

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 between Upper Brushy Creek Water Control and Improvement District and City of Round Rock (the "2018 Agreement") is entered into as of this _____ day of _____, 2018, 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 municipal corporation (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, on the _____ day of _____, 2014 the parties entered into an interlocal agreement (the "2014 Agreement") which set forth the parties' respective roles and duties regarding the design and construction of a new dam and inundation easement capable of impeding the flow of flood waters in the Lake Creek Basin area ("Dam 101"); and

WHEREAS, the District and the City desire to terminate the 2014 Agreement and adopt a new Interlocal Agreement (the "2018 Agreement") to include the terms and conditions as stated herein; and

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

A.

Both Parties agree that all the terms and conditions of the 2014 Agreement are hereby terminated, and this 2018 Agreement is and shall be deemed to be in complete replacement and novation of the 2014 Agreement; accordingly, this 2018 Agreement shall fully and in all things replace and supplant the 2014 Agreement.

B.
TERMS AND CONDITIONS OF 2018 AGREEMENT

1. Project Description.

The Lake Creek Watershed Flood Mitigation (Dam 101, Dam 102 and 620 Quarry) projects are collectively designed to remove residential homes generally located in the area downstream of the City of Austin and upstream of Interstate Highway 35 from the 1% floodplain (a/k/a 100-year floodplain). The approximate location of said Lake Creek Watershed Flood Mitigation projects are shown on **Exhibit “A”**, attached hereto and incorporated herein for all purposes pertinent. Dam 101 referenced herein (the “Dam 101 Project”) is the largest of the three flood mitigation projects and provides most of the flood protection; thus, the Dam 101 Project is the highest priority of the three Lake Creek Watershed Flood Mitigation projects described in this 2018 Agreement.

2. Dam 101 Project - District Obligations.

- a. The District shall engage a qualified consulting engineering firm for the engineering, design and permitting of the Dam 101 Project. The District shall manage said design services contract such that it results in the development and completion of 100% plans, specifications, and estimate (PSE) for the Dam 101 Project. Also, the District shall obtain all necessary pre-construction permits for the Dam 101 Project. The City shall be entitled to review the engineering, design and permitting related work product.
- b. Upon the approval and execution of this 2018 Agreement, the District shall, at no cost to the City, immediately pursue the acquisition of all property rights necessary for the construction and operation of the Dam 101 Project improvements and facilities, including but not limited to fee simple title, easements and/or a Possession and Use Agreement(s) as appropriate for the Dam 101 Project. Both Parties recognize that the acquisition of the property rights for the Dam 101 Project is time-sensitive, and that the District will use its best efforts to expedite and complete the property rights acquisition as soon as possible.
- c. The District shall, at its sole cost, be responsible for the acquisition of all other easements and property interests required for the Dam 101 Project.

3. Dam 101 Project - City Obligations.

- a. Pursuant to the 2014 Agreement, the District paid the City \$2,000,000 to offset engineering and design costs for the Dam 101 Project. The City has a balance of \$956,740 remaining from the \$2,000,000 payment. The City agrees to return the \$956,740 remaining balance to the District within thirty (30) days after this 2018 Agreement is approved and executed by both Parties.

- b. The City shall reimburse the District on a quarterly basis for all actual costs incurred and paid by the District for the engineering, design and permitting of the Dam 101 Project, but said amount of reimbursement shall not under any circumstances exceed \$2,000,000 (the “City Reimbursement”), except through an amendment of this 2018 Agreement approved and executed by both Parties. Prior to any quarterly City Reimbursement payment being made by the City as described herein, the District shall forward to the City invoices reflecting payments made by the District during said quarter for costs related to the 100% plans, specifications and pre-construction permitting for the Dam 101 Project. The City agrees to pay the quarterly City Reimbursement payment to the District within thirty (30) days after receipt of the end of each calendar year quarter. City Reimbursement payments made by the City pursuant to this 2018 Agreement shall be made from current revenues available to the City.

