

**EXHIBIT**

**“A”**

**INTERLOCAL AGREEMENT REGARDING  
ALLOCATION OF COSTS FOR THE REHABILITATION OF  
THE EAST WASTEWATER TREATMENT PLANT OF  
THE BRUSHY CREEK REGIONAL WASTEWATER SYSTEM**

**THIS INTERLOCAL AGREEMENT REGARDING THE ALLOCATION OF COSTS FOR THE REHABILITATION OF THE EAST WASTEWATER TREATMENT PLANT OF THE BRUSHY CREEK REGIONAL WASTEWATER SYSTEM (“Agreement”)** is entered into among the City of Austin, (“**Austin**”), the City of Cedar Park (“**Cedar Park**”), the City of Leander, (“**Leander**”), and the City of Round Rock, (“**Round Rock**”), to be effective this the \_\_\_\_ day of \_\_\_\_\_ 2024 (the “Effective Date.”) In this Agreement, Austin, Cedar Park, Leander, and Round Rock are sometimes individually referred to as “**Party**” and collectively referred to as “**Parties.**”

**Recitals**

**WHEREAS**, Austin, Cedar Park, and Round Rock entered into that certain Master Contract for the Financing, Construction, Ownership, and Operation of the Brushy Creek Regional Wastewater System dated December 8, 2009, with terms and conditions to jointly own and operate the Brushy Creek Regional Wastewater System (“System”) purchased from the Lower Colorado River Authority (“Original Master Contract”); and

**WHEREAS**, on June 4, 2010, the Parties entered into an Amended and Restated Master Contract for the Financing, Construction, Ownership and Operation of the Brushy Creek Regional Wastewater System, (the “Master Agreement”); and

**WHEREAS**, on June 9, 2011, the Parties entered into the First Amendment to the Master Contract to amend and clarify the duties and responsibilities of the Operations Committee, and to amend the provisions regarding the Capital Expense Budget; and

**WHEREAS**, on June 19, 2017, the Parties entered into that one certain Interlocal Agreement Regarding the Allocation of Cost for the Re-rating and Expansion to the East Wastewater Treatment Plant of the Brushy Creek Regional Wastewater System, to pursue expansion of the East Wastewater Treatment Plant (“WWTP”); and

**WHEREAS**, on July 13, 2017, the Parties entered into that one certain Interlocal Agreement Regarding Allocation of Costs for the Expansion to the East Wastewater Treatment Plant of the Brushy Creek Regional Wastewater System, to establish the terms and conditions of the cost allocations to expand the WWTP to 30 MGD; and

**WHEREAS**, on September 21, 2023, the Parties entered into a Second Amendment to the Master Contract to provide for Leander’s purchase of an undivided interest in the East Treatment Plant real property and the West Treatment Plant real property, as well as to modify the flow calculation methodology; and

**WHEREAS**, on January 25, 2024, the Parties entered into that one certain Interlocal Agreement Regarding Allocation of Costs for the Expansion to the East Wastewater Treatment

Plant of the Brushy Creek Regional Wastewater System (the “40 MGD Expansion”), whereby on the Cities of Round Rock and Austin participate in all costs incurred in the expansion, and the Cities of Cedar Park and Leander do not participate in any expansion related costs; and

**WHEREAS**, Section 3.7 of the Master Contract provides for the procedures to be followed to accomplish the design and construction of Capital Improvements such as repair and rehabilitation of System Components, including the execution of interlocal agreements such as this Agreement; and

**WHEREAS**, the Parties have agreed to jointly pursue the rehabilitation of various System Components of the WWTP, (the “Project”) to meet or maintain Regulatory Requirements and to improve operations of the System for the benefit of the Parties; and

**WHEREAS**, the purpose of this Agreement is to set forth the terms and conditions of the allocation of costs for the rehabilitation of the WWTP, and pursuant to which the Parties will participate in the costs and expenses related thereto.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**I.**  
**DEFINITIONS**

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

**1.01** “Agreement” means this Interlocal Agreement Regarding the Allocation of Costs for the Rehabilitation of the WWTP.

