

**INTERLOCAL AGREEMENT BETWEEN THE
BRUSHY CREEK REGIONAL UTILITY AUTHORITY
AND THE VILLAGE OF VOLENTE**

This Interlocal Agreement (“ILA”) is made by and between the Brushy Creek Regional Utility Authority, Inc. (“BCRUA”), a non-profit corporation of the State of Texas, created and existing under the laws of the State, including Subchapter D of Chapter 431 as amended, Texas Transportation Code, and the City of Cedar Park, Texas, the City of Leander, Texas, the City of Round Rock, Texas all home-rule municipalities and political subdivisions of the State, (individually the “City”; collectively the “Cities”) and the Village of Volente, Texas (“Volente” or “Village”), a Texas Type-B, general-law municipality. The BCRUA, including the Cities and Volente are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the Cities have an obligation to preserve and protect the public health, safety, and welfare of their more than 500,000 citizens by providing a dependable and adequate source of safe drinking water; and

WHEREAS, the BCRUA was created by the Cities to design, construct and operate a regional water transmission and treatment system to provide the Cities with drinking water; and

WHEREAS, each of the Cities has contracted with the Lower Colorado River Authority for water stored in Lake Travis (See Exhibits A, B and C attached to this ILA); and

WHEREAS, the BCRUA has completed construction of a 17 MGD water treatment plant (the “Treatment Plant”) located in the City of Cedar Park; and

WHEREAS, in order for the Cities to have a dependable method of accessing their contracted water in times of severe drought, it is necessary for the BCRUA to design, construct, and operate a deep-water intake facility and maintenance building (the “Intake Facility”), a raw water transmission line, and a pumping facility (the “Pumping Facility”), (collectively referred to as the “System”) to transmit the water from Lake Travis to the Treatment Plant; and

WHEREAS, after receiving the results of an engineering study attached to this ILA as Exhibit D, the BCRUA determined that certain property within the city limits of Volente (“Site 4”) (see Exhibit E attached to this ILA), was the preferred site for the Intake Facility and the Pumping Facility; and

WHEREAS, Volente preferred that the Intake Facility and the Pumping Facility be located on certain property previously owned by LCRA (“Site 8”) (see Exhibit E attached to this ILA); and

WHEREAS, following significant negotiation, BCRUA and Volente entered into a Memorandum of Understanding (“MOU”) (See Exhibit F attached to this ILA) which provided that Volente would support Site 4 as the location of the Intake Facility, if BCRUA would locate the Pumping Facility on Site 8, and construct an underground tunnel (“Tunnel”) instead of an open-cut trench to house the raw water transmission line; and

WHEREAS, with Volente’s support, BCRUA’s request to move the Pumping Facility to Site 8 was approved; and

WHEREAS, changing the location of the Pumping Station from Site 4 to Site 8 and constructing the Tunnel instead of an open-cut trench will significantly increase the cost to the BCRUA by approximately \$6,000,000; and

WHEREAS, Volente understands and agrees that the Intake Facility will now be located on Site 4, and the Tunnel will be constructed in part within the city limits of Volente; and

WHEREAS, the Volente Village limits are composed of a total area of two square miles (See Map of Village attached to this ILA as Exhibit G); and

WHEREAS, the Volente Village is primarily residential community with a limited number of lots available for commercial and retail use; and

WHEREAS, the Village has two major thoroughfares that provide nearly all of the access to and through the Village of Volente, FM 2769 and Lime Creek Road; and

WHEREAS, FM 2769 serves as the major regional travel corridor through the area in an east-west direction, and Lime Creek Road provides access in a north-eastern direction; and

WHEREAS, due to the narrow curving nature of both thoroughfares there is limited heavy or commercial traffic; and

WHEREAS, the BCRUA proposes to utilize Lime Creek Road for construction traffic in and out of the Village; and

WHEREAS, the construction and long-term operation of the intake facility and Tunnel will significantly increase heavy traffic within the Village; and

WHEREAS, the construction of the intake facility and Tunnel will take multiple years to complete; and

WHEREAS, the construction of the intake facility and Tunnel will require numerous large construction vehicles to use Village roads causing significant wear and tear and damage to such roads and

WHEREAS, the construction and increased traffic on Village roads will inconvenience Village residents and pose traffic safety risks to Villagers and guests; and

