

ARTICLE I DEFINITIONS

1.01. Definition of Terms. As utilized herein, the following terms shall have the meanings ascribed to them below:

(a) **Water:** means potable water that meets applicable requirements of the TCEQ for human consumption and other domestic uses.

(b) **Emergency:** means an Act of God or similar sudden unforeseen and unpreventable catastrophic combination of circumstances, or a disaster that renders Round Rock unable to provide potable water to its customers and calls for immediate action.

The term "emergency" does not include service interruptions for scheduled maintenance, lapse of raw water supply contracts or other legal and/or regulatory impediments, overcommitment of potable water supply, replacement or construction of facilities, or similar events that are foreseeable or preventable by the exercise of due diligence.

(c) **Approach Facilities:** means all improvements to Austin's water system required to transport water between the point(s) of delivery and the point(s) of connection to existing Austin facilities.

(d) **Point of Delivery:** means a point in an Austin water line designated by the Director of Austin Water where Round Rock may withdraw water on an emergency basis for distribution within Round Rock's water system. The designated Point of Delivery is located at 2801 CR 172, Round Rock, Texas 78681.

(e) **Director:** means the Director of Austin Water or an authorized designee.

1.02. Meaning of Terms Not Defined Above. Terms not defined above shall be accorded the meaning ascribed to them under the laws and regulations governing the Texas Commission on Environmental Quality ("TCEQ") and, if such terms are not therein defined, such terms shall be accorded their common meaning within the water utility industry in Travis County, Texas.

ARTICLE II GENERAL CONDITIONS FOR PROVISION OF EMERGENCY WATER SERVICE

2.01. Provision of Emergency Interconnection and Water Service. Subject to the terms and conditions of this Agreement, Austin agrees to permit an emergency interconnection to Austin's water system and to provide potable water for the temporary operation of Round Rock's water system but only in the event of an emergency as defined in this Agreement and only if the Director determined that the temporary emergency water

can be supplied without any adverse impact to Austin's existing water customers. The existence of an emergency requiring emergency water service shall initially be determined by the City of Round Rock Executive Director of Public Works. If the Director agrees that an emergency exists the available capacity from Austin under this Agreement shall then be determined by the Director.

2.02. Maximum Volume and Rate of Flow. Subject to the terms and conditions set forth in this Agreement, Austin agrees to sell and Round Rock agrees to buy potable water for distribution within Round Rock's water system on a temporary basis during an emergency in an amount determined by the Director as necessary to meet the service demands of Round Rock. The volume and rate of flow will be limited by the use of a pressure sustaining valve to maintain a set, specified minimum pressure on the Austin side of the point of connection. Round Rock acknowledges that this may result in a reduced flow rate. Round Rock acknowledges that the resulting maximum flow rate may not meet fire flow requirements.

2.03. Subject to Availability. The provision of emergency water service by Austin hereunder shall be subject, at all times, to the availability of water in excess of that required to supply water for all municipal, domestic, commercial, industrial, or other Austin users as determined by the Director.

2.04. Duration of Service. As determined by the Director, Austin agrees to provide emergency water service to Round Rock for the shorter of the following periods:

- (a) the reasonable duration of the emergency giving rise to the request for emergency water service; or
- (b) the reasonable duration needed to repair damage to Round Rock's water system caused by the emergency; or
- (c) the duration of the Austin's ability to provide water service to Round Rock after meeting the needs of its own customers; or
- (d) two weeks.

In the event that the emergency exceeds the shorter of the foregoing periods, Round Rock may make a written request to the Director to continue or resume emergency water service beyond that period. The Director may continue or resume such service for an additional two weeks or other such period as the Director shall deem appropriate if:

- (a) the emergency has not been abated and Round Rock has exercised reasonable diligence in attempting to remove or abate such emergency; and

- (b) Austin continues to have water available to serve Round Rock in excess of that required to service the Austin's own customers.

2.05. Contact Persons. Round Rock shall provide Austin with a list of contact persons authorized to request emergency service, which shall be appended to this Agreement as **Exhibit A**.

Austin shall provide Round Rock with a list of contact persons authorized to accept the request and to seek, from the Director, confirmation of the existence of an emergency and authorization to commence water service which list shall be appended to this Agreement as **Exhibit B**.

