

**EXHIBIT****"A"****INTERLOCAL AGREEMENT BY AND  
BETWEEN ROUND ROCK AND GEORGETOWN**

THIS INTERLOCAL AGREEMENT is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between CITY OF ROUND ROCK, a Texas home-rule municipality ("Round Rock") and CITY OF GEORGETOWN, a Texas home-rule municipality ("Georgetown") for the purposes of describing the use by Georgetown of the public rights-of-way of Round Rock for the distribution of electric power ("Agreement"). Round Rock and Georgetown are referred to collectively here as the "Parties," or individually as a "Party."

**WITNESSETH:**

WHEREAS, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Corporation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in areas such as streets, roads, and drainage, public health and welfare; and relating to other governmental functions in which the contracting parties are mutually interested in order to provide a governmental function or service that each party to the contract is authorized to perform individually.

WHEREAS, Section 791.001 of the Government Code further provides that the Parties are authorized to contract or agree to perform governmental functions and services to increase the efficiency and effectiveness of their respective local governments.

WHEREAS, Texas Utility Code §33.008(a) provides that, "a municipality may impose on [a] ... municipally owned utility ... that provides distribution service within the municipality a reasonable charge as specified in [§ 33.008] subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer."

WHEREAS, Georgetown owns and operates an electric utility and holds a Certificate of Convenience and Necessity allowing it to provide retail electric utility services in an area that includes a land located within the corporate limits of Round Rock.

WHEREAS, Georgetown wishes to use Round Rock's streets, alley, and public ways to deliver electricity to retail customers located both within Georgetown's certificated area and the corporate limits of Round Rock.

WHEREAS, Round Rock wishes to grant Georgetown the right to use its streets, alley, and public ways to deliver electricity to retail customers located both within Georgetown's certificated area and the corporate limits of Round Rock for a reasonable charge.

WHEREAS, Round Rock finds that the charge provided in this Agreement is reasonable and comparable to fees charged to other providers.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned parties agree as follows:

### **SECTION 1: Definitions.**

“Agreement” shall mean this Agreement and all rights and obligations established herein or as amended.

“Georgetown” shall mean the City of Georgetown, Texas, a home-rule municipality, as owner of a public electric utility.

“kWh Charge” as described in Section 4.

“Public Rights-of-Way” shall mean streets, avenues, easements (other than private easements obtained by Georgetown), rights-of-ways, alleys and highways of Round Rock and beneath the surface thereof as they may now or hereafter may exist and as defined herein, but such does not include bridges or other infrastructure owned by Round Rock such as water, sewer, electric, telecommunication and facilities and any other conduit system owned, operated or controlled by Round Rock in or on the Public Rights-of-Way.

“Round Rock” shall mean the City of Round Rock, Texas, a home rule municipality whose corporate limits are as constituted on the effective date of this Agreement or as may hereinafter be constituted.

“System” shall mean all poles, pole lines, towers. Distribution lines, wires, guys, cables, conduits and other desirable instrumentalities and appurtenances necessary for the operation of Georgetown’s electric distribution business.

### **SECTION 2: Grant of Right to use Municipal Streets, Alleys of Public Ways to Deliver Electricity to Retail Customers.**

Round Rock, subject to the terms, conditions, and provisions of this Agreement, does hereby grant to Georgetown, its successors and assigns, the non-exclusive right, privilege and franchise to use the Public Rights-of-Way of Round Rock located within the certificated area of Georgetown and within the corporate limits of Round Rock as provided herein for the distribution of electric power. This Agreement grants no other rights or privileges to use the Public Rights-of-Way in Round Rock except to distribute power in the city limits of Round Rock and no other use of the Public Rights-of-Way by Georgetown is granted or implied.

### **SECTION 3: Term of Agreement.**

Upon filing with Round Rock by Georgetown of the acceptance required hereunder, this Agreement shall be in full force and effect from and after the date of the passage and approval of the Agreement until this 30<sup>th</sup> day of April 2033.

#### **SECTION 4: Use Fee.**

In consideration for the rights and privileges herein granted, the administration of this Agreement by Round Rock, the temporary interference with the use of Public Rights-of-Way as rental for the use of the Public Rights-of-Way and for other costs and obligations undertaken by Round Rock herein, Georgetown agrees to pay to Round Rock a Use Fee, computed as a kWh in the amount of .0028872 delivered in the preceding year to retail customers whose consuming facilities' point of delivery is located within the corporate limits of Round Rock, not to exceed the amount or amounts prescribed by Section 33.008 of the Texas Utilities Code.

