

**SUBRECIPIENT AGREEMENT BETWEEN
WILLIAMSON COUNTY AND BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
FOR WATER AND WASTEWATER PROJECTS**

**WITH FUNDING FROM:
THE AMERICAN RESCUE PLAN ACT (ARPA) (A.L.N. 21.027)**

This Subrecipient Agreement (“Agreement”) is between Williamson County (the “COUNTY”), a political subdivision of the State of Texas, and Brushy Creek Municipal Utility District, is a municipal utility district created and operating under the authority of Chapters 49 and 54 of the Texas Water Code (“SUBRECIPIENT”), (collectively, the “Parties”), and shall be effective on [REDACTED], 2022 (“Effective Date”). The Parties have reviewed this Agreement and agree to the following:

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic; and

WHEREAS, on March 11, 2021, President Joseph Biden signed the American Rescue Plan Act (“ARPA”) to provide support to the State and local governments to respond to the financial impacts of COVID-19 pandemic; and

WHEREAS, the State and Local Fiscal Recovery Funds (“SLRF FUNDS”) authorized the ARPA (A.L.N. #21.027) are to be used to mitigate the ongoing effects of COVID-19 and support the nation’s pandemic recovery; and

WHEREAS, the COUNTY has received SLRF FUNDS to respond to the continuous impact of COVID-19 as outlined in the Final Rule promulgated by the Department of Treasury (“Treasury”); and

WHEREAS, Treasury has issued guidance for the use of SLRF FUNDS (31 CFR Part 35 and may be found at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>) and will continue to issue guidance and clarification on the appropriate use of these funds; and

WHEREAS, the COUNTY and SUBRECIPIENT find that SLRF FUNDS distributed in accordance with this Agreement shall meet the eligible uses outlined in the Treasury’s Final Rule, and additional guidance; and

WHEREAS, the COUNTY and SUBRECIPIENT find that the program(s) or project(s) and related expenditures outlined in this Agreement is/are eligible under current SLRF FUNDS guidance and rules promulgated by the U.S. Treasury and find that the program(s) or project(s) outlined herein will mitigate the ongoing effects of COVID-19 and support pandemic recovery in Williamson County.

THEREFORE, the Parties agree as follows:

I.
GENERAL OVERVIEW
AND
WATER PROJECT DEFINITIONS

The COUNTY has in good faith determined that this Agreement serves a public purpose. This public purpose includes, but is not limited to, the Subrecipient's efforts to meet the additional needs and services of the community, specifically providing critical support or public interest benefits to local residents as follows:

This Agreement will provide funding for critical infrastructure improvements to public water and wastewater system serving the community.

Additional Scope of Services is set forth in Appendix A, which is attached hereto and incorporated as if copied in full.

Definitions for water and sewer Expenditure Categories must follow the EPA's handbooks. For "clean water" expenditure category definitions, please see:

<https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>.

For "drinking water" expenditure category definitions, please see:

<https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.

The Program or Project Budget is set forth in Appendix B, which is attached hereto and incorporated as if copied in full.

II.
PAYMENT

The COUNTY shall make available an amount of up to **\$4,000,000.00 (FOUR MILLION DOLLARS)** to SUBRECIPIENT from the COUNTY's SLRF FUNDS to reimburse SUBRECIPIENT for expenses related to eligible uses of SLRF FUNDS as outlined in the Treasury's Final Rule, reflected in Appendix B, and in accordance with the terms and conditions outlined below:

Williamson County approves and pays reimbursement requests within thirty (30) days of receipt of a complete request. Errors in the reimbursement request, including insufficient documentation, may result in payment delays. SUBRECIPIENT is responsible for submitting a complete and accurate reimbursement request. Payment is considered made on the date postmarked.

Each reimbursement request must contain the following supporting documentation:

- i. Signed Request for Reimbursement (RFR) form
- ii. General Ledger (monthly, generated from SUBRECIPIENT's accounting system) coinciding with RFR
- iii. Timesheets and Payroll Reports (monthly, generated from SUBRECIPIENT's payroll system) if budget included personnel
- iv. Invoices of all other expenditures
- v. Proof of payment of all expenditures

III. TERM/TERMINATION

This Agreement shall become effective upon signature by both Parties and shall continue in full force and effect until December 31, 2026 unless terminated earlier in accordance with this Agreement. If at any time SUBRECIPIENT state contract is suspended or revoked, or if SUBRECIPIENT becomes excluded, debarred, or suspended from any federal program, this Agreement automatically terminates effective on the date of the suspension, revocation, or exclusion, and SUBRECIPIENT must submit a final, formal statement in the manner set out above and below requesting payment.

