

**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 Aqua Utilities, Inc dba Aqua Texas, Inc ("Aqua") and Williamson County, a political subdivision of the State of Texas (the "County"). In this Agreement, Aqua and the County are sometimes individually referred to as "**a Party**" and collectively referred to as "**the Parties**".

WHEREAS, the County is, has been and will be in the process of improving River Rd, Old Windmill Rd and San Gabriel Ranch Rd (the "County Projects"); and

WHEREAS, some of Aqua's water system lines and appurtenances (the "Improvements") are located within existing County right-of-way; and

WHEREAS, in connection with the construction of the roadway improvements, the County desires to relocate portions of the Improvements within existing County right-of-way and/or into the new rights-of-way; and

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which the County shall relocate the Improvements within certain segments of the County Project within existing County right-of-way and/or into the new rights-of-way.

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 provide for the County's relocation of the Aqua waterlines caused by the County's reconstruction and/or widening of River Rd, Old Windmill Rd and San Gabriel Ranch Rd (the "Aqua Project").

1.02 Relocation of Improvements. The County will, at its own expense, relocate the Improvements as described in the construction plans and the specifications associated with the construction plans (the "Plans and Specifications") within existing County right-of-way and/or the new rights-of-way acquired by the County. Additionally, the County:

(a) grants Aqua a right to utilize a portion within existing County right-of-way and/or the new rights-of-way for its water lines;

(b) provides Aqua the right to make any repairs or improvements to its water lines, but with the obligation to repair the overlying roadway improvements, including but not limited to driveways; and

The Plans and Specifications are those prepared by Williamson County, dated 08/09/17 and entitled River Rd & Old Windmill Rd, and by Freese and Nichols, to be dated in January of 2018 and entitled San Gabriel Ranch Road Bridge at Lackey Creek, which are incorporated herein by reference.

1.03 Continuation of Service. The County agrees that the County Project shall be undertaken so as to minimize any disruption of water service to existing customers of the Aqua and will not result in the permanent loss of water service to any such customers.

II. CONSTRUCTION OF PROJECT

2.01 General. The Parties mutually acknowledge and agree that the County shall, at its own expense, construct all physical improvements that constitute the Project.

2.02 Construction Plans. The County shall submit the Project Plans and specifications related to relocation of the Waterline, and any changes or modifications thereto, to the Aqua for review and approval prior to commencing construction.

2.03 Inspection. Aqua may inspect the Project Plans and the physical improvements and relocated Waterline during construction. If Aqua's inspectors determine that the construction by the County is not in accordance with the approved Project Plans and upon receipt of such notification from the Aqua, the County shall cease construction until the deficiency can be identified and a corrective plan of construction implemented with the agreement of the Aqua.

2.04 Future Relocations. Should the County or other entity require the relocation of the Aqua water system improvements previously relocated by this Agreement, Aqua shall, at its own expense, be responsible for the relocation expenses, including the acquisition of new easements, if necessary.

2.05 Repayment of Costs. Aqua shall reimburse the County for all costs that the County incurs for inspections, permitting, engineering, construction, legal services and other services related to the relocation of the Waterlines as stated herein (the "Aqua Reimbursement").

(a) The Aqua Reimbursement shall be in an amount not to exceed Five Hundred Thousand Dollars (\$500,000). The final amount of the Aqua Reimbursement will be based upon actual costs incurred by the County for the Aqua Reimbursement. All invoices shall be presented to Aqua as soon as possible after Aqua has accepted the Aqua Project.

(b) The Aqua Reimbursement shall be payable to the County within 60 days after Aqua has finally accepted the Aqua Project. Said acceptance will not be unreasonably withheld.

2.06 Insurance, Bonds and Warranties. The County shall require the contractor for the Project to name the Aqua as an additional insured on any policies related to the Project. The County shall require the contractor to provide performance bonds, payment bonds and maintenance bonds in favor of the Aqua for the Project in amounts satisfactory to the Aqua. The County shall transfer any warranties for the Project to the Aqua upon final completion and acceptance of the project.

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, arbitration 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 3.01 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:

AQUA:

Aqua Utilities, Inc dba Aqua Texas, Inc
1106 Clayton Lane, Suite 400W
Austin, Texas 78723
Attn: Robert L. Laughman
Telephone: (512) 990-4400

COUNTY:

Williamson County
710 Main Street, Suite 101
Georgetown, Texas 78626
Attn: Judge Dan Gattis

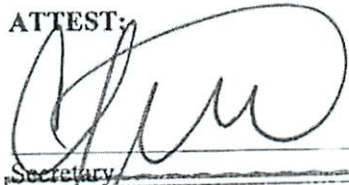
Telephone: (512) 943-1577

4.09 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.

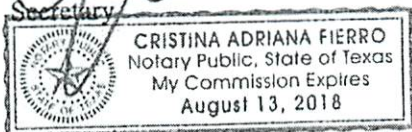
4.10 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

(SIGNATURES ON FOLLOWING PAGE)

ATTEST:



Secretary



ATTEST:

County Clerk

AQUA Utilities, Inc dba Aqua Texas, Inc:

By: 

Printed Name: Robert L. Laughman

Title: President

Date: 1/5/18

WILLIAMSON COUNTY:

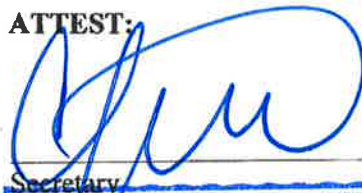
By: 

Printed Name: Dan A. Gattis

Title: County Judge

Date: 01-23-2018

ATTEST:



Secretary



ATTEST:

County Clerk

AQUA Utilities, Inc dba Aqua Texas, Inc:

By: 

Printed Name: Robert L. Laughman

Title: President

Date: 1/5/18

WILLIAMSON COUNTY:

By: _____

Printed Name: Dan A. Gattis

Title: County Judge

Date: _____