**1.02** “Contractor(s)” means one or more of the firms engaged by the Parties to perform Construction Services.

**1.03** “Construction Services” means services provided by one or more firms to construct the Project.

**1.04** “Construction Services Contract(s)” means those certain contracts for construction services to be approved by the Parties pursuant to which the Contractor(s) shall provide Construction Services.

**1.05** “Cost Allocation Percentage” means the percentage of Project Costs to be paid by each Party. The Cost Allocation Percentages are based on the Parties’ capacity ownership in the 33.0 MGD capacity of the System. The Project Cost Allocation Percentages are set forth on **Exhibit “A”** attached hereto.

**1.06** “Effective Date” means the date set forth in the introductory paragraph of this Agreement.

**1.07** “Master Agreement” means the Amended and Restated Master Contract for the Financing, Construction, Ownership and Operation of the Brushy Creek Regional Wastewater System dated

June 4, 2010, and as amended by the First Amendment to the Master Agreement entered into on June 9, 2011.

**1.08** “Operations Committee” or “OC” means the Operations Committee created in Section 4.6 of the Master Agreement.

**1.09** “Project” means: the efforts to design, install, and construct the necessary rehabilitation and repair of the WWTP outlined in this Agreement.

**1.10** “Project Consultant(s)” means one or more of the firms engaged by the Parties to perform Project Consulting Services.

**1.11** “Project Consulting Contract(s)” means those certain contracts for engineering and related services to be approved by the Parties pursuant to which the Project Consultant(s) shall provide Project Consulting Services.

**1.12** “Project Consulting Services” means the services required for the preliminary and final engineering and other services to be performed by the Project Consultant(s) pursuant to the Project Consulting Contracts in order to complete the objectives of the Project.

**1.13** “Project Costs” means all costs and expenses incurred by the Parties in furtherance of the Project.

**1.14** “Project Fund” means the funds contributed by the Parties for the Project in accordance with Section 5.02 of this Agreement.

**1.15** “System” means the Brushy Creek Regional Wastewater System.

**1.16** “WWTP” means the East Wastewater Treatment Plant of the System.

## **II. OPERATIONS COMMITTEE**

### **2.01 Responsibility of the OC.**

(a) The OC shall:

(i) Attend and participate in regular meetings with the Project Consultant(s) and Contractor(s) to monitor the status of the Project and to provide direction and recommendations with respect thereto;

(ii) Review and unanimously approve, in writing, reports for the Project produced by the Project Consultant(s) and Contractor(s);

(iii) Review and unanimously approve, in writing, any revisions to the scope to be performed by the Project Consultant(s) and Contractor(s);

(iv) Review and unanimously approve in writing other contracts necessary for the completion of the Project;

- (v) Confirm in writing the final completion of Project; and
- (vi) Address any other pertinent matters relating to the Project.

(b) The OC shall meet at regular intervals to review the matters over which it has authority. The OC shall be diligent, prompt, and timely in reviewing and acting on matters submitted to it.

### **III.** **CONSULTANT SERVICES**

#### **3.01 Consultant Services.**

(a) The Parties intend to enter into Project Consultant Contracts in the form unanimously approved by the Parties.

(b) After the scope of Project Consultant Contracts is approved, including any proposed changes to a Project Consultant's compensation, the Project Consultant Contracts may only be modified by unanimous written authorization from the Parties, such authorization shall be set forth in a "Supplemental Contract."

(c) The Parties agree that the final design of the Project will not be finalized until the OC has reviewed and unanimously approved in writing such design.

(d) Within ten (10) business days of receipt of any preliminary and/or final reports prepared by the Project Consultant(s), the members of the OC shall specify in writing to each other any objections regarding the draft reports, and any proposed revisions thereto. If any member of the OC fails to object in writing to the report within the ten (10)-business-day period, then that member shall be deemed to have approved the draft report. In the event that any member of the OC timely objects to the draft report, then the OC shall endeavor in good faith to resolve the matter by unanimous agreement. If the OC cannot unanimously agree to the proper resolution within fifteen (15) business days, then the OC shall refer the dispute to the respective City Managers of the Parties. The City Managers shall work diligently and in good faith to resolve the dispute as quickly as possible so as not to jeopardize the completion of the Project.

