



estimated project costs, including but not limited to design, permitting, land and easement acquisitions, and construction, are Thirty-Four Million and No/100 Dollars (\$34,000,000.00).

**2. District Obligations.**

- a. The District shall be responsible for the design, permitting, easement and land acquisition, construction operation and maintenance of the Dam 101 Project.
- b. The District shall be responsible for the design, permitting, and construction of the stream and wetland mitigation project (“SWMP”). In addition, any required survey, title work, recording, or other related SWMP costs shall also be paid by the District.
- c. The District shall be responsible for the USACE required inspections and estimated five (5) years of reporting for the SWMP. If the reporting period exceeds five (5) years, the City shall then become responsible for the inspections and the reporting requirements, provided the City has the appropriate staff. In the event the inspections and reporting requirements require specialized skills not present within the existing staff, the District shall either continue the inspection and reporting requirements or enter into negotiations with the City for the District to reimburse the City for staffing or third-party contracting costs associated with the required inspection and reporting requirements.

**3. City Obligations.**

The City shall pay ten percent (10%) of the project costs in an amount not to exceed Three Million Four Hundred Thousand and No/100 Dollars (\$3,400,000.00) as set forth below:

a. Financial Contribution:

- (i) The City shall be credited for all previous payments and financial commitments made pursuant to the reimbursement of engineering, design and permitting costs for the Dam 101 Project set forth in the 2018 Agreement. The City shall continue to reimburse the District for said costs up to not to exceed amount of Two Million and No/100 Dollars (\$2,000,000.00).
- (ii) The District acknowledges and agrees that staff time and associated expenses were incurred when the City initially managed the Dam 101 Project.

b. SWMP Assistance:

- (i) The City shall not require a fee or payment to execute the easements, or similar commitments as required by USACE, for the SWMP currently planned for the location set forth in the attached Exhibit “A” (“SWMP Site”).

- (ii) The City agrees to commit to the long-time stewardship as required by the USACE, including preserving the SWMP Site in its newly reestablished state in perpetuity.
- (iii) The City shall consider the channel and mitigation improvements an asset owned by the City and eligible for maintenance funding through the Drainage Utility.

c. Provision of Construction Water:

- (i) The City shall install a water take point on the City's west transmission line as close as practicable to the location shown in the attached Exhibit "B" ("Water Take Point"), as agreed upon by the District and City.
- (ii) The City shall perform, or contract to have performed at its expense, any modifications required for establishing a take point for construction water, including but not limited to tap installation.
- (iii) The City agrees to provide the water required for the Dam 101 Project at no cost to the District.

All of the items in this Section 3 represent the City's total financial obligations for all of the Dam 101 Project costs. In the event additional costs are incurred or cost escalations are experienced for the Dam 101 Project, the City shall not be responsible for any other items that are not specifically set forth in this Section 3.

C.

**MISCELLANEOUS PROVISIONS**

**1. Execution.**

This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.

**2. Governing Law.**

This Agreement will be governed by the Constitution and laws of the State of Texas.

**3. Successors and Assigns.**

The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party.

**4. Headings.**

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

**5. Partial Invalidity.**

If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

**6. Waiver.**

Any waiver by any party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

**7. Amendments.**

This Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties.

**8. Cooperation.**

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

**9. Venue.**

All obligations of the Parties are performable in Williamson County, Texas and venue for any action arising hereunder will be in Williamson County.

**10. Third Party Beneficiaries.**

Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

**11. Representations.**

Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the termination or expiration of this Agreement.

**12. Exhibits.**

All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

**13. Agreement.**

This 2021 Agreement shall amend only the provisions of the 2018 Agreement as set forth herein with no other changes in terms or conditions of the 2018 Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

(Signatures on the following pages)

UPPER BRUSHY CREEK WATER CONTROL  
AND IMPROVEMENT DISTRICT

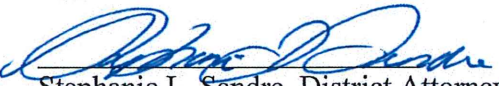
By:   
Mike Freeman, President

Date: 8/19/21

Attest:

  
Lisa Moravitz

Approved as to Form:

  
Stephanie L. Sandre, District Attorney



**CITY OF ROUND ROCK, TEXAS**

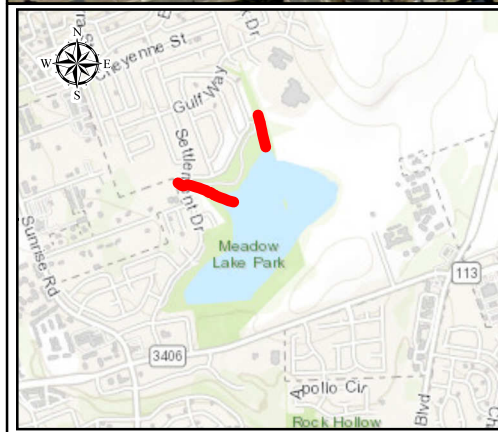
By: \_\_\_\_\_  
Craig Morgan, Mayor

Date: \_\_\_\_\_

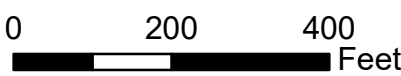
Attest:

\_\_\_\_\_  
Sara White, City Clerk

# EXHIBIT A

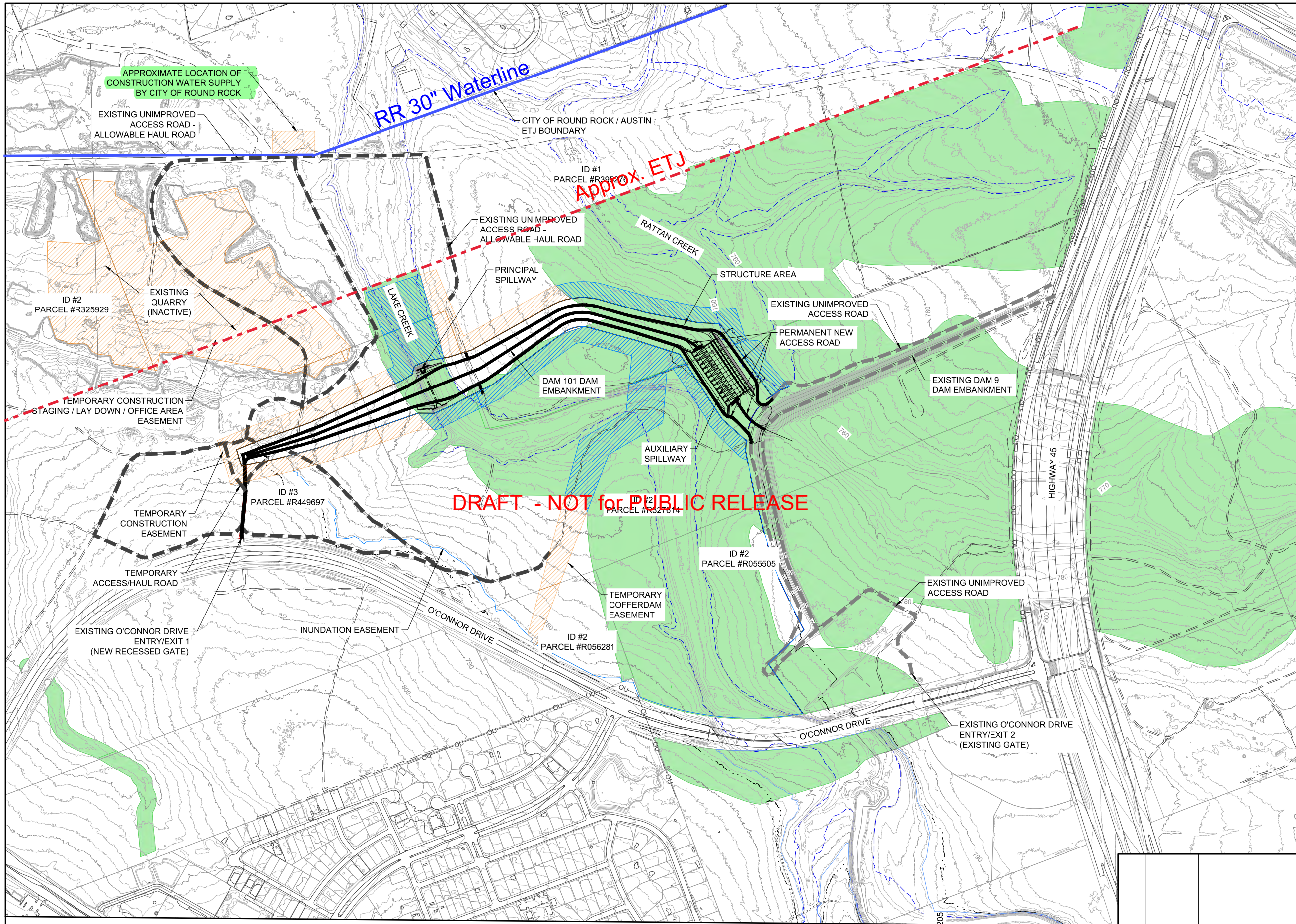


- Legend**
- SAR 3 - 532 LF
  - SAR 4 - 367 LF
  - XXXX SAR 5 - 120 LF
  - SAR 6 - 133 LF
  - SAR 7 - 460 LF
  - Parks



|  |                  |   |
|--|------------------|---|
| <b>TXRAM SAR MAP</b>                                       |                  |   |
| CANDIDATE COMPENSATORY MITIGATION SITES<br>DAM 101 PROJECT |                  |   |
|  |                  | AECOM Technical Services<br>9400 Amberglen Boulevard<br>Austin, TX 78729<br>(512) 454-4797<br>(512) 454-8807<br>www.aecom.com<br>TBPE Reg. No. F-3580 |
| Date 6/24/2021   | Project 60514934 | Figure 1  |



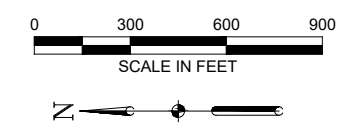


**LEGEND**

|  |  |
|--|--|
|  | OPEN SPACE PER ROBINSON RANCH ANNEXATION AGREEMENT             |
|  | TEMPORARY EASEMENT REQUIRED - DEVELOPABLE LAND                 |
|  | TEMPORARY EASEMENT REQUIRED - OPEN SPACE/ NON-DEVELOPABLE LAND |

Exhibit B

**DRAFT - NOT for PUBLIC RELEASE**



| REV NO. | DESCRIPTION       | DATE |
|---------|-------------------|------|
|         | ISSUED FOR REVIEW |      |

**DRAFT - NOT for PUBLIC RELEASE**

|  |  |  |  |  |  |
|--|--|--|--|--|--|
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