The County may immediately terminate this Agreement, without prior notice, if SUBRECIPIENT fails to perform any obligation found herein and the failure:

- i. Creates a potential threat to health or safety: or
- ii. Violated a law, ordinance, or regulation designed to protect health or safety.

Either party may terminate this Agreement without cause giving ninety (90) days written notice to the other party. Upon receipt of notice to terminate, SUBRECIPIENT shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders to contracts are chargeable to this Agreement. Any and all assets purchased under this Agreement shall transfer to the County for purposes outlined herein.

Within ninety (90) days after receipt of a notice of termination, SUBRECIPIENT agrees to submit an invoice showing, in detail, the services performed under this Agreement up to and including the date of termination.

Force Majeure: In the event that either Party is unable to perform its any of its obligation under the Agreement or to enjoy any of the benefits because of natural disaster, global pandemic, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (referred to as a "Force Majeure Event"), the party who has been so affected immediately agrees to give notice to the other part and agrees to do everything possible to resume performance. Upon receipt of such notice, the Agreement is immediately suspended. If the period of nonperformance exceeds ten (10) calendar days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been affected may terminate the Agreement immediately by giving written notice to the other Party.

IV. AMENDMENTS

This Contract may not be amended without a written agreement; however, SUBRECIPIENT may move up to 10% of allocated funds within any budget category without written approval of the COUNTY, except for Equipment or Indirect Cost budget line items, if the movement is consistent with the budget in Appendix B. To move any amount over and above a cumulative total of 10% of allocated funds within any budget category, SUBRECIPIENT must submit a written request to COUNTY and receive written approval of same.

V. STANDARDS FOR FINANCIAL MANAGEMENT

In accordance with 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, SUBRECIPIENT will develop, implement and maintain financial management and control systems, which include at a minimum accurate payroll, accounting and financial reporting records, cost source documentation, effective internal and budgetary controls, and determination of reasonableness, allowability and allocability of costs, and timely and appropriate audits and resolution findings.

SUBRECIPIENT shall maintain an effective accounting system, which will:

- i. Identify and record valid transactions
- ii. Record transactions to the proper accounting period in which transactions occurred
- iii. Describe transactions in sufficient detail to permit proper classification
- iv. Maintain records that permit the tracing of funds to a level of detail that establishes that the funds have been used in compliance with contract requirements
- v. Adequately identify the source and application of funds of each grant contract
- vi. Generate current and accurate financial reports in accordance with contract requirements

VI. MONITORING

SUBRECIPIENT agrees that COUNTY will, until the expiration of the federal retention period as referenced in 2 CFR 200.334, have access to and the right to examine at reasonable times any directly pertinent books, papers, and records (hard copy, as well as computer generated data) of the sub-recipient involving transactions related to this Agreement. This right to audit also extends to any obligations assigned to any subcontracts or agreements formed between SUBRECIPIENT and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of SUBRECIPIENT's obligations to COUNTY under this Agreement. The SUBRECIPIENT agrees that COUNTY will have access during normal working hours to all necessary facilities, staff, and workspace to conduct audits. The COUNTY will provide the SUBRECIPIENT with reasonable advance notice of intended audits. The SUBRECIPIENT must provide records within ten (10) business days or a mutually agreed upon timeline. SUBRECIPIENT may withhold any information

that it is mandated to withhold to comply with state or federal law.