WHEREAS, Volente has an obligation to preserve and protect the public health, safety, and welfare of its residents by reasonably regulating development within its city limits; and

WHEREAS, in furtherance of said obligation, Volente has adopted the Ordinances regulating development within its city limits; and

WHEREAS, BCRUA agrees that it intends to comply with Volente's Ordinances regulating development within the city limits of Volente; and

NOW THEREFORE, the BCRUA and Volente now wish to set forth their agreement regarding the design, construction, and operation of the Intake Facility in Volente, as set forth below:

ARTICLE I DEFINITIONS

“BCRUA” means the Brushy Creek Regional Utility Authority, a local government corporation created by the home rule cities of Cedar Park, Leander, and Round Rock to provide a dependable and adequate supply of treated water to their citizens.

“BCRUA Project” means the regional water transmission and treatment system construction project including the construction of the Intake Facility and Tunnel to be constructed within the Village of Volente.

“Intake Facility” means the deed-water intake facility, maintenance building, and accessory facilities to be constructed and operated on Site 4, for the purpose of accessing raw water from Lake Travis.

“Monitoring Wells” means the four wells drilled in the Village by the BCRUA to monitor water quality and conditions during construction of the Tunnel.

“Ordinances” means the validly adopted ordinances of the Village of Volente regulating development and construction in the Village.

“Pumping Facility” means the pumps, buildings, and related facilities to be constructed and operated on Site 8 for the purpose of pumping raw water to the Treatment Plant.

“Site 4” means the tract of land owned by the BCRUA in Volente on which the Intake Facility will be constructed.

“**Site 8**” means the tract of land owned by the BCRUA on which the Pumping Facility will be constructed.

“**System**” means the Intake Facility, the Tunnel, and the Pumping Facility.

“**Tunnel**” means the underground tunnel for the raw water transmission line between the Intake Facility and the Pumping Facility.

“**Volente**” means the Village of Volente, a Texas Type-B, general law city.

ARTICLE II BCRUA’S ACKNOWLEDGMENTS AND REPRESENTATIONS

BCRUA and the Cities acknowledge and agree that Volente has a legitimate governmental interest in protecting the public health, safety, and welfare of its citizens by regulating development in the city limits of Volente. In furtherance of the aforesaid interest, Volente has adopted the Ordinances to regulate development within the city limits of Volente. With respect to the design, construction, and operation of the Intake Facility and Tunnel, BCRUA agrees to deal with Volente in good faith with respect to complying with the applicable development regulations of Volente as set forth in the Ordinances. BCRUA agrees not to seek enforcement of the 1000-foot restricted zone pursuant to 30 Tex. Admin. Code § 290.41(e)(2)(B).

ARTICLE III VOLENTE’S ACKNOWLEDGMENTS AND REPRESENTATIONS

Volente acknowledges and agrees that the BCRUA and the Cities have a legitimate governmental interest in protecting the public health, safety, and welfare of their citizens by providing an adequate supply of clean drinking water. In furtherance of the aforesaid interest, BCRUA has determined that the Intake Facility and Tunnel are critical components of the System to access raw water in Lake Travis in order to provide drinking water to the Cities. Volente acknowledges that the Intake Facility and Tunnel are critical components and that Site 4 is a suitable and appropriate location for the Intake Facility and that the Tunnel must be constructed in part within Volente’s city limits. With respect to the design, construction and operation of the Intake Facility on Site 4, and the Tunnel, Volente agrees to deal with the BCRUA in a reasonable fashion and in good faith with respect to imposing and enforcing the Ordinances.

ARTICLE IV COVENANT OF GOOD FAITH AND FAIR DEALING

BCRUA and Volente each agree and covenant to deal with each other honestly, fairly, and in good faith so that they can discharge their respective duties to protect the public health, safety, and welfare of their respective citizens. This includes the covenant to not unduly restrict, condition, or delay any applications for permits or approvals required for the construction of the Intake Facility and Tunnel.

**ARTICLE V
ACCESS TO BCRUA RIGHTS OF WAY**

To the extent that it is legal and feasible, BCRUA agrees to allow Volente to use BCRUA's rights of way for future use of the installation of public water lines.

