

**INTERLOCAL AGREEMENT
BETWEEN THE CITY BRECKENRIDGE
AND THE STEPHENS REGIONAL SPECIAL UTILITY DISTRICT
EMERGENCY WATER TRANSFER**

This **Interlocal Agreement** (“Agreement”) is entered into to be effective as of the _____ day of _____, 2020 (the “Effective Date”), by and between the City of BRECKENRIDGE, a Texas Home Rule Municipal Corporation, (hereinafter referred to as “**BRECKENRIDGE**”) and the Stephens Regional Special Utility District (**STEPHENS REGIONAL SUD**) each acting herein by and through its governing body. STEPHENS REGIONAL SUD and BRECKENRIDGE may be referred to herein individually as a “Party” or collectively as the “Parties.”

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, allows local governments to contract with each other to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, four municipal potable water system interconnections exist between STEPHENS REGIONAL SUD and BRECKENRIDGE, which are able to provide operator initiated supplemental water flow to the other party’s water system when an emergency condition exists; and

WHEREAS, STEPHENS REGIONAL SUD and BRECKENRIDGE have determined that to further continuing efforts on joint cooperative projects between the parties, it would be in the best interests of STEPHENS REGIONAL SUD and BRECKENRIDGE to enter into this Agreement specifying the terms and conditions under which either Party will supply the other with supplemental water transfers to satisfy emergency conditions through present and future interconnections.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, STEPHENS REGIONAL SUD and BRECKENRIDGE agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 For the purposes of this Agreement, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall”

and “will” are mandatory and the word “may” is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

- 1.2 For the purposes of the Agreement, the following words, terms, phrases, and their derivatives shall have the meaning given in this Section.
 - 1.2.1 **STEPHENS REGIONAL SUD** means the Stephens Regional Special Utility District, in the Counties of Stephens, Throckmorton, Shackelford, Eastland, and Palo Pinto, State of Texas.
 - 1.2.2 **BRECKENRIDGE** means the City of Breckenridge, a Texas home rule municipal corporation in the County of Stephens, State of Texas.
 - 1.2.3 **Emergency Condition** means any situation where the municipal water system of either party cannot maintain potable water service to its customers due to mechanical failure, waterline leaks, or high system usage.
 - 1.2.4 **Interconnection** means a system of pipes, valves, meters, backflow prevention devices, controls, with or without motors and pumps allowing water to flow by existing system pressure differential or through a pumping facility from the STEPHENS REGIONAL SUD water system into the BRECKENRIDGE water system, or from the BRECKENRIDGE water system into the STEPHENS REGIONAL SUD water system.
 - 1.2.5 **Municipal Water System** means the water utility system owned, operated, and controlled by either Party.
 - 1.2.6 **Unit Rate** means the price for each one thousand (1,000) gallons of water supplied.

**ARTICLE II
EMERGENCY WATER TRANSFER**

- 2.1 **Emergency Supply.** During an emergency condition, each party agrees to transfer Available Water to the other party through the interconnections authorized by this Agreement, and shall discontinue the transfer of water when emergency conditions cease to exist or the supplying party no longer has Available Water.
- 2.2 **Available Water Defined; Termination of Supply.** Notwithstanding any other provision herein, water may be provided through the interconnections *only if* each of the supplying Party's elevated and hydro-pneumatic pressure storage tanks are *at least one-third full*, as determined by the supplying Party ("Available Water"). Additionally, water sharing may be terminated by the supplying Party at any time when the Party's elevated and hydro-pneumatic pressure storage tanks fall below that level, to prevent damage to the Party's water distribution system.
- 2.3 **Quality and Quantity.** The water furnished by either party under this Agreement shall be potable water, treated to TCEQ drinking water standards. The quantity of water supplied in either case shall be limited by the physical constraints of the meters and transmission/distribution systems and by the available delivery of water from the sources of the supplying party.
- 2.4 **No Obligation for System Upgrades.** Except for the requirements herein for meters and changes to the interconnections, the parties shall have no obligations hereunder to upgrade their water systems or facilities, or to oversize any future construction, in any manner due to the terms of this Agreement.