2.06. Procedure for Commencement of Service. The following protocol shall be used to commence emergency water service hereunder:

- (a) Round Rock's contact person shall notify Austin's contact person of the fact and nature of the emergency and the reason why Round Rock is unable to provide adequate water service to its customers;
- (b) Austin's contact person shall, as soon as reasonably practicable, report the foregoing information to the Director and request authorization to commence emergency water service to Round Rock;
- (c) as soon as practicable following such authorization, Austin will either dispatch its crew or direct Round Rock to open the interconnection between the Austin and Round Rock water systems to commence the emergency water service hereunder. The interconnection shall be established by Austin's unlocking and opening a valve at the Point of Delivery to connect the Austin water system to the Round Rock water system. Subject to other emergencies or service priorities within Austin's service area and the availability of personnel and equipment, Austin shall endeavor to establish the interconnection or direct Round Rock to make the interconnection as soon as reasonably practicable following the Director's authorization. Round Rock acknowledges that service to Austin customers must remain the priority of Austin at all times. . Each Party will notify the other Party as soon as practicable after the interconnection between the Austin and Round Rock water systems has been opened;
- (d) Round Rock shall be solely responsible for all changes, preparations, or safeguards to its system required to safely receive and distribute potable water from Austin's water system, for flushing and testing its distribution system and for notifying its customers of any changes in water chemistry.

2.07. Discontinuance of Emergency Service. Round Rock shall promptly notify Austin's contact person of the completion of repairs to its system or the abatement of the

emergency giving rise to the request for emergency service hereunder. Upon such notice, Austin shall close the interconnection and discontinue emergency water service to the Round Rock as soon as practicable.

2.08. Cooperation. Round Rock shall cooperate at all times with Austin to ensure the safe and efficient delivery of emergency water service hereunder.

2.09. Nondiscrimination. Water service provided to Round Rock by Austin shall be nondiscriminatory and consistent with Austin's policies, ordinances, and regulations for the provision of wholesale water to other wholesale customers.

2.10. Conservation Restrictions. During emergency service, Round Rock agrees to impose on its customers and enforce, at a minimum, all voluntary and mandatory conservation and use restrictions imposed by Austin on its own customers during such an emergency event. Austin may terminate emergency service to Round Rock on written notice if Round Rock fails to enforce conservation and use restrictions as least as stringent as those imposed by Austin on its own customers during the existence of such an emergency.

2.11. Chemical Compatibility/Safety of Water. Round Rock acknowledges that the disinfection method employed by Austin may not be compatible with the disinfection method used by Round Rock. Round Rock shall be solely responsible for any required flushing of its lines, for ensuring that water from the Austin System is not mixed with water from the Round Rock System, and for ensuring the overall safety and water hygiene standards of water distributed to retail customers via its distribution system in accordance with applicable regulatory requirements. Round Rock shall be responsible for providing any required notices to its retail customers of a change in disinfection methods.

2.12. Retail Responsibility. Distribution of water within Round Rock's service area shall be by means of Round Rock's pumping and distribution facilities. Round Rock shall bear sole responsibility for operation and maintenance of all Round Rock water distribution facilities on Round Rock's side of the interconnection.

ARTICLE III REQUIREMENTS FOR INTERCONNECTION

3.01. Point of Delivery. Water sold to Round Rock pursuant to this Agreement will be supplied from Austin's water distribution system and delivered to Round Rock at the Point of Delivery.

3.02. Changes to Point of Delivery. The Point of Delivery may be changed by agreement in writing between Round Rock and Austin. Round Rock shall bear the expense of changing the Point of Delivery and shall make, at its own expense, any

changes or improvements necessary to receive water of different pressure at the Point of Delivery. In the event of a change in the Point of Delivery, this agreement shall be amended to indicate the location of the Point of Delivery as modified. Austin shall not be required to supply water pursuant to this Agreement for any change in Point(s) of Delivery until all water facilities required to provide service hereunder are properly constructed, inspected, and approved as provided in Article IV below.

3.03. Additional Points of Delivery. Additional points of delivery must be approved by the Director. Round Rock's requests for such approval shall be accompanied by an engineering report and plans that are prepared by a Texas registered professional engineer and approved by Round Rock. The report and plans shall detail the area to be served and include the quantity of water to be delivered to the requested point(s) of delivery.

3.04. Nature of Interconnection. The interconnection between the Austin and Round Rock water systems shall be of a size, type, and design determined by the Director. The interconnection shall consist of a meter loop, meter housing or pit, water meter, and appurtenances to be constructed by Round Rock in accordance with this Agreement.

3.05. Control of Interconnection. The interconnection between the Austin and Round Rock water systems shall remain at all times under the control of Austin. Austin shall have the sole responsibility for removal of the emergency interconnection and water meter. Round Rock shall coordinate its activities with Austin and shall perform all actions that are requested by Austin in the performance of its responsibilities under this Agreement.

