

**INTERLOCAL AGREEMENT RELATED TO
CONSTRUCTION OF A MONITOR WELL IN THE TRINITY AQUIFER**

This Interlocal Agreement is entered into by and between the Barton Springs/Edwards Aquifer Conservation District (BSEACD), and the Hays Trinity Groundwater Conservation District (HTGCD) (collectively the Districts). In this Agreement, the Districts are sometimes individually referred to as District or Party.

WHEREAS, each District is a political subdivision of the State of Texas created under Article XVI, Section 59 of the Texas Constitution, and operates pursuant to the provisions of the Texas Water Code and each District's respective enabling act; and

WHEREAS, the Districts desire to and are authorized to enter into this Agreement pursuant to Texas Interlocal Cooperation Act, § 791.001, *et. seq.* of the Texas Government Code; and

WHEREAS, each District has authority under the Texas Interlocal Cooperation Act, its respective enabling act, and Chapter 36 of the Texas Water Code, including, but not limited to §§ 36.106, 36.107, 36.109, and 36.158 to enter into and perform the function under this Agreement; and

WHEREAS, each District manages a portion of the Trinity Aquifer in Hays County; and

WHEREAS, there is an increasing demand in developing the Cow Creek formation of the Trinity Aquifer; and

WHEREAS, each District recognizes the need and benefit of a monitor well for use in groundwater investigations and data collection in the Trinity Aquifer in Hays County; and

WHEREAS, groundwater flow from Jacob's Well ceases during periods of moderate to severe drought; and

WHEREAS, there is a need for monitoring the aquifer close to Jacob's Well; and

WHEREAS, the functioning of the system that contributes groundwater to Jacob's Well is not sufficiently understood to be able to develop reasonable groundwater models and for groundwater management; and

WHEREAS, Hays County has contributed fifty-eight thousand dollars (\$58,000) (Hays County Contribution) toward installation of this multiport well and a standard monitor well near Jacob's Well as part of this project.

NOW, THEREFORE, in consideration of the foregoing and the mutually acceptable terms and conditions of the Parties in this Agreement, the Districts agree as follows:

**ARTICLE 1
PURPOSE**

The purpose of this Agreement is to fund a portion of the construction of a monitor well in the Trinity Aquifer upgradient of Jacob's Well. The well will be used to collect hydrogeologic information from the Middle and Lower Trinity Aquifers.

This well will be a multiport monitor well similar to other multiport monitor wells installed in Hays and Travis Counties by BSEACD. The well will be installed into the Lower Trinity Aquifer to a depth of about 475 ft below land surface. The well will be completed with seven unique zones from which water samples can be collected and water pressure and hydraulic conductivity can be measured.

**ARTICLE 2
OBLIGATIONS AND RIGHTS OF BSEACD**

2.1 Using the funds contributed by Hays County and HTGCD, BSEACD will construct a well to monitor the Middle and Lower Trinity Aquifers. The well will generally be located within HTGCD upgradient of Jacob's Well. The well will be located either about 1,600 feet north of Jacob's Well or about 4,500 ft north-northwest of Jacob's Well.

2.2 BSEACD will acquire the necessary ownership interest in property or an agreement with property owners to construct the monitor well.

2.3 BSEACD will contribute Westbay multiport well equipment for installation in the well; this is a value of approximately fifteen thousand dollars (\$15,000).

2.4 BSEACD will monitor and collect data from the monitoring well. Specifically, BSEACD will monitor water levels on a continual basis if pressure transducers have been installed in the well. Otherwise, manual measurements will be made on at least a quarterly basis.

2.5 BSEACD will share monitor well data with HTGCD quarterly unless HTGCD has declared drought conditions. During periods of HTGCD-declared drought, BSEACD will share data with HTGCD monthly, or at the request of HTGCD.

2.6 Unless otherwise agreed to by the parties, if BSEACD is unable to or does not otherwise complete the construction and initiate data collection of the monitor well by December 31, 2020, BSEACD shall return the monies paid by HTGCD within thirty (30) days of the construction and monitoring deadline.

**ARTICLE 3
OBLIGATIONS OF HTGCD**

3.1 Within thirty (30) days of the Effective Date, HTGCD shall pay BSEACD twenty-five thousand dollars (\$25,000), which BSEACD will combine with the Hays County contribution for construction of the monitor well.