**ARTICLE III
UNIT RATE PRICE AND PAYMENT**

- 3.1 **Unit Rate.** The unit rate per one thousand (1,000) gallons of potable water transferred during emergency conditions through any interconnection pursuant to this Agreement will be *one and one-half times* the then effective Breckenridge commercial in-city rate per thousand gallons for 10,000 gallons usage, recognizing that the rate will be updated from time to time, to be paid by the party receiving the water. At the date of this Agreement, the Breckenridge commercial in-city rate is \$6.80 per thousand and therefore the unit rate for water transferred is \$10.20 per thousand.
- 3.2 The parties agree that the unit rate will be the same regardless of which party provides or receives the water.

- 3.3 No standard monthly meter fees (service fees) will be charged by either party to the other for the interconnects, or associated meters. Each party will maintain its own equipment at the interconnects, at no cost to the other party.
- 3.4 **Payments.** Each month, a party who has supplied water to the other party shall provide the supplied party an itemized statement of the amounts owed for water supplied under this Agreement for the prior month (a “Bill”). The party receiving the Bill agrees to pay the Bill not later than the fifteenth (15th) day after their receipt of the Bill. The payments shall be made by mailing to the address stated on the Bill, by hand-delivery to the other party’s office, or by wire-transfer to the other party’s bank account. Payments not received by the due date will be considered past due. Any payment that is past due by more than ten (10) days after the due date will incur a late fee of five percent (5%) of the amount of the Bill, and thereafter be subject to the default in payments provisions herein.
- 3.5 **Default in Payments.** All amounts due and owing pursuant to a Bill shall, if not paid when due, bear interest at the same rate as the post-judgment interest rate as set out in Section 304.003(c), Texas Finance Code, or any successor statute from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as otherwise permitted by law.
- 3.6 Payments under this Agreement will be made from current revenues available to the paying party.

ARTICLE IV TRANSFER INITIATION AND TERMINATION

- 4.1 **Initiation of Transfer; Interconnection Operation.** The parties agree that to initiate any transfer of water under this Agreement, the party requesting the supply must have its General Manager or City Manager send a written request to the other party, per the Notice provisions herein. Additionally, the Mayor of Breckenridge and the President of the Board of Stephens Regional SUD are authorized to initiate a transfer of water hereunder. Further, manually operated interconnection valves belonging to the other party **will not be operated** without an operator from the other party being present.
- 4.2 **Resolution of Emergency.** The parties agree that the party receiving emergency water will use its best efforts to resolve the emergency situation as soon as possible.
- 4.3 **Meters.** The parties agree each party will own, maintain, and read the meter the party uses to supply the other with emergency water at each interconnect.

1. An appropriate official of each party at all reasonable times shall have access to the metering equipment of the other party for the purpose of verifying meter readings. Each party shall have the duty to notify the other party in the event that the metering equipment is not registering accurately or is malfunctioning so that the meter can be promptly repaired.
2. Each party shall calibrate its metering equipment not less frequently than once every twelve (12) months. When any such calibration is to be made, the party shall provide the other party at least three (3) days prior notice (or such shorter period of time as the other party is able to accommodate from time to time) of the time and date of such calibration, and the other party shall have the right to attend the calibration. If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%) of the actual flow, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months.
3. If for any reason any meter is out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meter is out of service or out of repair shall be reasonably estimated by the parties upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters, if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated by (i) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) estimating the quantity of delivery based on deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

**ARTICLE V
MAINTENANCE, TESTING AND OPERATION**

- 5.1 Each party will be responsible for the maintenance, testing and operation of the equipment on their side of the interconnection. The party responsible for the maintenance, testing and operation will advise the other party whenever it is working on or operating the interconnection system prior to such activity.

**ARTICLE VI
INTERCONNECTION LOCATION(S)**

- 6.1 Existing interconnections between the Parties are at the following locations:
1. Hwy 180 W and FM 3099 N
 2. N Jackson and E. Lindsey St.
 3. N. Baylor and Texas St.
 4. Hwy 183 S, just South of S. Rose Avenue.
- 6.2 New interconnection facilities and locations may be added or deleted by mutual agreement of the City Manager and General Manager for each party in writing as outlined in Section 8.1. The terms and conditions of this Agreement shall apply to all interconnections so added.
- 6.3 When an interconnection is added the parties agree that each party shall share equally in the cost of purchasing property, design and construction of the interconnection, and maintenance of the interconnection, unless otherwise specifically stated.