3.06. Backflow Prevention. In order to protect the potable water supply of Austin from contamination, Round Rock agrees to comply with the cross-connection control regulations set forth in Chapter 15-1, Austin City Code, as amended and applicable regulations of the TCEQ regarding the elimination of cross-connections and backflow prevention. Round Rock agrees to maintain, at its sole expense, on the Round Rock side of the interconnection, a reduced pressure backflow prevention assembly conforming to Austin specifications and applicable laws and regulations governing the same. For changes to Point(s) of Delivery, Round Rock shall construct the assembly in accordance with the process set out in Article IV below.

For changes to Point(s) of Delivery, Round Rock shall engage a qualified backflow prevention assembly testing firm to test and provide written certification that the assembly is installed and operating in accordance with the manufacturer's specifications. Round Rock shall forward a true copy of such written certification to the Director prior to the commencement of emergency water service under this Agreement for such changed Point(s) of Delivery. Round Rock also agrees to have the backflow prevention assembly re-tested and re-certified as required by the Director and applicable laws, ordinances, and regulations.

The reduced pressure backflow prevention assembly shall be the property of Round Rock, who shall be solely responsible for the ownership, operation and maintenance of same at all times.

The parties agree that sanitary control of the Round Rock distribution system shall reside with Round Rock at all times, and that Round Rock is responsible for establishing and enforcing adequate regulations for safeguarding the Round Rock water system.

3.07. Metering Facilities. Water consumed by Round Rock shall be measured by an appropriately sized master water meter approved by the Director, which has been installed at the agreed Point of Delivery. A separation between the Austin water system and the Round Rock water system shall be maintained at all times until the commencement of emergency water service under this Agreement.

At its sole expense, Round Rock installed and dedicated to Austin the meter loop and the meter house or pit and appurtenances (including a SCADA pressure measuring device) at the Point(s) of Delivery. The meter loop and meter house or pit and appurtenances is the property of Austin together with the water meter.

Austin owns, operates, and maintains the metering equipment and appurtenances at its expense and shall calibrate the water meter upon request of Round Rock provided, however, that the cost of calibrating the meter equipment shall be borne by Round Rock if requested more frequently than once every twelve (12) months. Any meter registering within AWWA standards for the type and size of that meter shall be deemed accurate. The metering equipment shall be read by Austin. Unless otherwise agreed in writing, if any meter fails to register accurately for any period of time, the amount of water furnished during such period of time shall be deemed to be the amount furnished in the most recent billing period, or portion thereof, in which emergency water service was provided to Round Rock prior to the meter failure or be deemed to be the amount furnished based upon Round Rock's daily recordings of such water use for TCEQ purposes for the connections determined to be receiving service via the emergency interconnect.

3.08. Ingress and Egress. Round Rock agrees to ensure Austin's ingress and egress to the Point of Delivery and interconnection for all reasonable purposes incident to this Agreement including, without limitation, inspection, installation, operation, maintenance, repair or removal of the interconnection and all valves, metering facilities, and other equipment necessary or incident to the purposes of this Agreement.

ARTICLE IV CONSTRUCTION RESPONSIBILITIES FOR NEW OR CHANGED POINT(S) OF DELIVERY

4.01. Design and Construction Responsibilities. Round Rock shall be responsible for the proper design and construction of the meter loop, meter house or pit, and all

approach facilities, as well as all modifications to the Round Rock water system required for emergency water service under this Agreement and for payment of all costs associated with the proper permitting, design, construction, inspection, and final acceptance of same.

Austin may install, at its option and expense, a flow restrictor at the Point of Delivery if the Director determines the installation of a flow restrictor to be necessary or prudent. If installed, the flow restrictor shall be the property of Austin, who shall be solely responsible for the operation, maintenance, and security of same.

4.02. Round Rock Responsible for Obtaining Construction Permits, Approvals, Easements; Payment of Fees. Round Rock shall be responsible for obtaining all necessary permits, consents, approvals, licenses, and authorizations for the construction work that are required by federal, state, and local authorities having jurisdiction in the matter and all easements or other property rights required for those portions of the construction work that will traverse private property. Round Rock shall be responsible for payment of all fees or other expenses associated with the above without reimbursement from Austin.