**ARTICLE VI
USE, MAINTENANCE AND REPAIR OF ROADWAYS**

- 6.01.** Volente understands that during the construction of the Intake Facility, Tunnel and related facilities, that construction trucks and other vehicles will be utilizing the public roadways within the city limits of Volente. BCRUA agrees to conduct a traffic impact study to determine gather baseline data on any such roads prior to the beginning of construction.
- 6.02.** BCRUA agrees to maintain, including all roadways utilized within the Village during the construction phase in a condition equal to or better than the condition of such roads prior to the project, including pavement striping/markings using non-water-based paint, all pavement base and surface repair reconstruction and resurfacing, drainage, mowing, litter and debris control. BCRUA agrees to conduct monthly inspection of road conditions to determine any necessary repairs.
- 6.03.** BCRUA agrees to conduct monthly inspections of road conditions to determine any necessary repairs. BCRUA agrees to repair any damage caused by vehicles or construction equipment utilized for the BCRUA Project within 30 days of inspection by BCRUA or notification of damage by Volente.
- 6.04.** BCRUA agrees to take all necessary measures to prevent damage to roads utilized for the project, including but not limited to reinforcing Lime Creek Road.
- 6.05.** Within 60 days of completion of the project, BCRUA agrees to restore all roads utilized within the Village as part of the BCRUA Project to preconstruction conditions or better and to resurface all remaining Village of Volente roads. BCRUA agrees that it will agree to a similar arrangement with Travis County regarding county roadways impacted by the BCRUA Project within 5 miles of the Village of Volente.

**ARTICLE VII
TRAFFIC AND CONSTRUCTION**

- 7.01.** BCRUA agrees that no construction traffic shall pass through the central business district of the Village along FM 2769 except in cases of emergency, without prior notice to the Village.

- 7.02. Operating Hours within the Village:
- August – May: Monday – Friday 8:30 a.m. – 3:00 p.m. (Necessary to avoid LISD bus traffic)
 - June-July: Monday – Friday 8:00 a.m. – 5:00 p.m.
 - No Construction allowed on Saturday, Sunday or City recognized Holidays
 - No Construction allowed Monday – Friday 5:00p.m. – 8:00 a.m.
- 7.03. Road Closures: No complete road closures are permitted to ensure traffic and fire safety.
- 7.04. BCRUA shall maintain and provide the Village a list of all construction and concrete truck companies contracted or sub-contracted by the BCRUA.
- 7.05. BCRUA shall provide to the Village a bi-weekly forecast of all heavy truck operations on Lime Creek Road for the length of the project. The forecast shall identify the streets to be utilized, the number, type and size of trucks and other equipment to be used, relative weight of each vehicle type including any load, and the frequency of traffic, i.e., number of trips per day for each truck type.
- 7.06. BCRUA agrees to provide 30 days prior notice of all barge traffic, including any loading and unloading activities at Site 4.
- 7.07. BCRUA shall maintain all ingress and egress from all construction sites within the Village, in a manner that ensures visibility, and traffic safety, including tree trimming, right-of way conditions, dust mitigation.
- 7.08. BCRUA agrees not to use Village roads to transport the structure for the water intake system. All large equipment and sections of the intake system shall be assembled at a location outside of the Village and brought to the Site 4 via barge.
- 7.09. All Spoils shall be removed from the Village via Lime Creek Road (north) or via barge via Site 4. No Spoils may be left on Village or BCRUA property.

ARTICLE VIII SAFETY AND REPORTING

- 8.01. BCRUA agrees to provide to the Village 24-hour emergency contacts for the maintenance and storage building.
- 8.02. BCRUA shall establish and maintain a complaint triage process with a single point of contact and response for any concerns regarding the construction and continued operation of the BCRUA Project.
- 8.03. BCRUA agrees to provide notice of completion of phases of construction.

- 8.04.** BCRUA agrees to provide Volente notice of any construction changes for the BCRUA Project within the Village of Volente, including changes to the contractors or subcontractors within 2 business days.
- 8.05.** BCRUA agrees to prepare, maintain and provide the Village copies of all reports regarding chemicals released into Lake Travis via the BCRUA deep water intake. The reports shall include an inventory of all chemicals, the amounts used, date of release, method of release and purpose for the release.
- 8.06.** BCRUA agrees to immediately notify the Village of any accidents, workers compensation injuries or deaths as a direct result of the BCRUA Project.
- 8.07.** BCRUA agrees to allow for quarterly inspections by the Village Fire Department of all stored chemicals in the maintenance storage building located within the Village, and to pay for any expenses incurred for such inspections for as long as the building or chemicals are on the property.
- 8.08.** BCRUA agrees to install an outer perimeter fence constructed taller than the inner perimeter razor-wired fencing to obscure the view of the razor wired-fence. The outer perimeter fence shall be constructed of materials that are in keeping with the natural beauty and look consistent with the Village of Volente vision statement.

