

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is made and entered into by and between *Montague* County, Texas (“Platting Authority”), and the Upper Trinity Groundwater Conservation District (“District”) (collectively “Parties” and individually “Party” depending upon the context).

RECITALS

WHEREAS, Platting Authority is a body politic and corporate created and operating pursuant to Article IX, Section 1 of the Constitution of Texas, the Texas Local Government Code, and the applicable, general laws of the State of Texas;

WHEREAS, the District is a groundwater conservation district and a body politic and corporate, created by the 80th Texas Legislature under the authority of Section 59, Article XVI, of the Texas Constitution, and in accordance with Chapter 36 of the Texas Water Code by the Act of May 25, 2007, 80th Leg., R.S., ch. 1343, 2007 Tex. Gen. Laws 4583, codified at TEX. SPEC. DIST. LOC. LAWS CODE ANN. ch. 8830 (“the District Act”);

WHEREAS, the Parties, each being a political subdivision of the State of Texas, desire to enter this Agreement in accordance with the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code;

WHEREAS, the Parties agree that coordinating efforts and expertise in the evaluation of the availability of groundwater as the source of water intended to supply a platted subdivision is mutually advantageous and benefits the public;

WHEREAS, Chapter 232 of the Texas Local Government Code requires applicants to acquire a plat from the Platting Authority prior to subdividing certain tracts of land located outside the limits of a municipality (“Rural Tracts”);

WHEREAS, the Platting Authority, as authorized by Section 232.0032 of the Texas Local Government Code, requires applicants seeking to plat a Rural Tract for which groundwater is intended to be the source of supply to provide a statement prepared by a geoscientist licensed to practice in Texas or an engineer licensed to practice in Texas certifying that adequate groundwater is available for the subdivision in accordance and in compliance with the rules of the Texas Commission on Environmental Quality (TCEQ) set forth in Title 30 of the Texas Administrative Code, Chapter 230 (the “Certification Statement”);

WHEREAS, the District, in accordance with Section 59 of Article XVI of the Texas Constitution, Chapter 36 of the Texas Water Code, and the District Act, adopts and implements rules to manage groundwater, protect property rights, and balance the conservation and development of groundwater to meet the needs of the citizens of *Montague* County and the State of Texas;

WHEREAS, Sections 36.113 - 36.117 of the Texas Water Code authorize the District to approve or deny well registrations and permits for groundwater wells in accordance with the District's rules; and

WHEREAS, Chapter 232 of the Texas Local Government Code grants the Platting Authority the exclusive and final authority in consideration of plat applications seeking to subdivide a Rural Tract;

THEREFORE, in consideration of the mutual promises, obligations, and benefits to be derived by the Parties pursuant to this Agreement, the Platting Authority and the District each agree as follows:

ARTICLE I AUTHORIZATION AND PURPOSE

1.1 Authority and Purpose.

- a. This Agreement is entered into pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791; the Texas Water Code, Chapter 36; the Texas Local Government Code; and other applicable law.
- b. The purpose of this Agreement is to facilitate cooperation between the Platting Authority and the District in instances where a subdivided Rural Tract is intended to rely on groundwater as the source of the water supply, and to ensure that, prior to receiving an approved plat from the Platting Authority, an applicant seeking to subdivide a Rural Tract of land that relies on groundwater ("Plat Applicant") (1) certifies adequate groundwater availability and (2) demonstrates the ability to comply with the District's rules, including but not limited to minimum tract size, well spacing, and applicable well capacity and groundwater production limits. The District recognizes that its role is to offer its technical resources and input to the Platting Authority when evaluating Certification Statements and that the Platting Authority has exclusive jurisdiction and the sole discretion to take action regarding plat applications and the Certification Statements. Similarly, the Platting Authority recognizes that the District has exclusive jurisdiction and the sole discretion to take action regarding groundwater-related water well registration and permit applications.

ARTICLE II DUTIES OF THE PARTIES

2.1 Communication. The Parties agree to timely and effectively communicate and coordinate in the execution and implementation of this Agreement, and to provide assistance to each other in the Platting Authority's consideration of plat applications, and in the District's processing and consideration of applications for water well registrations or permits, where groundwater is the proposed source of water to any properties under a proposed plat.