VII. ALLOWABLE COSTS

COUNTY payment to SUBRECIPIENT does not preclude COUNTY from determining that certain costs were ineligible for reimbursement. If the COUNTY determines that a cost the COUNTY has paid for is ineligible for reimbursement, the SUBRECIPIENT will refund the ineligible amount to the COUNTY. COUNTY will determine whether costs submitted by SUBRECIPIENT are allowable and eligible for reimbursement. If COUNTY has paid funds to SUBRECIPIENT for unallowable or ineligible costs, COUNTY will notify SUBRECIPIENT in writing, and SUBRECIPIENT shall return the funds to COUNTY within thirty (30) calendar days of the date of this written notice. COUNTY may withhold all or part of any payments to SUBRECIPIENT to offset reimbursement for any unallowable or ineligible expenditure that SUBRECIPIENT has not refunded to COUNTY, or if required financial report(s) are not submitted by the due date(s).

VIII. INDEPENDENT SINGLE OR PROGRAM SPECIFIC AUDIT

If SUBRECIPIENT, within SUBRECIPIENT'S fiscal year, expends a total amount of at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, SUBRECIPIENT shall have a single audit or program-specific audit in accordance with the 2 CFR 200. The \$750,000 federal threshold amount includes federal funds passed through by way of State and local agency awards.

IX. EQUIPMENT

Any purchase of equipment must be consistent with the Uniform Guidance at 2 CFR Part 200 Subpart D. Equipment acquired under this Agreement must be used for the originally authorized purpose. Consistent with 2 CFR 200.313, any equipment acquired using federal funds shall vest in the non-Federal entity.

Procedures for managing equipment must meet the following requirements:

- i. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property, name of title holder, acquisition date, cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- ii. A physical inventory of the property must be taken, and the results reconciled with the property records at least once every two years.
- iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- iv. Adequate maintenance procedures must be developed to keep the property in good condition.

- v. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

Disposition. When original or replacement equipment acquired under this Agreement is no longer needed or in use for the project or program outlined herein, SUBRECIPIENT must request disposition instructions from the COUNTY.

X.
LEGAL COMPLIANCE, PERFORMANCE MEASUREMENT,
AND REQUIRED REPORTING

SUBRECIPIENT shall comply with all applicable federal, state and local laws and regulations governing the expenditure of funds under this Agreement, including but not limited to additional requirements for U.S. Department of The Treasury Coronavirus Local Fiscal Recovery Fund award terms and conditions compliance related to the American Rescue Plan Act (ARPA) (A.L.N. 21.027). SUBRECIPIENT shall submit to the Williamson County Auditor's office all necessary invoicing and appropriate documentation evidencing expenditures and that said expenditures are Allowable Expenditures. Allowable Expenditures are limited to those expenditures shown in Appendix B. Additional reports and documentation may be required as requested by COUNTY in the approved format.

XI.
DEBARMENT AND SYSTEM FOR AWARD MANAGEMENT

SUBRECIPIENT is not entitled to receive payment under this Agreement for services performed by any personnel who have been excluded, debarred, or suspended under a federal program, unless given explicit permission by the COUNTY. SUBRECIPIENT agrees to maintain an active registration in the System for Award Management (SAM.gov)

XII.
INDEPENDENT CONTRACTORS

It is understood that any relationship created by this Agreement between the Parties shall be that of independent contractors. Under no circumstances shall either Party be deemed an employee of the other nor shall either Party act as an agent of the other Party. Any and all joint venture, joint enterprise, or partnership status is hereby expressly denied, and the Parties expressly state that they have not formed expressly or impliedly a joint venture, joint enterprise, or partnership.

XIII.
SUBCONTRACTING AUTHORITY

SUBRECIPIENT may enter into contracts as necessary for the performance of the scope of services outlined in this Agreement. SUBRECIPIENT agrees to act in good faith and shall comply with all applicable purchasing laws in choosing subcontractors and executing any contracts pursuant to this Agreement.

XIV.
DOCUMENTATION

SUBRECIPIENT shall keep and maintain, for a period not less than five (5) years after December 31, 2026, any and all records relating to use of the SLRF FUNDS described herein.

XV.
FORM 1295 COMPLIANCE

SUBRECIPIENT acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties and has acknowledged the completeness of this disclosure by filing Form 1295 "Certificate of Interested Parties" with the Texas Ethics Commission *if required* by Texas Government Code Section 2252.908, as amended.