**ARTICLE IX
MONITORING WELLS AND PROTECTION OF PRIVATE WELLS**

- 9.01.** BCRUA agrees that it will use its best efforts to establish a water well monitoring program (See Exhibit H attached to this ILA) that will include any private domestic wells that are located within four hundred (400) feet on either side of the Tunnel. (See Exhibit I attached to this ILA for the list of wells within 400 feet of the tunnel.) Volente understands that the success of the program depends on the voluntary cooperation of the affected land owners and Volente is not responsible for residents providing BCRUA access to wells on private property.
- 9.02.** BCRUA shall provide to the Village all raw water data from the monitoring wells monthly, in electronic format. (.CSV, XLS, or another agreed format).
- 9.03.** BCRUA agrees to convey to the Village ownership of all monitoring wells after construction is complete.

**ARTICLE X
VOLENTE'S ACCESS TO WATER**

- 10.01.** The Village of Volente has an obligation to preserve and protect the public health, safety, and welfare of their residents. The BCRUA agrees to provide a dependable and adequate source of safe drinking water to the Village residents.

- 10.02. Should BCRUA provide access to the System, Volente understands that it will need to contract with the LCRA for the legal right to withdraw water from Lake Travis.
- 10.03. BCRUA agrees to participate at no cost to the Village in any grant application for funds needed to connect the Village to the BCRUA System.
- 10.04. Should BCRUA no longer need the equipment and property used for the deep-water intake, and either abandon or deem it surplus goods, the BCRUA agrees to convey said equipment to the Village at no cost. If the equipment and property used for the deep-water intake is no longer needed by the BCRUA, but is not deemed surplus, the BCRUA gives the Village of Volente the option to purchase the equipment at fair market value.

ARTICLE XI

COMPENSATION AND REIMBURSEMENT FOR PROFESSIONAL SERVICES

- 11.01. BCRUA understands that the BCRUA Project is designed to benefit the residents of the Cities but will significantly impact the Village of Volente road conditions, traffic, safety, property, and will cause undue inconvenience for Village residents. In consideration of these impacts, the BCRUA agrees to compensate the Village as follows:
 - a. \$10,000,000 onetime payment;
 - b. \$250,000 per year for 25 years for use of Village right-of-way; and
 - c. 5% of the total BCRUA water sales profits for the life of the project, including any water sold by wholesale contract to other cities.
- 11.02. BCRUA agrees to reimburse Volente for all past, present and future engineering and attorney’s fees accrued for the negotiation and preparation of this Agreement and the review of design documents and the applications for permits and approvals for the construction of the Intake Facility and Tunnel. BCRUA agrees that Volente’s engineering representative will be permitted to attend and observe design and construction meetings that involve the Intake Facility.
- 11.03. BCRUA agrees to establish a yearly grant of \$100,000 for the Volente Fire Department for the life of the project.

ARTICLE XII

INSURANCE AND LIABILITY

- 12.01. BCRUA, including the individual Cities and all of BCRUA’s or a Cities’ Contractors and Subcontractors performing work within the Village shall provide the following insurance policies throughout the term of the Agreement, and shall provide to BCRUA

and to the Village on request a copy of the insurance policy or relevant excerpts thereof demonstrating compliance with this provision:

- a. BCRUA will require the Village of Volente be added as an additional named insured on all policies issued for work to be conducted within the Village.
- b. Worker's Compensation providing statutory coverage and Employer's Liability Insurance providing limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-each employee, and One Million Dollars (\$1,000,000) disease-policy limit.
- c. Business Automobile Insurance providing One Million Dollars (\$1,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations. Limits may be satisfied using primary and excess/umbrella policies.
- d. Commercial General Liability Insurance providing limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Contractor or any of its employees or subcontractors for whom Contractor is legally liable. Limits may be satisfied through the use of primary and excess/umbrella policies
- e. Contractor's Pollution Liability (CPL) Insurance providing limits of Two Million Dollars (\$2,000,000) per claim and aggregate. CPL coverage will provide for liability due to pollution conditions caused by or exacerbated by Contractor and will include coverage related to the remediation of pollutants and for third-party claims alleging bodily injury and/or damage to third-party property due to pollutants. Claims made coverage will include a retroactive date that predates all Work executed per this Agreement.
- f. Professional Liability insurance covering errors and omissions in the professional services performed on behalf of the Village, with limits of One Million Dollars \$1,000,000.
- g. Commercial Crime insurance with limits of \$1,000,000.
- h. Umbrella Excess Liability insurance that following the form of the underlying primary liability insurance required by this Agreement, with limits of Six Million Dollars \$6,000,000 each occurrence combined single limit.

