



USE AGREEMENT

I. PARTIES

This document constitutes an agreement ("Agreement") between Williamson County, Texas, a political subdivision of the State of Texas ("County"), and BGE, Inc. ("BGE") relating to the BGE's use of a County controlled cave access point, as more fully described herein below.

II. PURPOSE

County maintains the roadway known as Cambria Drive in Round Rock, Texas. During the month of February 2018, County and others discovered a cave and cave opening below Cambria Drive. The cave has been named the Ogof Cambria (Cambria Cave), being referred to herein as the "Cave". The Cave's opening is located at UTM 14R 620534.53E, 3373677.63N, which is referred to herein the "Cave Access Point".

As a part of County's maintenance of Cambria Drive, the County began conducting inspections and investigations of the Cave through the Cave Access Point. The County thereafter identified various chambers that are under Cambria Drive that extend in an Eastward direction from Cambria Drive.

BGE's would like to use the Cave Access Point in conjunction with inspections and studies to be performed within the Cave.

In consideration of BGE's agreement to provide all results, data and documentation acquired from its use of the Cave Access Point to enter into the Cave, County hereby agrees to allow BGE the use of the Cave Access Point on the date(s) and at the time(s) set forth herein. BGE agrees to not conduct invasive inspections or otherwise damage, alter, modify or physically change the existing Cave Access Point or any other parts of the Cave during its use of same.

During BGE's use of the Cave Access Point, the County shall always have the right to use the Cave Access Point for its own purposes and BGE hereby agrees to allow the County to use the Cave Access Point for such purposes.

III. LIABILITY; INDEMNIFICATION AND SAFETY PRECAUTIONS

BGE, IN USING THE CAVE ACCESS POINT AND CONDUCTING OPERATIONS WITHIN THE CAVE, DOES SO AT ITS OWN RISK. COUNTY SHALL NOT BE LIABLE FOR ANY DAMAGES TO PROPERTY OR DAMAGES ARISING FROM PERSONAL INJURIES SUSTAINED BY BGE OR ANY OF ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, CONTRACTOR, SUBCONTRACTORS, REPRESENTATIVES OR ANY ENTITY CLAIMING BY, THROUGH OR UNDER BGE, IN, ON OR ABOUT THE CAVE ACCESS POINT OR OF ANY OTHER PORTION OF THE CAVE, UNLESS SUCH DAMAGE OR INJURY IS CAUSED BY THE COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT. BGE ASSUMES FULL RESPONSIBILITY FOR ANY PROPERTY

DAMAGE OR INJURY WHICH MAY OCCUR TO BGE, ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, CONTRACTOR, SUBCONTRACTORS, REPRESENTATIVES OR ANY ENTITY CLAIMING BY, THROUGH OR UNDER BGE, IN, ON OR ABOUT THE CAVE ACCESS POINT OR OTHER PORTIONS OF THE CAVE, UNLESS SUCH DAMAGE OR INJURY IS CAUSED BY THE COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT. BGE SHALL CONDUCT ITS ACTIVITIES UPON THE CAVE ACCESS POINT AND IN THE CAVE SO AS NOT TO ENDANGER ANY PERSON OR CAVE FEATURES THEREON OR THEREIN.

INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS. IN FURTHER CONSIDERATION OF COUNTY'S AGREEMENT TO ALLOW BGE TO USE THE CAVE ACCESS POINT AND CONDUCT OPERATIONS WITHIN THE CAVE, TO THE FULLEST EXTENT PERMITTED BY LAW, BGE SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF COUNTY'S CHOOSING), AND HOLD HARMLESS COUNTY, AND COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF BGE, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY OR INDIVIDUAL FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED AT, ON, OR NEAR THE CAVE ACCESS POINT IN CONNECTION WITH ANY OPERATIONS OF BGE. BGE HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS. IN FURTHER CONSIDERATION OF COUNTY'S AGREEMENT TO ALLOW BGE TO USE THE CAVE ACCESS POINT AND CONDUCT OPERATIONS WITHIN THE CAVE, TO THE FULLEST EXTENT PERMITTED BY LAW, BGE SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF COUNTY'S CHOOSING), AND HOLD HARMLESS COUNTY, AND COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM USE OF THE CAVE ACCESS POINT OR FROM OPERATIONS WITHIN THE CAVE, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF BGE OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

BGE shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the BGE's use of the Cave Access Point and Cave. BGE shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to BGE and/or its respective officials, officers, agents, employees, contractor, subcontractors, representatives or any entity that may claim by, through or under BGE, in, on or around the Cave Access Point and in the Cave.

The terms of this Liability, Indemnification and Safety Precautions provision shall survive any termination of this Agreement.

IV. TERM OF USE AND TERMINATION

BGE shall be allowed to use the Cave Access Point and inspect the Cave from 7:00 a. m on April 23, 2018 until 7:00 p. m. on May 4, 2018. Either party may terminate this Agreement, without cause, upon ten (10) days written notice to the other party.

V. INSURANCE

During the term of this Agreement, BGE agrees to provide and maintain Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1.0 Million per occurrence and \$2.0 Million in the aggregate, including coverage on same for independent subcontractor(s). WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.

BGE and its respective officials, officers, agents, employees, contractor, subcontractors, representatives shall not attempt to access the Cave under this Agreement until it has obtained all required insurance and such insurance has been provided to and approved by County. Approval of the insurance by County shall not relieve or decrease the liability of BGE hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. BGE shall furnish County with a certification of coverage issued by the insurer. BGE shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

VI. MISCELLANEOUS

- A. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.
- B. Compliance with Law. BGE, at its sole cost and expense, shall comply and secure compliance with all municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force.
- C. No Assignment. BGE shall not assign this Agreement or any of its rights hereunder, without the prior written consent of the County.
- D. Governing Law, Venue. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

- E. **Binding Effect, Assignability.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns subject to the provision herein.
- F. **Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- G. **Reports of Accidents.** Within 24 hours after BGE becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any person, whether or not it results from or involves any action or failure to act by the BGE or any employee or agent of the BGE and which arises in any manner relating to the BGE's use of the Cave Access Point and Cave, BGE shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. BGE shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the BGE, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from BGE's use of the Cave Access Point and Cave under this Agreement.
- H. **Construction.** Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.
- I. **Relationship of the Parties.** Each party to this Agreement, in the performance of any activities under this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- J. **No Waiver.** No action or inaction taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and such action or inaction will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.
- K. **Entirety of Agreement.** This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. **NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.**

Executed by the parties below to be effective as of the date of the last party's execution hereof.

WILLIAMSON COUNTY, TEXAS

By: Valerie Covey
~~Dan A. Gattis, County Judge~~
Valerie Covey, Presiding Officer

Date: May 8, 2018

BGE, INC.

By: Charles R. Harris

Printed Name: CHARLES R. HARRIS

Representative Capacity: SR. VICE PRESIDENT

Date: April 19, 2018

Executed by the parties below to be effective as of the date of the last party's execution hereof.

WILLIAMSON COUNTY, TEXAS

By: _____
Dan A. Gattis, County Judge

Date: _____, 20__

BGE, INC.

By: Charles R. Harris

Printed Name: CHARLES R. HARRIS

Representative Capacity: SR. VICE PRESIDENT

Date: April 19, 2018