**ARTICLE VII
DELEGATION OF ADMINISTRATIVE AUTHORITY**

- 7.1 The Board of Stephens Regional SUD and City Council of Breckenridge hereby delegate the following administrative functions to their respective Managers in this Agreement:

To modify, move, or install new interconnections provided that costs for such modifications, relocations or installations are within the spending authority of each Manager, and for decisions regarding normal operations of the interconnections.

**ARTICLE VIII
GENERAL PROVISIONS**

- 8.1 **Amendment or Modification.** Except as otherwise provided herein, the terms and conditions of this Agreement may be modified at any time by the mutual consent of both parties. Mutual consent will be demonstrated by the approval of each party's governing body or by the signatures of both the General Manager of the STEPHENS REGIONAL SUD and the City Manager of BRECKENRIDGE for administrative matters specifically delegated to the Managers in this Agreement. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by the Manager of each party.

- 8.2 **Notice and Contacts.** Written notice shall be deemed to have been duly served if delivered in person to the individual listed below or if it is delivered or sent by certified mail, facsimile or email to the business address as listed below. Each party has the right to change its business address by giving at least fourteen (14) days advance written notice of the change to the other party in writing.

STEPHENS REGIONAL SUD: Stephens Regional SUD
Attn: General Manager
P.O. Box 1621
Breckenridge, Texas 76424
(254) 559-6180 phone
(254) 559-3820 facsimile
Email: rcosgrove@srsud.com

CITY OF BRECKENRIDGE: City of Breckenridge
Attn: City Manager
105 N. Rose Ave.
Breckenridge, Texas 76424
(254) 559-7249 phone
(254) 559-_____ facsimile
Email: _____

- 8.3 **Counterparts.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 8.4 **Jurisdiction and Venue.** This Agreement has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Stephens County, Texas.
- 8.5 **Approvals.** Whenever the term “approve” or “approval” is used in this Agreement, the party whose approval is required will not unreasonably withhold or delay it.
- 8.6 **Governmental Immunity and Hold Harmless.** To the extent permitted by law and without waiving each respective party’s governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act, Breckenridge and Stephens Regional SUD agree to hold each other harmless from and against any and all claims or causes of action arising out of or in connection with the emergency transfer of water provided under this Agreement.
- 8.7 The parties acknowledge and agree that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements,

- arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the parties, either before or after the execution of this Agreement, shall affect or modify any terms or obligations hereunder.
- 8.8 **Term.** The initial term of this Agreement is for three (3) years and shall automatically renew thereafter annually unless either party terminates this Agreement by providing written notice to the non-canceling party at the address for Notice in this Agreement at least *six months in advance* of the cancellation date.
- 8.9 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective parties.
- 8.10 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
- 8.11 **No Assignment.** This Agreement and all rights and obligations contained herein may not be assigned without the prior written approval of the other party.
- 8.12 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 8.13 **Relation to Other Contracts.** The parties have a separate Wholesale Treated Water Supply Contract, effective as of April 14, 2020 (the “Wholesale Agreement”), whereby Breckenridge has agreed to supply not to exceed 700 GPM of treated water to Stephens Regional SUD, plus the Additional Supply when available and requested by Stephens Regional SUD (collectively, the “Wholesale Contract Supply”). For purposes of clarity and avoidance of confusion, unless otherwise agreed, all water supplied by Breckenridge to Stephens Regional SUD shall be pursuant to the terms of the Wholesale Agreement up to the full amount

of the Wholesale Contract Supply, as stated therein. The terms of this Agreement shall only apply to the supply of water to Stephens Regional SUD when: 1) initiated due to an emergency condition as requested by Stephens Regional SUD, and 2) after the exceedance of the amount of the Wholesale Contract Supply.

- 8.14 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

STEPHENS REGIONAL SUD

CITY OF BRECKENRIDGE

BY: _____
Board President

BY: _____
Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Board Secretary

City Secretary

APPROVED:

APPROVED:

General Manager

City Manager

Board Attorney

City Attorney