Such use fee payments described in the above section 4 shall be calculated and paid to Round Rock annually on or before the 30<sup>th</sup> day of October, of each year of his Agreement, with the first such annual payment being due on October 30, 2023. Late payments shall accrue interest at six percent (6.00%), plus a late payment fee of \$50.00 per day, up to \$1000.

Such use fee payments described above shall be reviewed and possibly recalculated, as may be agreed upon by the Parties, at three (3) year intervals, with the first review being conducted no sooner than April 30, 2026 with any changes being agreed upon and implemented no later than June 30, 2026. Should the Parties agree at any review that no recalculation of the Use Fee is necessary, this Agreement shall continue in full force and effect until modified in writing during the next scheduled review.

#### **SECTION 5: Audit of Georgetown's Records and Reports.**

5.1 Books of Account. Georgetown shall keep complete and accurate books of accounts and records of its business and operation under and in connection with this Agreement.

5.2 Access by Round Rock. The City Manager of Round Rock shall have access to all books and accounts and records of Georgetown to the extent the City of Georgetown determines in its reasonable discretion that said books of accounts and records relate to and will assist Round Rock in ascertaining the correctness of any and all payments or reports to Round Rock. As to compliance with construction standards, Round Rock's City Manager shall have access to Georgetown's records relating to use of the Public Rights-of-Way by its System within Round Rock, and may examine its representatives in respect thereto. Access shall be given by Georgetown to Round Rock's City Manager at all reasonable times, as determined by City of Georgetown.

5.3 Audits. Round Rock may inspect Georgetown's books of accounts relative to Round Rock at any time during regular business hours on ten (10) business days' prior written notice and may audit the books from time to time. All records reasonably necessary for such audit shall be made available by Georgetown at Georgetown's City Hall. Georgetown agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within thirty (30) days of written request. If the results of any audit indicate that Georgetown (i) paid the correct Use Fee, (ii) overpaid the Use Fee and is entitled to a refund or credit, or (iii) underpaid the Use Fee by three percent (3.00%) or less, then Round Rock shall pay the costs of the audit. If the results of the audit indicate that Georgetown underpaid the Use Fee by more than three percent (3.00%),

then Georgetown shall pay the reasonable cost of the audit. Round Rock agrees that any audit shall be performed in good faith. If the results of the audit indicate that Georgetown underpaid the Use Fee by more than three (3.00%), and Georgetown is unable to produce contrary evidence that Round Rock's reasonable judgment is satisfactory to demonstrate to Round Rock that the results of the audit are not accurate, then Georgetown shall pay interest on the total amount of underpayment at an annualized interest rate of eight percent (8.00%), and interest shall be calculated from the time the original amount is due. Any additional amount due to Round Rock hereunder shall be paid within thirty (30) days from the date of invoice. Any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at an annualized interest rate of eight percent (8.00%) on the entire amount from the date of invoice. Notwithstanding the above, if Georgetown's auditor disagrees with Round Rock's determination that the additional amount due exceeds three percent (3.00%), Round Rock's auditor and Georgetown's auditor shall choose a neutral auditor who shall make a determination which is final and binding on both parties as to whether the three percent (3.00%) amount was exceeded.

5.4 Confidentiality. The Parties agree to hold in strict confidence any non-public information or information marked proprietary or confidential that it learns from each other to the extent permitted by law. Neither Party shall be liable to the other Party for the release of any information obtained as a result of an audit where a Party is required to release that information by law or court order.

## **SECTION 6: Annexations by Round Rock.**

This Agreement shall extend to and include any and all territory which is annexed by Round Rock and lies within Georgetown's certificated area during the term of this Agreement. Within sixty (60) days from the effective date of any such annexation, Georgetown shall assure Round Rock that any and all customers located within such annexed territory be included and shown on its accounting system as being within Round Rock. After such sixty (60) day period, all customer accounts located within such annexed territory shall be subject to the payment provisions specified in Section 4 of this Agreement.

## **SECTION 7: Construction.**

7.1 Compliance with Round Rock Ordinances. Georgetown shall be bound by all current and future ordinances that govern the placement, location, and construction of facilities in Round Rock; and ordinance that assist in the management of facilities placed in, on or over the Public Rights-of-Way to the extent such are necessary to protect the public health, safety, or welfare, and are adopted pursuant to Round Rock's police powers. Round Rock shall in good faith provide Georgetown with a thirty (30) day notice prior to the consideration of any proposed ordinance that binds Georgetown. In the event that the thirty (30) day notice is not provided to Georgetown, through inadvertence or otherwise, such ordinance shall still be binding upon Georgetown.