12.02. BCRUA shall require all Contractors, including the Cities, Walker Partners and Subcontractors to add the Village and Village's directors, officers, employees, and representatives as additional named insured in Contractor's commercial general

liability, automobile liability, excess/umbrella, and Contractor's pollution liability policies for any work conducted within the Village.

12.03. Certificates of Insurance ("COI").

- a. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 12.01 and its subsections. Certificates of insurance will reference the project name as identified on the first page of this Agreement.
- b. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.
- c. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy's(ies') renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party's receipt.
- d. The Village shall be notified immediately if any COI that has expired, lapses or been cancelled.

12.04. BCRUA is responsible for all verified damage to residential properties, including trees, shrubs, driveways, portable buildings, garages, wells and septic systems incurred as a result of the BCRUA Project. All claims will be evaluated by an independent third-party expert the cost of which will be paid for by the BCRUA.

**ARTICLE XIII
GENERAL PROVISIONS**

13.01. Authority. This ILA is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 402.001, *Texas Local Government Code*.

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

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

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

13.05. Entire Agreement. Except as otherwise expressly provided herein, this ILA contains the entire agreement of the Parties regarding the use of construction cost savings from Phase 1A of the BCRUA regional treatment and distribution project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the Regional Project are contemplated and shall not be affected or limited by this ILA.

13.06. Amendments. Any amendment of this ILA must be in writing and shall be effective if signed by the authorized representatives of the Parties.

13.07. Applicable Law; Venue. This ILA shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Travis County, Texas.

13.08. Notices. Any notices given under this ILA shall 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:

BCRUA: Karen Bondy, General Manager
Brushy Creek Regional Utility Authority
221 E. Main St.
Round Rock, Texas 78664

With copy to: Stephan L. Sheets
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

VILLAGE OF VOLENTE: Jana Nace, Mayor
Village of Volente
16100 Wharf Cove
Volente, Texas 78641

With copy to: Alan Bojorquez
Bojorquez Law Firm
12325 Hymeadow Dr. Ste. 2-100
Austin, Texas 78750

13.09. Force Majeure. Parties shall not be deemed in violation of this ILA if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such

impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

- 13.10. **Counterparts.** This ILA may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.
- 13.11. **Authority.** Each party represents and warrants that it has the full right, power and authority to execute this ILA.
- 13.12. **Effective Date.** This ILA is effective on the date last executed below:

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(Signatures on following pages)

**BRUSHY CREEK REGIONAL UTILITY
AUTHORITY**

By: _____
Anne Duffy, President

Date: _____

DRAFT

VILLAGE OF VOLENTE

By: _____
Jana Nace, Mayor

Date: _____

DRAFT

EXHIBIT "A"

**Contract between the City of Cedar Park and the Lower Colorado River Authority for
water stored in Lake Travis**

DRAFT

EXHIBIT “B”

Contract between the City of Leander and the Lower Colorado River Authority for water stored in Lake Travis

DRAFT

EXHIBIT "C"

**Contract between the City of Round Rock and the Lower Colorado River Authority for
water stored in Lake Travis**

DRAFT

EXHIBIT 'D'

Engineering Study Conducted by BCRUA

DRAFT

EXHIBIT 'E'

Map of Intake and Pumping Facility Sites and Tunnel

DRAFT

EXHIBIT “F”

**Memorandum of Understanding between the Village of Volente and the Brushy Creek
Regional Utility Authority**

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EXHIBIT "G"

Map of the Village of Volente

DRAFT

EXHIBIT “H”

BCRUA Private Well Monitoring Program

DRAFT

EXHIBIT "I"

List of Private Wells within 400 feet of the BCRUA Tunnel

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