2.2 Platting Authority's Duties.

- a. The Platting Authority has exercised its authority under Section 232.0032 of the Texas Local Government Code to require applicants seeking to plat a Rural Tract for which groundwater is intended to be the source of supply to provide a Certification Statement that complies with TCEQ rules, certifying that adequate groundwater is available for the subdivision. To assist both the Platting Authority and Plat Applicants in implementing this requirement, the Platting Authority shall require a Plat Applicant seeking to subdivide a Rural Tract for which groundwater is intended to be the source of supply to provide a completed Certification Statement to the Platting Authority, the District, and the Texas Water Development Board, and shall direct the Plat Applicant to the District for guidance on the groundwater availability certification process prior to reviewing and processing the plat application. The Platting Authority shall also require a Plat Applicant to submit to the District with the completed Certification Statement all information, data, and calculations performed or relied on in completing the Certification Statement.
- b. The Platting Authority shall also require a Plat Applicant to submit a flat-fee payment of one thousand five hundred dollars (\$1,500.00) payable to the District, the “GAC Review Fee,” for the District’s cost in having its professional staff review the Certification Statement and prepare a written report under Section 2.3. The GAC Review Fee must be received by the District, from either the Plat Applicant or the Platting Authority, before the District is obligated to undertake any work or review described under Section 2.3.
- c. The Platting Authority shall not consider an application seeking to subdivide a Rural Tract for which groundwater is intended to be the source of supply unless and until the Platting Authority has received from the District a final Certification Statement prepared by the Plat Applicant and any necessary accompanying documents along with the District’s report setting forth the District’s assessment as to whether the Certification Statement sufficiently complies with TCEQ’s rules and sufficiently certifies that sufficient groundwater is available to serve the Rural Tract subdivision in the manner proposed by the Plat Applicant, and that the Plat Applicant has demonstrated that the groundwater well(s) it proposes to supply groundwater to the Rural Tract will be able to comply with the District’s rules without the need for the Plat Applicant to obtain any exception to the minimum tract size or well spacing requirements of the District’s rules.
- d. If the Platting Authority places any restrictions or conditions regarding the drilling, depth, completion, equipping, or operation of water wells in the plat for a Rural Tract, the Platting Authority shall timely submit such restrictions or conditions to the District in order that the District may be aware of such restrictions or conditions in considering any registration applications or permit applications for water wells on the Rural Tract.

2.3 District’s Duties.

- a. Upon receipt of notice from the Platting Authority regarding a proposed plat requiring a Certification Statement by the Platting Authority, the District agrees that the District’s General Manager and professional staff shall:

1. Meet with the Plat Applicant to provide an overview of the timeline, process, and requirements for the District's GAC Review;
2. Consult with the Plat Applicant regarding each proposed plat as necessary to complete the District's review of the Certification Statement;
3. Make staff available, at the earliest convenience, to:
 - i. inspect any existing well(s), including inspection by downhole camera, on the tract of land that is subject of the proposed plat, to identify if they are adequate to be used as observation wells for the aquifer test portion of the study;
 - ii. provide information to the applicant in their decision making in the design of any new well drilled for the purpose of the aquifer test;
 - iii. utilize District resources to conduct a downhole geophysical log of any well on the property, including both new and existing well(s);
 - iv. inspect any equipment that is to be used to measure flow rate and water levels during the aquifer test to ensure those tools are properly calibrated; and
 - v. provide any other assistance or oversight, during the aquifer test, as deemed appropriate by the District's General Manager.
- b. Upon receipt of the Certification Statement by the Platting Applicant, the District agrees that the District's General Manager and professional staff shall review the Certification Statement as follows:
 1. assess whether that the information in the Certification Statement sufficiently complies with TCEQ's rules set forth in Title 30 of the Texas Administrative Code, Chapter 230, and sufficiently certifies that adequate groundwater is available for the subdivision;
 2. verify the Plat Applicant's anticipated method of water distribution, as provided in the Certification Statement, whether by the expansion of an existing public water supply system, a new public water supply system, individual water wells for individual subdivided lots, or a combination of such methods ("Distribution Method");
 3. determine whether the Projected Water Demand Estimates provided by the Plat Applicant in the Certification Statement are reasonable ("Demand Estimates");
 4. determine whether the Plat Applicant's proposed use of groundwater, Distribution Method, and Demand Estimates, to the extent the Distribution Method and

Demand Estimates rely on groundwater, comply with the District's rules, including but not limited to requirements relating to minimum tract size and well spacing without the need for an exception, and, for a proposed well that requires a permit under the District's rules, authorized annual groundwater production;

