

EXHIBIT

"A"

INTERLOCAL AGREEMENT REGARDING COST SHARING OF THE ZEBRA MUSSEL CONTROL PROJECT

THIS INTERLOCAL AGREEMENT REGARDING COST SHARING OF THE ZEBRA MUSSEL CONTROL PROJECT ("ILA") is entered into among the Brushy Creek Regional Utility Authority ("BCRUA"), the City of Round Rock, Texas, a Texas home-rule city ("Round Rock"); the City of Cedar Park, Texas, a Texas home-rule city ("Cedar Park"), and the City of Leander, Texas, a Texas home-rule city ("Leander"). In this ILA, BCRUA, Round Rock, Cedar Park and Leander are sometimes individually referred to as "**Party**" and collectively referred to as "**Parties**". In this ILA, Round Rock, Cedar Park and Leander are sometimes collectively referred to as "**Cities**."

Recitals

WHEREAS, on the 2nd day of September, 2008 the Parties entered into that one certain Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project (the "Master Contract"), that provides terms and conditions for the financing, construction and operation of the first phase of the new regional system consisting generally of upgrades to Cedar Park's raw water intake, a raw water intake line, new water treatment plant, and water transmission mains; and

WHEREAS, it has been determined by the Parties that Lake Travis has become infested with Zebra Mussels, which requires measures to prevent the Zebra Mussels from damaging the BCRUA's water system; and

WHEREAS, the BCRUA has entered into a Contract for Engineering Services with Walker Partners for the preliminary design of the BCRUA Zebra Mussel Control Project, (the "Project"); and

WHEREAS, Cedar Park and Leander own water system facilities in Lake Travis that are separate and apart from the BCRUA water system; and

WHEREAS, Cedar Park and Leander recognize that their separate water system facilities would benefit from the Project; and

WHEREAS, Cedar Park and Leander are willing to share in the cost of the Project with the BCRUA; and

WHEREAS, the purpose of this ILA is to set forth the terms and conditions for the sharing of the cost of the Project by the Parties, as set forth herein;

Now Therefore, the Parties hereby agree as follows:

I. DEFINITIONS

All terms used herein shall have the meanings assigned to them in the Master Contract, as amended, unless the context clearly requires otherwise.

1.01 “BCRUA” means the Brushy Creek Regional Utility Authority.

1.02 “BCRUA System” means the water intake, transmission, treatment, and distribution system owned and operated by the BCRUA.

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

1.04 “Cedar Park System” means the water intake, transmission, treatment, and distribution system owned and operated by Cedar Park.

1.05 “Effective Date” means the 26th day of April, 2018.

1.06 “General Manager” means the general manager of the BCRUA.

1.07 “ILA” means this Interlocal Agreement Regarding Cost Sharing of the Zebra Mussel Control Project.

1.08 “Leander” means the City of Leander, Texas

1.09 “Leander System” means the water intake, transmission, treatment, and distribution system owned and operated by Leander.

1.10 “Master Contract” means Master Contract for the Financing, Construction and Operation of the BCRUA Regional Water Treatment and Distribution Project.

1.11 “Operations Committee” or “OC” means the Operations Committee created in the Master Contract.

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

1.13 “Project” means the efforts to design and construct improvements to the BCRUA System, the Cedar Park System, and the Leander System to control Zebra Mussels.

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

1.15 “Project Fund” means a fund to be established and administered by BCRUA in accordance with **Sec. 3.02** in order to provide monies to pay the Project Costs.

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

II. PROJECT COST ALLOCATIONS

2.01 The Parties agree that Project Cost shall be allocated among the Parties based upon the intake capacities of the three systems as follows:

<u>Party</u>	<u>Capacity</u>	<u>Cost Allocation</u>
City of Leander	WTP intake at 12.0 MGD	17.02%
City of Cedar Park	WTP intake at 26.0 MGD	36.88%
BCRUA	WTP intake at 32.5 MGD	46.10%

2.02 The Cities agree that the BCRUA’s share of the above cost allocation will be shared among the three Cities as follows:

<u>Party</u>	<u>Cost Allocation</u>
City of Leander	46.66%
City of Cedar Park	26.67%
City of Round Rock	26.67%

2.03 The Parties agree that the Project Cost shall be allocated among the Cities on the basis of their combined over-all share as follows:

<u>Party</u>	<u>Cost Allocation</u>
City of Leander	38.53%
City of Cedar Park	49.18%
City of Round Rock	12.29%

III. PROJECT FUND

3.01 The total estimated Project Cost is estimated to be \$1,349,387.00 as set forth in the Zebra Mussel Control Project Budget attached hereto as Exhibit “A”. Using the cost allocation percentages from **Sec. 2.03** above, each City’s share of the estimated total Project Cost is as follows:

City of Leander	\$519,922
City of Cedar Park	\$663,559
City of Round Rock	\$165,905

3.02 The General Manager shall establish a Project Fund for the purpose of receiving the Cities’ allocated share of the Project Cost and to fund and pay invoices for the Project Cost. The Project Fund shall be deposited in an interest-bearing account, and all interest shall remain in the Project Fund to pay Project Cost.

