

**EXHIBIT**  
**"A"**

**INTERLOCAL AGREEMENT REGARDING  
PROPERTY ACQUISITION FOR BCRUA REGIONAL WATER TREATMENT AND  
DISTRIBUTION PROJECT (PHASE 2)**

THE STATE OF TEXAS                   §  
  §                   KNOW ALL BY THESE PRESENTS:  
COUNTY OF WILLIAMSON           §

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into among the City of Round Rock, a Texas home-rule city ("City") and the Brushy Creek Regional Utility Authority, Inc. ("BCRUA"). In this Agreement, the City and the BCRUA are sometimes individually referred to as "Party" and collectively referred to as "Parties".

Recitals

**WHEREAS**, the City is a participating city in the BCRUA, a currently active and legally existing Corporation organized under the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended, and

**WHEREAS**, the City and BCRUA now desire to enter into an agreement regarding certain responsibilities for property acquisition needed for Phase 2 ("Phase 2") of the BCRUA Regional Water Treatment and Distribution Project ("Project"), and that will acknowledge, consent, authorize and direct the City to acquire certain property interests for the Project, and allocate responsibility for certain acquisition costs; and

**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.  
GENERAL**

**1.01 General.** The purpose of this Agreement is for BCRUA to consent, acknowledge, and authorize the legal right and authority of the City to engage in activities to determine the location and necessity for, negotiate the voluntary purchase of and, if necessary, to use its power of eminent domain to condemn any and all right of way, easements, or any other related property interests required by and for the Project which are determined to be necessary to carry out the purposes and uses of the Project.

**1.02 Eminent Domain.** Phase 2 of the Project is a public capital improvement project to design and construct a regional water system and related utility improvements. The City shall acquire the land, right-of-way, easements or other property interests required for completion of the Project. The duty and responsibility of the City to acquire the land, right-of-way, easements or other property interests shall include the consent, acknowledgment, authority and obligation of the City to use and employ the power of eminent domain if determined to be reasonably necessary to acquire the property interests required for Phase 2. The City is also authorized and

directed to acquire in the name of the City any and all property interests required for Phase 2 for and as required by the Project. If the City acts to acquire any tract(s) or parcel(s) of the land, right-of-way, easement or other property rights by exercising the power of eminent domain, in addition to the eminent domain authority of the City, the City is authorized to use any existing eminent domain or other statutory, common law, or constitutional rights and authority of the BCRUA necessary to acquire the property interests required for Phase 2 of the Project.

**1.03 Acquisition Costs.** BCRUA agrees to reimburse the City for any and all costs expended and documented by City which are directly related to the acquisition of the required property interest described herein, including legal fees, litigation costs, expert and acquisition consultant fees, and other actual costs determined by City to be necessary to carry out the purposes, requirements and direction of the Agreement. The Parties agree that this responsibility for reimbursement shall be applicable to any documented costs or expenses of City as described herein which have occurred prior to the effective date of this Agreement.

## **II. NEGOTIATION AND MEDIATION OF DISPUTES**

**2.01 Remedies.** The Parties agree that their respective obligations under this Agreement are unique and the failure by any Party to perform its obligations under this Agreement would not be appropriately remedied by award of damages to any other affected Party to this Agreement and in any event, such damages would be difficult, if not impossible, to determine because of the unique nature of the Parties' obligations to each other hereunder. Further, the Parties agree that the remedy of termination of this Agreement by any Party is inappropriate and not in the public interest. Therefore, the Parties agree that they shall be entitled, and limited, to the remedies of specific performance, mandamus and injunction in the event of any breach of any obligation by any Party under this Agreement.

**2.02 Dispute Resolution.** The Parties agree to attempt first to resolve disputes concerning this Agreement amicably by entering into negotiations in good faith. The Parties agree that they will not refer any dispute to mediation or litigation until they have first made reasonable and good faith efforts to settle their differences by joint negotiations conducted in a timely manner.

**2.03 Mediation.** If any dispute cannot be resolved through good faith negotiation, then the Parties shall select within fifteen (15) business days, a trained mediator to assist with resolution of the dispute. The parties will share the mediator's fees equally and the parties will bear their own cost of participation, such as fees for any consultants or attorneys they may utilize to represent them or assist them in the mediation.

### **III. GENERAL PROVISIONS**

**3.01 Authority.** This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

**3.02 Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither the City nor BCRUA waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**3.03 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.

**3.04 Assignment.** Except as otherwise provided herein, the assignment of this Agreement by any Party is prohibited without the prior written consent of the other Party. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party.

**3.05 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.

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

**3.07 Entire Agreement.** This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

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

**3.09 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.

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

**CITY:** City of Round Rock  
Attn: City Manager  
221 E. Main Street  
Round Rock, Texas 78664

**BCRUA:** Brushy Creek Regional Utility Authority, Inc.  
Attn: Tom Gallier  
1906 Hur Industrial Blvd.  
Cedar Park, Texas 78613

**3.11 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.

**3.12 Authority.** Each Party represents and warrants that it has the full right, power and authority to execute this Agreement. The parties' respective governing bodies must approve this Agreement.

**CITY OF ROUND ROCK**

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

**BRUSHY CREEK REGIONAL UTILITY  
AUTHORITY, INC.:**

By: \_\_\_\_\_  
Frank Leffingwell, President  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_