

EXHIBIT

"A"

INTERLOCAL AGREEMENT REGARDING ALLOCATION OF COSTS FOR THE RE-RATING OF AND EXPANSION TO THE EAST WASTEWATER TREATMENT PLANT OF THE BRUSHY CREEK REGIONAL WASTEWATER SYSTEM

THIS INTERLOCAL AGREEMENT REGARDING THE ALLOCATION OF COSTS FOR THE RE-RATING OF, AND EXPANSION TO THE EAST WASTEWATER TREATMENT PLANT OF THE BRUSHY CREEK REGIONAL WASTEWATER SYSTEM ("Agreement") is entered into between 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**"). 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, on June 4, 2010, the cities of Austin, Cedar Park, Leander, and Round Rock (the "Cities") 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, Section 3.06 of the Master Agreement provides for the procedures to be followed to accomplish the design and construction of expansions to the System, including the execution of interlocal agreements such as this Agreement; and

WHEREAS, the Parties have agreed to jointly pursue an application for the re-rating of the System, and for an expansion of the System that will provide for a total of 17.5 million gallons per day of additional wastewater treatment capacity to meet future wastewater treatment demands of the Parties based on projected population growth; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions of the allocation of costs for the re-rating and expansion and to authorize preliminary and final design and other consulting services related to the Project, and pursuant to which the Parties will cost participate in all costs and expenses related thereto; and

WHEREAS, the Parties intend to enter into a separate interlocal agreement to set forth the terms and conditions of the allocation of costs for the construction of the Project;

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 Re-rating of, and Expansion to the East Wastewater Treatment Plant of the Brushy Creek Regional Wastewater System.

1.02 “Austin” means the City of Austin, Texas.

1.03 “Cedar Park” means the City of Cedar Park, Texas.

1.04 “Cost Allocation Percentage, Re-Rate Project” means the percentage of Re-Rate Project Costs to be paid by each Party. The Re-Rate Project Cost Allocation Percentages are set forth on **Exhibit “A”** attached hereto.

1.05 “Cost Allocation Percentage, Expansion Project” means the percentage of Expansion Project Costs to be paid by each Party. The Expansion Project Cost Allocation Percentages are set forth on **Exhibit “B”** attached hereto.

1.06 “Effective Date” means the last date of execution of this Agreement by the Parties; provided all of the Parties must execute this Agreement for it to be effective.

1.07 “Leander” means the City of Leander, Texas.

1.08 “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.

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

1.10 “Party” or “Parties” means Austin, Cedar Park, Leander, and/or Round Rock, individually or collectively, as applicable.

1.11 “Project” means: (i) the efforts to design and construct the re-rate improvements and increase the capacity of the existing System by an additional 3.5 million gallons per day, and (ii) the efforts to design and construct the necessary 14 million gallons per day expansion of the East Wastewater Treatment Plant, which will provide for a total of 17.5 million gallons per day of additional treatment capacity to meet the future wastewater treatment demands of the Parties.

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

1.13 “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.

1.14 “Project Consulting Services” means the services required for the for 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.

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

1.16 “Project Costs, Expansion” means all those direct and indirect costs associated with the efforts to expand the existing East Wastewater Treatment Plant.

1.17 “Project Costs, Re-rate” means all of those direct and indirect costs associated with the efforts to re-rate the capacity of the existing System.

1.18 “Project Fund” means a fund to be established and administered by Round Rock in accordance with Section 4.02 in order to provide monies to pay the Project Costs.

1.19 “Round Rock” means the City of Round Rock, Texas.

1.20 “System” means the Brushy Creek Regional Wastewater System.

II. OPERATIONS COMMITTEE

2.01 Responsibility of the OC. The OC shall:

(i) Attend and participate in regular meetings with the Project Consultant(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);

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

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".

3.02 OC Participation.

(a) The OC shall prepare a schedule of meetings with the Project Consultant(s) that shall be approved by all members of the OC. The foregoing shall not be construed to prohibit any Party from communicating with Project Consultant(s) regarding the Project Consultant Services without the presence or participation of the other Parties, or from meeting with the Project Consultant(s) when it is not practicable to schedule a meeting with the OC.