5. conduct additional analysis, which may include one or more simulated impact analysis to verify the results set forth by the applicant or to provide the Platting Authority an estimate of potential impacts under scenarios different than the one proposed by the applicant.
 6. prepare a written report, which may be sealed or unsealed by the District's professional staff, detailing the District General Manager and professional staff's review of the Certification Statement as set forth herein, including any deficiencies and any additional input deemed to be beneficial to the Platting Authority or the Plat Applicant.
- c. The District shall complete its review of the Certification Statement and deliver its report along with the final Certification Statement prepared by the Plat Applicant to the Platting Authority not later than ten (10) business days after the date the final Certification Statement and all required accompanying information and GAC Review Fee are received by the District from the Plat Applicant. The ten (10) business days period shall not begin until the date the District has received each of the following: (1) a completed Certification Statement; (2) all information, data, and calculations performed or relied on in completing the Certification Statement; and (3) the GAC Review Fee. The District may request and the Plat Applicant shall provide to the District any missing or incomplete information required by this Agreement. If the Plat Applicant fails to provide missing or incomplete information requested by the District, the District is not obligated to provide its report.
- d. The District General Manager and professional staff's assessment as to whether the Certification Statement sufficiently complies with TCEQ's rules and sufficiently certifies that sufficient groundwater is available to serve the Rural Tract subdivision in the manner proposed by the Plat Applicant is to be considered as a recommendation and is not binding on the Platting Authority. The District General Manager and professional staff's determination regarding whether the project proposed by the Plat Applicant will comply with the District's rules as set forth herein are not binding on the District's Board of Directors for any permitting or other decision related to the project that goes before the District's Board of Directors.

ARTICLE III GENERAL PROVISIONS

- 3.1 **Recitals.** The recitals herein stated are correct, agreed upon, and hereby incorporated by reference and made a part of this Agreement.
- 3.2 **Obligations of the Parties.** Parties agree to be bound by this Agreement, and to work in

good faith toward achieving its purpose and the functions described herein.

3.3 Amendment. The Parties, and their respective designees, may propose an amendment to this Agreement. An amendment to this Agreement is adopted if the governing body of each Party adopts the amendment and furnishes the other Party with a copy of the minutes or resolution reflecting approval.

3.4 Notices. To be effective, any notice provided under this Agreement must be in writing, and shall be deemed to have been received for all purposes upon the earlier to occur of hand delivery or three (3) days after the same is mailed by U.S. Postal Service certified or registered mail, return receipt requested, and addressed as follows:

If to the Platting Authority:

Attn: Kevin L. Benton

Montague County Judge

Address: P.O. Box 475

City, State, Zip: Montague, TX 76051

Email: Arichardson@Co.Montague.TX.US

If to the District:

General Manager
Upper Trinity Groundwater Conservation District
PO Box 1749
Springtown, TX 76082
doug@uppertrinitygcd.com

Each Party agrees to provide a courtesy copy of any notice by email to the other Party. Each Party shall notify the other Party immediately if any of the contact information above changes. This notice provision shall not be construed to limit the ability of the Parties to allow for electronic submission or exchange of information that is not referred to herein as a "notice" between the District, the Platting Authority, and the Plat Applicant.

3.5 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Texas, and shall be fully enforceable in *Montague County*.

3.6 Voluntary Removal. At any time, a Party at its own discretion may deem it is in its own best interest to voluntarily terminate its participation in this Agreement. Such termination shall be effective thirty (30) days after the terminating Party delivers written notice of termination to the other Parties. The Parties shall have no additional liability to one another


for termination under this section.

- 3.7 Prior Agreements Superseded.** This Agreement constitutes the entire Agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter.
- 3.8 Assignment.** No Party may assign its rights, privileges and obligations under this Agreement in whole, or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.
- 3.9 Construction.** In case any one or more of the provisions contained herein shall be held to be for any reason invalid, illegal, or unenforceable in any respect, the remaining provisions of the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision, or by reason of the status of the respective Parties.
- 3.10 Legal Compliance.** Parties, their officials, employees, designees, and agents shall comply with all applicable federal, state, and local laws and ordinances related to the work and services performed under this Agreement.
- 3.11 Force Majeure.** No Party shall be responsible for delays or lack of performance by such entity or its officials, employees, designees, or agents that result from acts beyond that Party's reasonable control, including acts of God, strikes or other labor disturbances, pandemics or epidemics, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses, except that the Parties shall take reasonably proactive measures to avoid delays that could be caused by the COVID-19 pandemic. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to accommodate the delay.
- 3.12 Multiple Counterparts.** This Agreement may be executed in separate identical counterparts by the Parties and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.
- 3.13 No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person or entity.

IN WITNESS WHEREOF, the Parties hereto, acting under the authority of their respective governing bodies, have executed this Agreement as either a single instrument or in multiple counterparts, each of which shall constitute an original, effective on the date signed by the second Party to sign (the Effective Date).

AGREED UPON AND APPROVED BY:

MONTAGUE COUNTY, TEXAS
acting by and through its Commissioners Court



Montague County Judge

Date: May 28, 2024

Attest: 

Montague County Clerk

Date: May 28, 2024

UPPER TRINITY GROUNDWATER CONSERVATION DISTRICT
acting by and through its Board of Directors,
which delegated signature authority to its General Manager



Doug Shaw, General Manager

Date: 5-28-24