4.03. Submission of Plans. Round Rock shall submit the final as-built plans and specifications for the interconnection, approach facilities, and other water facilities required to be constructed by Round Rock under this Agreement to the Director as soon as reasonably practicable but in no event more than 30 days after final inspection of the interconnection by Austin. After Round Rock obtains all necessary permits, approvals, and other authorizations for construction, and before construction of such facilities begins, Round Rock shall give written notice to the Director of the date on which construction will commence. Round Rock is responsible for the payment of all City engineering and plan review fees.

4.04. Inspection and Acceptance of Construction Work. The interconnection, approach facilities, metering facilities, and all Round Rock water facilities required for emergency water service under this Agreement must be inspected by Austin before the commencement of emergency water service under this Agreement. Austin may refuse to allow the connection of the Austin water system to the Round Rock water system if Austin determines that the construction of any of the water facilities required for emergency water service hereunder is defective. Round Rock is responsible for the payment of all Austin inspection fees.

4.05. Ownership, Operation and Maintenance of Facilities. Following construction and final acceptance of same, Austin shall own and be responsible at all times for the ownership, operation, and maintenance of the approach facilities and all facilities comprising the interconnection including, without limitation, the meter loop, meter housing or pit, water meter, and appurtenances (and flow restrictor if installed).

Round Rock shall be responsible for the ownership, operation, and maintenance of the backflow prevention assembly and all other water facilities on the Round Rock side of the Point of Delivery.

ARTICLE V WATER RATES AND BILLING

5.01. Rates and Charges. Round Rock agrees to pay Austin for all water service provided to Round Rock at the rates and charges established below:

- (a) **Daily Use Charge:** Round Rock agrees to pay a non-prorated emergency water service user fee of **\$2,670** for each calendar day that Round Rock is provided emergency water service under this Agreement. The number of hours of use within a calendar day shall not affect the calculation of this fee. If the emergency interconnection is activated more than three times within any one contract year, the daily use charge shall increase to **\$5,340** for the following contract year and shall remain at **\$5,340** per year until the contract year following the one in which the emergency interconnection is activated three times or less, at which time the daily use charge shall return to **\$2,670**. The daily use charge is subject to annual review and modification by Austin and is subject to change based on the size of the meter necessary to serve Round Rock's retail customers or the percentage increase in Austin's volumetric charge.
- (b) **Volumetric Charge:** For each 1,000 gallons of water consumed, Round Rock shall pay an amount equal to the average of the wholesale rates per thousand gallons charged by Austin to its wholesale water customers. The volumetric rate shall be subject to change each year or as the wholesale customers' rates are modified from time to time by the Austin City Council.
- (c) **Account/Meter Charge:** For those months in which Round Rock receives emergency water service, a monthly account charge and monthly meter charge will be included in Round Rock's monthly bill based upon approved charges in effect at the time.

5.02. Billing and Payment. Austin shall mail a written bill to Round Rock for each emergency billing period during the period of time Austin approves the provision of emergency water service setting forth the account charges, daily use charges, and quantity of water delivered to Round Rock as determined by Austin's reading of the meter installed at the agreed Point(s) of Delivery.

Each bill shall include a due date and total amount owed to Austin based on the account charges, daily use charges, and the metered volume of water delivered multiplied by the water rate for Round Rock determined as stated above. Round Rock agrees to make timely payments to Austin and shall pay the total amount owed to Austin by the due date

on each bill for emergency water service. Payments shall be considered past due thirty (30) days after the date of receipt of each bill for emergency water service and subject to late charges.

5.03. Effect of Nonpayment. Failure of Round Rock to make payments is a material breach and cause for termination of this Agreement by Austin.

ARTICLE VI OPERATION AND MAINTENANCE RESPONSIBILITIES

6.01. System Operation and Maintenance. Except as otherwise expressly set forth in this Agreement, each party shall be solely responsible for the proper operation and maintenance of its own water distribution system in its entirety including:

- (a) those facilities of a party located on its side of the Point of Delivery used to transport water to or from the Point(s) of Delivery; and
- (b) those facilities constructed by a party for the purpose of transporting water to or across the corporate limits, extraterritorial jurisdiction, or service area of the other, if applicable.

6.02. Security of Facilities. Each party shall be solely responsible for the proper safeguarding and security of their water facilities on their respective sides of the Point(s) of Delivery.

6.03. Protective Measures. Round Rock shall be solely responsible for undertaking all reasonable and prudent measures required to protect its system from damage or harm caused by the connection of the Round Rock water system to the Austin water system, differences in operational pressures or water chemistry, or otherwise from the receipt of emergency water service hereunder. Round Rock shall also be responsible for providing such notice as may be required by law to inform its customers of any difference in water chemistry occasioned by its receipt of emergency water service under this Agreement.