4. Dam 101 Project Construction Funding.

- a. The District and the City cannot commit at this time any funding for the construction of the Dam 101 Project. However, both Parties will use their best coordinated efforts to obtain funding for the construction of the Dam 101 Project, including but not limited to funding from additional partners and from State and Federal grant sources.
 - b. Upon completion of the construction of the Dam 101 Project facilities and improvements, the District will be the Dam 101 Project’s owner and operator.

5. Dam 102

The Dam 102 Project is a smaller earthen dam within the City of Austin’s extraterritorial jurisdiction (“ETJ”). The District and the City agree that neither Party shall be responsible for the acquisition of easements or other property rights, or the design and construction of the Dam 102 Project.

6. 620 Project

The 620 Quarry Project is a detention facility within the City of Round Rock’s City Limits. The District and the City agree that District shall not be responsible for the acquisition of easements or other property rights, or the design and construction of the 620 Quarry Project.

B.
MISCELLANEOUS PROVISIONS

1. Execution.

This 2018 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 2018 Agreement will be governed by the Constitution and laws of the State of Texas.

3. Term.

This 2018 Agreement shall commence upon execution of this 2018 Agreement and shall terminate upon the completion of 100% plans, specifications, and estimate (PSE) for the Dam 101 Project; the District's acquisition of all necessary pre-construction permits for the Dam 101 Project; and the District's acquisition of all property rights necessary for the construction and operation of the Dam 101 Project improvements and facilities.

4. Default and Remedies.

In the event either Party fails to comply with any material provision of this 2018 Agreement, and such Party continues such failure for thirty (30) days after the other Party provides written notice to cure, the non-complying Party shall be deemed to be in default under this 2018 Agreement. In the event that either Party defaults under this 2018 Agreement, and such default is not cured as within thirty (30) days as provided in this 2018 Agreement, the non-defaulting Party may, in addition to any other remedy at law or in equity, immediately terminate this 2018 Agreement or seek specific performance of this 2018 Agreement.

5. Authority.

This 2018 Agreement is entered, in part, pursuant to the authority of the Interlocal Cooperation Act, Texas Government Code Chapter 791 (the "Act"). The provisions of the Act are incorporated in this 2018 Agreement and this 2018 Agreement shall be interpreted in accordance with the Act.

6. Independent Relationship.

Each Party, in the performance of this 2018 Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose.

7. No Waiver of Immunities.

Nothing in this 2018 Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either Party. Neither Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity.

8. Notices.

Notices given under this Agreement will be effective if forwarded to a Party by hand-delivery, transmitted to a Party by confirmed fax or deposited with the U.S. Postal Service, certified mail, postage prepaid, to the address of the Party indicated below:

DISTRICT:

Telephone: _____

Facsimile: _____

Email: _____

CITY:

Telephone: _____

Facsimile: _____

Email: _____

Either Party may from time to time designate any other address for notice by written notice to the other Party.

9. Effective Date.

This Agreement is executed to be effective on the date the last Party signs this Agreement.

10. Successors and Assigns.

The assignment of this 2018 Agreement by either Party is prohibited without the prior written consent of the other Party.

11. Headings.

The captions and headings appearing in this 2018 Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

12. Partial Invalidity.

If any of the terms, covenants or conditions of this 2018 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 2018 Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

13. Waiver.

Any waiver by any party of its rights with respect to a default or requirement under this 2018 Agreement will not be deemed a waiver of any subsequent default or other matter.

14. Amendments.

This 2018 Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties.

15. 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 2018 Agreement.

16. Venue.

All obligations of the Parties are performable in Williamson County, Texas and venue for any action arising hereunder will be in Williamson County, Texas.

17. Third Party Beneficiaries.

Except as otherwise expressly provided herein, nothing in this 2018 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 2018 Agreement.

18. 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 2018 Agreement.

19. Exhibits.

All exhibits attached to this 2018 Agreement are hereby incorporated in this 2018 Agreement as if the same were set forth in full in the body of this 2018 Agreement.

20. Entire Agreement.

This 2018 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.

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: _____
Mike Freeman, President

Date: _____

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

Date: _____

Attest:

Sarah White, City Clerk

Lake Creek Watershed Flood Mitigation