3.03 The Cities shall contribute monies to the Project Fund in accordance with the following provisions:

(i) Within thirty (30) calendar days of the effective date of this ILA, each City shall deposit into the Project Fund a sum, which represents twenty five percent (25%) of each Party's share of the estimated Project Costs, set forth in **Sec. 3.01**, as follows:

City of Leander	\$129,980.50
City of Cedar Park	\$165,889.75
City of Round Rock	\$ 41,476.25

(ii) At such time as the balance in the Project Fund is significantly depleted, as determined in the General Manager's reasonable discretion, General Manager shall provide written notice (by email or otherwise) thereof to the Cities, 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 the General Manager shall be accompanied by a written accounting report that identifies in reasonable detail all prior expenditures from the Project Fund.

(i) 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.

3.04 In the event that there are remaining funds within the Project Fund upon final completion of the Project, then the General Manager 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 Cities. Payment shall be accompanied by a written accounting describing the basis for calculation of payment to each City.

IV. PAYMENT OF PROJECT COSTS

4.01 All Project Costs shall be shared by the Cities according to the cost allocations set forth in **Sec. 2.03**.

The Parties agree that all invoices for Project Cost shall be sent to BCRUA and that upon receipt of each invoice, the General Manager shall review the invoices and confirm that they are in order and ready for payment.

Upon the General Manager's approval of each invoice for Project Costs, the General Manager will transmit a copy of the approved invoice to each City'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 the General Manager 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 City 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, then the OC shall exercise all rights to which it is entitled 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, 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 the Master Contract, 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.

V. GENERAL PROVISIONS

5.01 Authority. This ILA is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 402.001, *Texas Local Government Code*.

5.02 Severability. The provisions of this ILA are severable and, if any provision of this ILA is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this ILA shall not be affected and this ILA shall 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 ILA shall be paid from current revenues or other funds lawfully available to the Party for such purpose.

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

5.05 Entire Agreement. Except as otherwise expressly provided herein, this ILA contains the entire agreement of the Parties regarding the allocation of cost of the project 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 Regional Project are contemplated and shall not be affected or limited by this ILA.

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

5.07 Applicable Law; Venue. This ILA shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Williamson County, Texas.

5.08 Notices. Any notices given under this ILA shall 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:

CEDAR PARK:

600 North Bell Blvd.
Cedar Park, Texas 78613
Attn: Brenda Eivens
Telephone: (512) 401-5020
Email: roberts@ci.cedar-park.tx.us

with copy to:

JP LeCompte
600 N. Bell Blvd.
Cedar Park, Texas 78768
Telephone: (512) 401-5004
Email: JP.LeCompte@cedarparktexas.gov

ROUND ROCK:

221 East Main
Round Rock, Texas 78664
Attn: Laurie Hadley
Telephone: (512) 218-5410
Email: lhadley@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
Executive Office Terrace
223 W. Anderson Lane, Suite A-105
Austin, Texas 78752
Telephone: (512) 323-5778
Email: attorneys@cityattorneytexas.com

BCRUA:

Brushy Creek Regional Utility Authority
221 E. Main St.
Round Rock, Texas 78664
Attn: Tom Gallier, General Manager
Telephone: (512) 788-2036
Email: tgallier@roundrocktexas.gov

with copy to:

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

5.09 Force Majeure. Parties shall not be deemed in violation of this ILA 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.

5.10 Counterparts. Effect of Partial Execution. This ILA may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

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

5.12 Effective Date. The effective date of this ILA is the 26th day of April, 2018.

SIGNATURES APPEAR ON FOLLOWING PAGES.

CITY OF ROUND ROCK:

ATTEST:

Sara White, City Clerk

By: _____
Craig Morgan, Mayor

Date: _____

CITY OF CEDAR PARK:

ATTEST:

LeAnn Quinn, City Secretary

By: _____
Matt Powell, Mayor

Date: _____

CITY OF LEANDER:

ATTEST:

Dara Crabtree, City Secretary

By: _____
Christopher Fielder, Mayor

Date: _____

**BRUSHY CREEK REGIONAL UTILITY
AUTHORITY**

By: _____
Frank Leffingwell, President

Attest:

By: _____
Stephen Thomas, Secretary