7.2 Relocation of Facilities. In the event relocation is required by Round Rock of any of Georgetown's electric utility wire, cable, or other facility within Public Rights-of-Way such relocation shall be completed within a reasonable time allowed considering the scope and

circumstances of the project and agreed by the parties. In the event relocation is not completed in the time allowed due to action or inaction by Georgetown, Round Rock may impose a fee not to exceed \$20 per day.

7.3 Inspection. Round Rock retains the right to make reasonable visual, non-invasive inspections of the System and on request for Round Rock's City Manager from time to time, to require Georgetown to provide available records or data to demonstrate its current compliance with the terms of this Agreement. Said inspections shall be made during Georgetown's normal business hours and shall not cause Georgetown's employees to work any hours that will cause Georgetown to pay overtime wages or salaries to employees necessary to fulfill Round Rock's right to said inspection.

7.4 Temporary Removal of Wires. Georgetown, on the request of any person shall remove or raise or lower its wires within Round Rock temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Georgetown may require such payment in advance. Georgetown shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within Round Rock and also underground work shall conform to the basic standards of the National Electrical Safety Code, National Bureau of Standards, United States Department of Commerce, as promulgated at the time of erection thereof.

7.5 Tree Trimming. The right, license, privilege and permission is hereby granted to Georgetown, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks and public places of Round Rock, so as to prevent the branches of such trees from coming in contact with the wires or cables of Georgetown, and when ordered by Round Rock, said trimming shall be done under the supervision and direction of Round Rock City Manager or of any city official to whom said duties have been or may be delegated.

## **SECTION 8: Transfers and Assignments.**

No transfer of this Agreement shall be effective unless the following conditions are met:

- a) The transfer shall be in writing, in duplicate;
- b) Signed by both the transferor and by the transferee;
- c) Filed with the Round Rock City Clerk;
- d) The transferee pays a franchise transfer fee of Five Hundred Dollars (\$500.00) to Round Rock; and
- e) The transfer is approved by Round Rock's City Council as provided herein.

The fees for the years subsequent to such transfer shall be payable by the transferee under the same conditions as they had been for the transferor. Approval by the Round Rock City Council

of such transfer will extinguish Georgetown's rights and obligations pursuant to this Agreement and delegate them to the transferee.

No assignment in law or otherwise shall be effective until the assignee has filed with Round Rock's City Manager an instrument, duly executed, reciting in fact that such assignment, accepting all the terms of this Agreement, and agreeing to comply with all of the provisions of this Agreement. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment for the purposes of this section.

## **SECTION 9: Forfeitures and Termination.**

9.1 In addition to all other rights and powers retained by Round Rock under this Agreement or otherwise, Round Rock reserves the right to forfeit and terminate this Agreement and all of Georgetown's rights and privileges hereunder in the event of a material breach of terms and conditions hereof, subject to reasonable notice and opportunity to cure as provided in Section 9.2 below.

9.2 If Georgetown is in violation of this Agreement and such violation is of a curable nature, Round Rock's City Manager or designee shall notify Georgetown in writing, setting forth the nature of such violation. Within twenty-one (21) days of receipt of such notice, Georgetown shall (i) respond in writing that the violation has been cured, (ii) provide a written cure plan, subject to review and approval by Round Rock's City Manager, or (iii) provide a written explanation with documentation to support that the alleged violation did not occur.

9.3 Notwithstanding Section 9.2, Georgetown shall be allowed thirty (30) days after Round Rock's delivery of the written notice described in Section 9.2 to cure a curable violation. If the nature of such violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Georgetown's control, the period of time in which Georgetown must cure the violation may be extended by Round Rock's City Manager in writing for such additional time reasonably necessary to complete the cure, providing that (i) Georgetown has begun promptly to cure, and (ii) Georgetown is diligently pursuing its efforts to cure in Round Rock Manager's reasonable judgment.

9.4 At Georgetown's request, Round Rock shall afford Georgetown an opportunity to show that a violation has not occurred, through a hearing before the Round Rock City Council. Such hearing shall take place on or before the next Round Rock City Council meeting regularly scheduled within thirty (30) days after Round Rock's receipt of Georgetown's request. After the conclusion of the hearing either party may seek any and all remedies to which it may be entitled in law or in equity.

9.5 Material breaches of this Agreement specifically include, but are not limited to, failing to comply with the requirements set forth in Sections 4, 5, and 7 and the provision of unauthorized services.

