIAMSON COUNTY:

By: _____
Printed Name: Dan A. Gattis
Title: County Judge
Date: _____

ATTEST:

City Clerk

CITY OF ROUND ROCK:

By: _____
Printed Name: _____
Title: _____
Date: _____

ATTEST:

City Secretary

CITY OF GEORGETOWN:

By: _____
Printed Name: _____
Title: _____
Date: _____

ATTEST:

Secretary

**BRUSHY CREEK MUNICIPAL UTILITY
DISTRICT:**

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBITS

EXHIBIT “B”