(e) The Parties agree that the design and funding for the design will include only those systems and components the Parties unanimously agree are for rehabilitation only, and no portions of the design will be for the purpose of increasing capacity to support the 40 MGD Expansion.

#### **3.02 Work Product.**

(a) Any Party is entitled to copies of any work product produced by the Project Consultant(s) in connection with the Project Consultant Services. The Party requesting a copy of such information shall pay all reasonable costs incurred in preparing and furnishing the copies.

(b) In accordance with, and subject to the terms and conditions set forth in the Project Consultant Contracts, the Parties may utilize the work product produced by the Project Consultant(s) for their own purposes.

#### **IV.** **CONSTRUCTION SERVICES**

##### **4.01 Construction Services.**

(a) The Parties intend to enter into Construction Services Contracts in the form unanimously approved by the Parties.

(b) After the scope of Construction Services Contracts are approved, the Construction Services Contracts may only be modified by unanimous written authorization from the Parties, such authorization shall be set forth in a “Supplemental Contract.”

(c) The Parties agree that the Construction Services Contracts will not be finalized until the OC has reviewed and unanimously approved in writing such Contracts.

#### **V.** **PROJECT COSTS.**

##### **5.01 Payment of Project Costs.**

(a) All Project Costs shall be shared by the Parties as set forth in **Exhibit “A”** attached hereto.

(b) The Parties agree that Project Consultant(s) and Contractor(s) will be instructed to send all invoices to Round Rock and that upon receipt of each invoice from the Project Consultant(s) and Contractor(s), Round Rock shall review the invoice and confirm that the Project Consulting Services and/or Construction Services have been completed in accordance with the request for payment.

(c) Upon Round Rock’s approval of each invoice for Project Costs, Round Rock will transmit a copy of the approved invoice to each Party’s representative on the OC. Within ten (10) business days of receipt of the invoice for payment, the members of the OC shall specify in writing to Round Rock any objections regarding the invoice for payment. If any member of the OC fails to object in writing to the invoice within the ten (10) business day period, then the Party represented by such OC member shall be deemed to have approved the invoice for payment. In the event that any member of the OC timely objects to the invoice, then the matter shall be resolved in accordance with the following procedures:

(i) If the objection relates to the performance of work or services by a Project Consultant, then the OC shall exercise all rights to which the Parties are entitled under the Project Consulting Contract or Construction Contract to resolve the dispute, require correction of the defective work, and otherwise address the concern of the objecting member of the OC.

(ii) In the event that any member of the OC objects to an invoice for reasons not related to the performance of work or services by the Project Consultant or Contractor, then the OC shall endeavor in good faith to resolve the matter by unanimous agreement. If the OC cannot unanimously agree to the proper resolution within thirty (30) calendar days of the date of written objection, then the invoice shall be paid as received; provided, however, that any Party may subsequently seek a determination of the dispute through the dispute resolution process set forth in Sec. 5.03 below, and the allocation of costs between the Parties shall be adjusted in accordance with such determination. Any such request for dispute resolution must be brought within thirty (30) calendar days of the date of written objection.

(iii) In the event that Project Costs exceed agreed upon estimates, then the OC must approve such overruns by unanimous agreement. If the OC cannot unanimously agree, then the matter shall be submitted to the City Managers for resolution as set forth in Sec. 5.03.

(d) The Parties agree that the reasonable compensation cost for Round Rock's performing the aforesaid financial administration and other general administrative services is the sum of \$2,000 per month, beginning when the first Project Consultant Contract is executed, and ending with the completion of the construction of the Project, which costs shall be shared and allocated among the Parties (including Round Rock) according to the Cost Allocation Percentages set forth in Exhibit "A".

(e) In the event of termination of this Agreement prior to the completion of the Project, all Parties shall provide payment of their pro rata share of the Project Costs incurred prior to and through the date of the termination.