9.6 The preceding shall not constitute a material breach if the violation occurs without the fault of Georgetown or occurs as a result of circumstances beyond its control. Georgetown shall

not be excused from performance of any of its obligations under this Agreement by mere economic hardship, nor misfeasance or malfeasance of its directors, managers, officers, or employees.

9.7 A termination shall be declared only by a written decision of the Round Rock City Council after a public hearing before the Round Rock City Council, which shall afford Georgetown full opportunity to be heard and to respond to any notice of grounds of termination. The foregoing sentence, however, shall not be construed as requiring any additional hearing after Georgetown has had such proceeding pursuant to Section 9.4 and after Georgetown's failure timely to cure any default within a time period which may have been granted by the City Council at the hearing held pursuant to Section 9.4 above. All of Round Rock's notice requirements shall be met by providing written notice to Georgetown at least fifteen (15) days before a public hearing concerning the proposed termination of this Agreement. Such notice shall state Round Rock's alleged grounds for termination.

9.8 The Round Rock City Council, after public hearing, and upon finding the existence of grounds to terminate, may either declare this Agreement terminated, excuse the breach upon a showing by Georgetown of mitigating circumstances or good cause for existence of such grounds, or grant additional time for Georgetown to cure its default.

9.9 Neither Georgetown's acceptance of this Agreement, Georgetown's appearance before the Round Rock's City Council at any public hearing concerning proposed termination of this Agreement nor any action taken by the Round Rock City Council a result of such public hearing, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect Georgetown's right to seek judicial determination of the rights and responsibilities of the Parties under this Agreement.

#### **SECTION 10: Foreclosure, Receivership, and Bankruptcy.**

Georgetown shall notify Round Rock within thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of Georgetown, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary, such notice to include where applicable the cause number and court involved.

#### **SECTION 11: Enforcement.**

Round Rock's attorney or his/her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Georgetown shall provide to Round Rock's attorney or his/her designee documents and records that Round Rock's attorney or his/her designee deems reasonably necessary to determine Georgetown's compliance with this Agreement, with the exception of those documents made privileged and/or confidential by federal or state law or regulation or any documents that would be privileged under the Texas Rules of Civil Procedure.

**SECTION 12: Nonexclusive Rights.**

Nothing contained in this Agreement shall ever be construed as conferring upon Georgetown any exclusive rights or privileges of any nature whatsoever.

**SECTION 13: Entire Agreement.**

This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose.

**SECTION 14: Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 15: Non-Waiver.**

Failure of either party to declare, or delay in taking any action in connection with, any breach or default immediately upon the occurrence thereof shall not waive such breach or default, but the non-defaulting party shall have the right to declare any such breach or default at any time. Failure of the non-defaulting party to declare one breach or default does not act as a waiver of that party's rights to declare another breach or default.

**SECTION 16: Governing Law; Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue and jurisdiction over any dispute related to this Agreement shall be with the Texas State District Court in Williamson County, Texas.

**SECTION 17: No Waiver of Immunities.**

Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by the Parties, their past or present officers, employees, or agents or employees.

**SECTION 18: Notice.**

To Round Rock:

City of Round Rock  
Attn: City Manager  
221 E. Main Street  
Round Rock, Texas 78664



With copy to:

Stephanie L. Sandre, City Attorney  
Sheets & Crossfield, PLLC  
309 E. Main Street  
Round Rock, Texas 78664

To Georgetown:

City of Georgetown  
Attn: City Manger  
P.O. Box 409  
Georgetown, Texas 78627

With a copy to:

Skye Masson, City Attorney  
P.O. Box 409  
Georgetown, Texas 78627

or to such other address as provided in writing by the receiving Party.

**SECTION 19: Approval by Governing Bodies.**

This Agreement has been approved by the Governing Body of the City of Round Rock and by the Governing Body of the City of Georgetown at meetings held in compliance with the Texas Open Meetings Act.

**SECTION 20: Payment from Current Revenues.**

Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

[Signatures on the following page.]

**CITY OF GEORGETOWN, TEXAS**

By: \_\_\_\_\_  
JOSH SCHROEDER, Mayor

ATTEST:

By: \_\_\_\_\_  
Robyn Densmore, City Secretary

**CITY OF ROUND ROCK, TEXAS**

By: \_\_\_\_\_  
CRAIG MORGAN, Mayor

ATTEST:

By: \_\_\_\_\_  
Meagan Spinks, City Clerk