(b) 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.

(c) 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.

3.03 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. PROJECT COSTS.

4.01 Project Costs. All Project Costs shall be determined to be either Re-rate Project Costs or Expansion Project Costs.

4.02 Payment of Project Costs.

(a) All Re-Rate Project Costs shall be shared by the Parties according to the Re-Rate Cost Allocation Percentages, as set forth in **Exhibit "A"** attached hereto.

(b) All Expansion Project Costs shall be shared by the Parties according to the Expansion Cost Allocation Percentages, as set forth in **Exhibit “B”** attached hereto.

(c) The Parties agree that Project Consultant(s) will be instructed to send all invoices to Round Rock and that upon receipt of each invoice from the Project Consultant(s), Round Rock shall review the invoice and confirm that the Project Services have been completed in accordance with the request for payment. Round Rock shall also determine if the invoice is for Re-rate Project Costs or for Expansion Project Costs.

(d) Upon Round Rock’s approval of each invoice for Project Costs, including the determination of Re-Rate Project Costs or Expansion 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 it is entitled under the Project Consulting 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, 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. 4.04 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. 4.04.

(e) 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 bidding process for the construction of the Project (resulting in the expansion of the East Wastewater Treatment Plant to a total of 17.5 million gallons per day of additional treatment capacity), which

costs shall be shared and allocated among the Parties (including Round Rock) according to the Cost Allocation Percentages set forth in Exhibit “B”.

(f) 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.

4.03 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) by the Parties, 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. The Project Fund shall be placed in an interest-bearing account, and the interest shall become part of the Project Fund.

(ii) 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.

(iii) The foregoing process shall continue until such time as the Project Costs have been paid in full. In the event that the Project Costs exceed the original estimate, after prior notice to the Parties of the cost exceedance and what was considered to avoid such costs, each Party shall deposit within the Project Fund a sum equal to the product determined by multiplying each Party’s Cost Allocation Percentage for the type of Project Costs for such services.

(b) In the event that there are remaining funds 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.

(c) All interest that accumulates within the Project Fund shall remain within such fund for payment of Project Costs.

4.04 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.

V.
GENERAL PROVISIONS

5.01 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*.

5.02 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.

5.03 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.

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

5.05 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.

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

5.07 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.

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: Sam Roberts
Telephone: (512) 401-5000
Email: sam.roberts@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

ROUND ROCK:

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

with copy to:

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

LEANDER:

P.O. Box 319
Leander, Texas 78646-0319
Attn: Wayne Watts
Telephone: (512) 259-1178
Email: w.watts@ci.leander.tx.us

with copy to:

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

5.08 Force Majeure. The Parties shall not be deemed in violation of this Contract 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 its obligation to make payment to Round Rock as provided in this Agreement.

5.09 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.

5.10 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.

5.11 Conflict. If there is a conflict between the Master Agreement and this Agreement, the provisions of this Agreement shall control.

5.12 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.

5.13 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 non-binding arbitration 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 either 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.

5.14 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.

5.15 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.

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

CITY OF AUSTIN:

By: _____
Robert Goode, Assistant City Manager

Date: _____

CITY OF ROUND ROCK:

ATTEST:

Sara White, City Clerk

By: _____
Craig Morgan, Mayor

Date: _____

CITY OF CEDAR PARK:

ATTEST:

LeAnn Quinn, City Secretary

By: _____
Matthew Powell, Mayor

Date: _____

CITY OF LEANDER:

ATTEST:

Dara Crabtree, City Secretary

By: _____
Christopher Fielder, Mayor

Date: _____

Exhibit "A" **Allocation of Re-rate Project Costs**

City	Rerate Capacity (MGD)	Cost Allocation
Round Rock	2.87	81.96%
Leander	0.00	0.00%
Cedar Park	0.51	14.61%
Austin	0.12	3.43%
TOTALS	3.50	100.00%

Exhibit "B"

Allocation of Expansion Project Costs

City	Expansion Capacity (MGD)	Cost Allocation
Round Rock	3.50	25.00%
Leander	5.50	39.29%
Cedar Park	2.00	14.29%
Austin	3.00	21.42%
TOTALS	14.00	100.00%