**ARTICLE 4
TERM AND TIME OF PERFORMANCE**

4.1 The Effective Date of this Agreement shall be the date last executed by the Districts below. The term of the Agreement shall continue from the Effective Date until the Districts determine a mutually agreed upon end date.

**ARTICLE 5
NOTICE**

5.1 Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to non-compliance issues required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the Districts at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

BSEACD: Barton Springs Edwards Aquifer Conservation District
Attn: Dana Christine Wilson, Administrative Manager
1124 Regal Row
Austin, TX 78748
(512) 282-8441
(512) 282-7016 (fax)
Email: dana@bseacd.org

WITH COPY TO: Bill Dugat
Bickerstaff, Heath, Delgado, Acosta
3711 South MoPac Expwy, Bldg. 1, Suite 300
Austin, TX 78746
(512) 472-8021
bdugat@bickerstaff.com

HTGCD: Hays Trinity Groundwater Conservation District
Attn: Charlie Flatten, General Manager
PO Box 1648
Dripping Springs, TX 78620
Email: GM@Haysgroundwater.com

WITH COPY TO: Greg Ellis
Attorney at Law
2104 Midway Court
League City, TX 77573

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 Negotiation. The Districts will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Agreement. If a controversy or claim should arise, the Districts agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any District may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Districts shall, within ten (10) days after the Effective Date of this Agreement, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes subject to approval of the District's governing body. Each of the Districts may change the designation of its Representative, but shall maintain at all times during the term of this Agreement a designated Representative and shall ensure that the other Districts are notified of any change in the designation of its Representative.

6.2 Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the Districts may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other District. In the event that such a request is made, the Districts agree to participate in the mediation process. The Districts and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the Districts shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the Districts. The fees and expenses of the Mediator shall be borne equally by the Districts.

6.3 Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Districts may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas, Austin Division, to the extent said Court shall have jurisdiction over the matter.

**ARTICLE 7
MISCELLANEOUS**

7.1 Not-to-Exceed; Budget Amount. Under no circumstances shall BSEACD's financial obligation from funds other than funds contributed by Hays County and HTGCD exceed the amount cited in Section 2.3, above, nor shall HTGCD's obligation exceed the amount cited in Section 3.1, above, unless otherwise agreed in writing by the Districts. Notwithstanding any other provision of this Agreement, if the BSEACD or HTGCD Board of Directors fails to appropriate or budget funds to meet the terms and conditions cited herein, then the non-appropriating entity shall not be obligated to fulfill its obligations under this Agreement.

7.2 Entire Agreement. This Agreement represents the entire and integrated agreement between HTGCD and BSEACD and supersedes all prior negotiations, representations or arguments either written or oral. No official, representative, agent, or employee of the Districts has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the respective Board of Directors. The recitals set forth above are incorporated herein.

7.3 Lawful Authority. The execution and performance of this Agreement by HTGCD and BSEACD have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of HTGCD and BSEACD in accordance with its terms.

7.4 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the Districts hereto.

7.5 Independent Parties. It is understood and agreed between the Districts that HTGCD and BSEACD, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture.

7.6 Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

7.7 Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the Districts have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

7.8 No Waiver. No waiver by a Party of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

7.9 Public Information Act. BSEACD and HTGCD are governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under the Act.

7.10 Additional Documents. The BSEACD and HTGCD covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

7.11 Compliance with Laws. In performing this Agreement, the Districts will comply with all local, state and federal laws.

7.12 Counterparts. This Agreement has been executed by the Districts in multiple originals or counterparts each having full force and effect.

**ARTICLE 8
LIABILITY**

8.1 To the extent allowed by Texas law, BSEACD and HTGCD agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.

Hays Trinity Groundwater Conservation District:

By: _____
Linda Kaye Rogers
Board President

Date: _____

Barton Springs Edwards Aquifer Conservation District:

By: Blayne Stansberry
Blayne Stansberry
Board President

Date: 2/12/2020

ATTEST:

By: Blake Dorsett
Blake Dorsett
Board Secretary

Date: 3/12/2020

APPROVED AS TO FORM:

By: Bill Dugat III
William D. Dugat III
Attorney for BSEACD

Date: March 13, 2020