

EXHIBIT

"A"

INTERLOCAL AGREEMENT BETWEEN UPPER BRUSHY CREEK WATER CONTROL AND IMPROVEMENT DISTRICT AND CITY OF ROUND ROCK

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This Interlocal Agreement (the "Agreement") is entered into as of this _____ day of _____, 2015 by and between the Upper Brushy Creek Water Control and Improvement District, a political subdivision of the State of Texas (the "District") and the City of Round Rock, a Texas home-rule municipality (the "City") (collectively, the "Parties").

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more local governments may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, the District and the City desire to cooperate in the modification of Dam 11 to create additional flood storage ("Dam 11 Modification"); and

WHEREAS, the District has previously committed to modify Dam 11 to accommodate the Altman/Thermasol project, and

WHEREAS, the Dam 11 Modification is an adjustment to the modification of Dam 11 requested by the City to add flood storage volume and resolve drainage issues for various City projects within and adjacent to the Dam 11 inundation easement , potentially including but not limited to the North Mays extension, the conversion of the McNeil Park property, and the expansion of the Police/Fire training facility.

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

A.

TERMS AND CONDITIONS

1. Project Improvement.

Dam 11 is an existing earthen dam and inundation easement, which was constructed in 1966 by the Soil Conservation Service for flood and sediment control. The location of said Dam 11 is shown on **Exhibit "A"**, attached hereto and incorporated herein (the "Dam 11"). The Dam 11 Modification involves the adjustment of the low

flow ports on the Dam 11 principal spillway to accommodate the additional flood storage capacity needed by the City.

2. District Obligations.

- a. The District shall contract with a consultant(s) to perform the design, permitting, and construction phase services for the Dam 11 Modification. After project completion, the District will continue to own, operate and maintain the Dam 11. The District shall be responsible for all costs over and above the \$10,000 contribution from the Altman/Thermasol project and the \$75,000 City contribution.
- b. After completion of the Dam 11 Modification and receipt of City reimbursement described below, the District shall reserve for the City a net additional flood storage of approximately 75 acre-feet created by the Dam 11 Modification. The City may use the additional storage for various projects as determined by the City to compensate for floodplain/easement reclamation and detention needs in or adjacent to the Dam 11 inundation easement. After written notification to the District, the City may assign some or all of the flood storage capacity to any third party.

3. City Obligations.

- a. The City shall reimburse the District for all costs associated with the design, permitting and construction of the Dam 11 Modification, up to and no more than SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000). The payment shall be made within 30 days after written notice from the District to the City that the Dam 11 Modification construction has been accepted by the District. The District's written request for payment shall include all invoices evidencing Dam 11 Modification costs.
- b. The City or assignee shall submit to the District, with the appropriate Permit Application documentation and fees, an engineering report documenting the flood storage allocated to each specific project prior to any work being commenced on the project. The report(s) shall also include an accounting of the original storage allocation, storage used to date, proposed storage to be used, and remaining storage available.
- c. It is the District's and City's intent that the Dam 11 Modification leave capacity for at least 10 years of sediment storage before removal is required. Sediment storage is the volume of pool area that could fill with sediment without encumbering the lower port. If it is determined 10 years after the Dam 11 Modification (or earlier if agreed to by both parties) that sediment accumulation is progressing at the faster rate than projected and as such the port has been or will be obstructed, the City shall cost participate in a sediment removal project.

The City shall pay fifty percent (50%) of the sediment removal project to restore the sediment storage capacity to the intended levels such that the port would be

unencumbered for at least 10 years from the completion of the Dam 11 Modification project. The City contribution shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000). The District shall notify the City before initiating the project. The payment shall be made within 30 days after written notice from the District to the City that the sediment removal contract has been awarded by the District. The District's written request for payment shall include all invoices evidencing Dam 11 sediment removal costs.

4. Permitting and Fees

Any project claiming all or part of the additional storage associated with the Dam 11 Modification shall go through the District permitting process as approved by the District on November 21, 2014. Fees per project associated with the Dam 11 Modification permitting will be limited to \$1,200 for the Design Phase Application/Administration and \$1,200 for the Construction Phase Close-out fees.

**B.
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. Entire Agreement.

This Agreement, including any attached exhibits, contains the entire agreement between the Parties with respect to the subject matter and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.

14. Term.

This Agreement shall automatically terminate if a construction contract is not awarded for the Dam 11 Modification by the District within two (2) years after this Agreement is executed by both parties.

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.

**UPPER BRUSHY CREEK WATER CONTROL
AND IMPROVEMENT DISTRICT**

By: _____
Jeff Sawyer, President

Date: _____

CITY OF ROUND ROCK, TEXAS

By: _____
Alan McGraw, Mayor

Date: _____

Attest:

Sarah White, City Clerk