(f) The Parties agree that construction of the Project will occur in subsequent fiscal years subject to the approval of and appropriation of funds by the governing body of each Party, and no funding for construction will be paid or authorized by the Parties until October 1, 2025.

## **5.02 Project Fund.**

(a) The Parties shall contribute monies to the Project Fund in accordance with the following provisions:

(i) Within ten (10) calendar days of execution of the Project Consulting Contract(s), each Party shall deposit into the Project Fund a sum, which represents twenty five percent (25%) of each Party's share of the estimated Project Costs for Project Consulting Services. The Project Fund shall be placed in an interest-bearing account, and the interest shall become part of the Project Fund, with each Parties share of interest as based on the Cost Allocation Percentages set forth in Exhibit "A" to be credited toward each Parties cost responsibility.

(ii) Within ten (10) calendar days of execution of the Construction Services Contract(s), each Party shall deposit into the Project Fund a sum, which represents twenty-five percent (25%) of each Party's share of the estimated Project Costs for construction. The Project Fund shall be placed in an interest-bearing account, and the interest shall become part of the Project Fund, with each Parties share of interest as based on the Cost Allocation Percentages set forth in Exhibit "A" to be credited toward each Parties cost responsibility. Payment into the Project Fund for construction of the Project is subject to Section 5.01(f) of this Agreement, and will not be paid until after October 1, 2025.

(iii) At such time as the balance in the Project Fund is substantially depleted, as determined in Round Rock's reasonable discretion, Round Rock shall provide written notice (by email or otherwise) thereof to the other Parties, each of which shall have thirty (30) calendar days to deposit into the Project Fund an additional payment, in the same amount as originally deposited. Each notice by Round Rock shall be accompanied by a written accounting report that identifies in reasonable detail all prior expenditures from the Project Fund.

(b) In the event that there are remaining funds, including accumulated interest, within the Project Fund upon final completion of the Project, then Round Rock shall promptly divide and remit within 30 calendar days such funds to the Parties on a pro rata basis according to the percentage of all Project Costs previously paid by each of the Parties. Payment shall be accompanied by a written accounting describing the basis for calculation of payment to each Party.

**5.03 Disputes.** In the event of any disputes among the Parties, the Parties agree that the City Managers shall work diligently and in good faith to resolve the dispute as quickly as possible so as not to jeopardize the completion of the Project.

## **VI** **GENERAL PROVISIONS**

**6.01 Authority.** This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 552.001, *Texas Local Government Code*.

**6.02 Severability.** The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

**6.03 Payments from Current Revenues.** Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose. The obligation of Parties to make payments to Round Rock will not constitute a general obligation or indebtedness of the Parties that obligate a Party to levy or pledge any revenue from taxes.

**6.04 Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**6.05 Entire Agreement.** Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the sharing of costs for the Project Consulting Services and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the Project are contemplated and will not be affected or limited by this Agreement.

**6.06 Amendments.** Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

**6.07 Applicable Law; Venue.** This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

**6.08 Notices.** Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

**AUSTIN:**

P.O. Box 1088  
Austin, Texas 78767  
Attn: Director, Austin Water  
Telephone: (512) 972-0109

with copy to:

City Law Department  
P.O. Box 1088  
Austin, Texas 78767  
Attn: Division Chief, Utility & Regulatory  
Division

**CEDAR PARK:**

450 Cypress Creek Road, Bldg. 1  
Cedar Park, Texas 78613  
Attn: Kenneth Wheeler  
Telephone: (512) 401-5550  
Email: [kenneth.wheeler@cedarparktexas.gov](mailto:kenneth.wheeler@cedarparktexas.gov)

with copy to:

J.P LeCompte  
City Attorney  
450 Cypress Creek Road, Bldg. 1  
Cedar Park, Texas 78613  
Email: [JP.LeCompte@cedarparktexas.gov](mailto:JP.LeCompte@cedarparktexas.gov)



**ROUND ROCK:**

221 East Main  
Round Rock, Texas 78664  
Attn: Michael Thane  
Telephone: (512) 218-3236  
Email: [mthanel@roundrocktexas.gov](mailto:mthanel@roundrocktexas.gov)

with copy to:

Steve Sheets  
309 E. Main Street  
Round Rock, Texas 78664-5264  
Telephone: (512) 255-8877  
Email: [steve@scrrlaw.com](mailto:steve@scrrlaw.com)

**LEANDER:**

P.O. Box 319  
Leander, Texas 78646-0319  
Attn: City Manager  
Telephone: (512) 259-1178  
Email: [tparton@leandertx.gov](mailto:tparton@leandertx.gov)

with copy to:

Paige Saenz  
223 W. Anderson Lane, Suite A-105  
Austin, Texas 78752  
Telephone: (512) 323-5778  
Email: [paige@cityattorneytexas.com](mailto:paige@cityattorneytexas.com)

**6.09 Force Majeure.** The Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects. Force majeure shall not relieve the Parties of their obligation to make payment to Round Rock as provided in this Agreement.

**6.10 Independent Contractor.** Each of the Parties shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of its employees hereunder and each Party's employees shall not be considered employees or borrowed servants of any of the other parties for any reason.

**6.11 No Third-Party Beneficiaries.** This Agreement shall inure only to the benefit of the Parties and third parties not privy to this Agreement shall not, in any form or manner, be considered a third-party beneficiary of this Agreement.

**6.12 Conflict.** If there is a conflict between the Master Agreement, as amended, and this Agreement, the provisions of this Agreement shall control.

**6.13 Termination.** This Agreement may be terminated by mutual agreement of the Parties. If this Agreement is terminated by the Parties prior to its completion of Project Consulting Services,

then the terms and conditions of the Master Agreement shall control. Any outstanding balance within the Project Fund will be returned proportionally in accordance with the applicable Exhibit percentages. The Parties shall then work cooperatively with due diligence to determine how to address existing and future wastewater treatment capacity issues.

**6.14 Default.** In the event that one Party believes that the other Party is in default of any of the provisions in this agreement, the non-defaulting party will make written demand to cure to the defaulting party and give the defaulting party up to thirty days to cure the default or, if the curative action cannot reasonably be completed within thirty days, the defaulting party will commence the curative action within thirty days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting party may initiate any remedies available to the non-defaulting party due to such default. The non-defaulting party shall mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The parties agree that they will use their best efforts to resolve any disputes and may engage in mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas before initiating any lawsuit to enforce their rights under this agreement. Nothing in this agreement shall be construed to limit a Party's right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a non-defaulting party to this Agreement.

**6.15 Counterparts. Effect of Partial Execution.** This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

**6.16 No Waiver of Immunities or Defenses.** Nothing in this Agreement shall be deemed to waive, modify, or amend any immunity or legal defense available at law or in equity to the Parties, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party.

**6.17 Authority.** Each Party represents and warrants that it has the full right, power, and authority to execute this Agreement.

**(SIGNATURES ON FOLLOWING PAGES)**

**CITY OF AUSTIN:**

By: \_\_\_\_\_  
Robert Goode, Assistant City Manager

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

**CITY OF ROUND ROCK:**

ATTEST:

\_\_\_\_\_  
Meagan Spinks, City Clerk

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

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

**CITY OF CEDAR PARK:**

ATTEST:

\_\_\_\_\_  
LeAnn Quinn, City Secretary

By: \_\_\_\_\_  
Jim Penniman-Morin, Mayor

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

**CITY OF LEANDER:**

ATTEST:

\_\_\_\_\_  
Dara Crabtree, City Secretary

By: \_\_\_\_\_  
Christine DeLisle, Mayor

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

## EXHIBIT A

### Allocation of Project Costs (For 33 MGD Capacity of the System)

<u>City</u>	<u>Ownership Capacity (MGD)</u>	<u>Cost Allocation</u>
Round Rock	20.05	60.76%
Leander	4.23	12.82%
Cedar Park	5.46	16.55%
<u>Austin</u>	<u>3.26</u>	<u>09.87%</u>
<b>TOTALS</b>	<b>33.00</b>	<b>100.00%</b>