XVI.
NOTICE

Any notice required or permitted to be delivered hereunder shall be deemed to have been given when personally delivered, or if mailed, seventy-two hours after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the Parties hereto at the respective addresses set forth below, or at such other addresses as they shall specify by written notice delivered to the following addresses:

County;

County Judge
710 Main Street, Suite 101
Georgetown, Texas 78628

and

County Auditor
710 Main Street, Suite 301
Georgetown, Texas 78628

Subrecipient:

Brushy Creek Municipal Utility District
General Manager
16318 Great Oaks
Round Rock, TX 78681

XVII.
SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

XVIII.
VENUE AND APPLICABLE LAW

Venue of this Agreement shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

XIX.
ENTIRE AGREEMENT

This Agreement represents the entire understanding between the Parties and supersedes all prior representations.

WITNESS that this Agreement shall be effective as of the date of the last party's execution below.

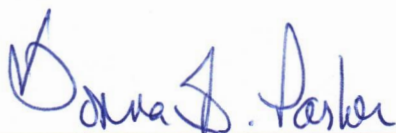
WILLIAMSON COUNTY:

Authorized Signature

Printed Name

Date: _____, 2022

**BRUSHY CREEK MUNICIPAL UTILITY
DISTRICT:**



Authorized Signature

Donna Parker

Printed Name

Date: July 28, 2022

APPENDIX A – Scope of Services

Infrastructure improvements to community water and wastewater systems including without limitation, any one or more of the following:

- Cat Hollow Wastewater Lift Station Improvements
- Emergency power installation at raw water intake facility
- Emergency power installation for groundwater wells
- Winterization of raw water intake vault
- Winterization improvements at the Water Treatment Plant
- Winterization improvements for groundwater wells
- Hillside Lift Station removal

APPENDIX B – Program or Project Budget/Allowable Expenses

Budget Category	Total Estimated ARPA Eligible Costs
Construction and Construction Administration for any one or more of the following public infrastructure improvements: • 5.2 Clean Water: Centralized Wastewater Collection and Conveyance ○ Cat Hollow Wastewater Lift Station Improvements ○ Hillside Lift Station removal • 5.10 Drinking Water: Treatment ○ Winterization improvements at the Water Treatment Plant • 5.13 Drinking Water: Source ○ Emergency power installation at raw water intake facility ○ Emergency power installation for groundwater wells ○ Winterization of raw water intake vault ○ Winterization improvements for groundwater wells	\$2,376,000.00 \$216,000.00 \$2,306,000.00

Notes:

1. Subrecipient is responsible for funding costs of design of the infrastructure improvements.
2. Subrecipient shall be responsible for funding any project costs in excess of the sum set forth in Article II of this Agreement.
3. If subrecipient does not enter into a contract for construction of any individual project improvement by December 31, 2024, Subrecipient shall not be entitled to funding for any costs associated with the project. In such an event, Subrecipient shall have no obligation to proceed with construction of the improvement.
4. Any costs funded by Subrecipient after December 31, 2026 shall not be eligible for reimbursement under this Agreement.

ORDER NO. 22-0728-02

ORDER APPROVING CONTRACT

WHEREAS, Brushy Creek Municipal Utility District (the "District") is a municipal utility district created and operating under the authority of Chapters 49 and 54 of the Texas Water Code, as amended;

WHEREAS, Section 49.213(b) of the Texas Water Code authorizes a district to enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by a district.

WHEREAS, the Board of Directors of the District desires for the District to enter into the **Subrecipient Agreement Between Williamson County and Brushy Creek Municipal Utility District for Water And Wastewater Projects**; and

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF BRUSHY CREEK MUNICIPAL UTILITY DISTRICT, THAT:

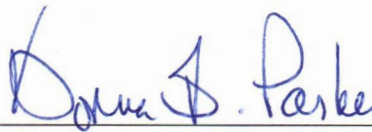
SECTION 1. The facts and recitations in the preamble of this Order are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

SECTION 2. The Board of Directors hereby approves the contract attached hereto, and further authorizes the execution thereof by the President, Vice-President or General Manager of the District.

SECTION 3. Upon adoption, a copy of this Order shall be retained in the District's records and retained in accordance with the District's record retention policies.

RESOLVED this 28 day of July, 2022.

**BRUSHY CREEK MUNICIPAL UTILITY
DISTRICT**

By: 
President

ATTEST:


Secretary