ARTICLE VII GENERAL PROVISIONS

7.01. Term. This Agreement shall be effective for a term of ten (10) years from the Effective Date.

7.02. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations whether oral or written, respecting the subject matter herein.

7.03. Interpretation. The parties recognize that this Agreement is voluntary and consensual on the part of each party; that, absent this Agreement, Austin is not required by law to provide emergency water service to Round Rock and Round Rock is not required by law to obtain emergency water service from Austin; and that each party has been represented by legal counsel who have participated in the formulation, drafting, and approval of this Agreement. Accordingly, this Agreement will not be interpreted more favorably to one party than the other.

7.04. Compliance with Commission Rules. Round Rock agrees to file a copy of this contract with the Executive Director of the TCEQ at its current address and any other administrative body with which applicable law requires emergency potable water interconnect agreements to be filed.

7.05. Records. Round Rock agrees to timely provide copies of all records, data, documents, or other information related to the emergency interconnection upon request by Austin.

7.06. Amendments. No amendment of this Agreement shall be effective until it is approved by each party and reduced to writing signed by the authorized representatives of the parties.

7.07. No Amendment of Other Agreements. This Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.

7.08. No Third Party Beneficiaries. This Agreement shall inure only to the benefit of the parties and third persons not privy shall not be considered a third party beneficiary of this Agreement. Each party shall be solely responsible for the fulfillment of its own utility contracts or commitments.

7.09. No Joint Venture, Partnership, Agency. This Agreement will not be construed in any form or manner to establish a partnership, joint venture, or agency, express or implied, nor any employer-employee, borrowed servant, or joint enterprise relationship by and among the parties. Austin shall be an independent contractor and shall be responsible at all times for directing its employees in the course of their duties. Round Rock shall be responsible at all times for directing Round Rock's employees in the course of their duties.

7.10. Indemnification. Round Rock agrees to defend, indemnify and hold Austin harmless from all liability or claims or demands whatsoever for personal injury, property damage, damages to Round Rock's water system, administrative or civil penalties, or other loss, penalty, or expense arising, directly or indirectly, from, or by virtue of, the provision of emergency water service under this Agreement unless such liability or claims arise from the gross negligence or willful misconduct of Austin.

7.11. Severability. The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such part of this Agreement to other persons or circumstances shall not be affected and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained.

7.12. Force Majeure. If, by reason of Force Majeure as herein defined, any party shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the particulars of such Force Majeure to the other party within a reasonable time after the occurrence thereof. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and any such party shall in good faith exercise its best efforts to remove and overcome such inability.

The term "Force Majeure" as utilized herein shall mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; or other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability. Force Majeure shall not excuse the obligation of Round Rock to pay for emergency water service provided under this Agreement.

7.13. Applicable Law. This Agreement shall be construed under and in accordance with Texas law.

7.14. Venue. Venue for any action arising hereunder shall be in Travis County, Texas.

7.15. Notices. Notices to be provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service certified mail, postage prepaid, to the address of the other party shown below:

CITY OF ROUND ROCK:

City of Round Rock
Attn: Michael Thane
Executive Director
of Public Works
221 East Main
Round Rock, TX 78664

CITY OF AUSTIN:

Austin Water
Attn: Shay Roalson, Director
P.O. Box 1088
Austin, Texas 78767-1088

7.17. Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written approval of the other party, which shall not be unreasonably withheld.

7.18. Multiple Originals. This Agreement may be executed in multiple originals each of equal dignity.

7.19. Effective Date. This Agreement shall be effective upon the date of execution by all parties.

[Signatures on the following page.]

EXHIBIT A
List of Contact Persons for City of Round Rock

Email to: mthane@roundrocktexas.gov

Primary Contact. Michael Thane, Executive Director of Public Works: 512-218-3236

Second Contact. Laton Carr, Assistant Director of Public Works: 512-218-3238

Third Contact. Evan Larson, Water Treatment Plant Superintendent: 512-218-6699

Fourth Contact. Kit Perkins, Infrastructure Manager: 512-341-3145

EXHIBIT B
List of Contact Persons for City of Austin

Email to: AWKeyAccounts@austintexas.gov

Primary Contact. Virginia Collier, Program Manager: 512-972-0117

Second Contact. Marilyn Toliver, Key Accounts Manager: 512-422-5121

Third Contact. Marcia Brooks, Customer Experience Operations Manager: 512-972-0197

Fourth Contact. Austin Water Dispatch: 512-972-1000