

EXHIBIT

"A"

**INTERLOCAL AGREEMENT
FOR SERVICE AREA BOUNDARY ADJUSTMENT
AND TEMPORARY AND
EMERGENCY WATER SERVICE**

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON

§

§

THIS INTERLOCAL AGREEMENT FOR SERVICE AREA BOUNDARY ADJUSTMENT AND TEMPORARY AND EMERGENCY WATER SERVICE (this "Agreement") is made and entered into by and between the City of Round Rock, a Texas home rule municipal corporation ("Round Rock") acting by and through its duly authorized Mayor, and Jonah Special Utility District, a Texas special utility district ("Jonah") acting by and through its duly authorized Board President. Round Rock and Jonah are sometimes referred to herein as a "Party" or collectively as "Parties."

RECITALS:

1. Round Rock and Jonah each own and operate extensive water utility systems providing water service to customers in Williamson County.
2. A significant portion of Round Rock's extraterritorial jurisdiction ("ETJ") is located within the boundaries of Jonah's water service area.
3. Round Rock and Jonah believe that continued economic development is beneficial for the citizens living in their jurisdictions.
4. Round Rock and Jonah believe that a reliable source of water is critical for continued economic development.
5. Round Rock and Jonah recognize that having an interconnect between their two water systems provides important benefits to both Parties.
6. Round Rock and Jonah recognize that substantial benefits may be derived from joint cooperation with each other in the planning, financing, construction and provisions of utilities in the region served by the Parties.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and undertakings set forth below, Round Rock and Jonah hereby contract and agree as follows:

ARTICLE I DEFINITIONS

1.01 Unless the context clearly requires otherwise, the following terms shall have the meaning set forth below:

- (a) Agreement: this “Interlocal Agreement for Service Area Boundary Adjustment and Temporary and Emergency Water Service by and Between City of Round Rock and Jonah Special Utility District.”
- (b) Emergency: an Act of God or similar unforeseen and unpreventable catastrophic circumstance or disaster that significantly affects either Party’s ability to provide potable water to its customers. The term shall not include drought conditions, service interruptions for scheduled maintenance, lapse of raw water supply contracts or other legal impediments, over-commitment of supply, or replacement or construction of facilities or similar events that are preventable by the exercise of due diligence, foresight, and planning.
- (c) Emergency Service: potable water service to be provided by one Party to the other Party for a temporary period only in the event of and for the duration of an Emergency pursuant to the terms and conditions of this Agreement.
- (d) MGD: million gallons per day.
- (e) Point of Delivery: one or more points of interconnection to be mutually determined by the Parties in the future.
- (f) Point of Delivery Meter: a meter located at a Point of Delivery to measure water delivered from one Party to the other.
- (g) Service: either Temporary Service or Emergency Service
- (h) Temporary Service: potable water service to be provided by Round Rock to Jonah for the period of time defined below pursuant to the terms and conditions of this Agreement.
- (i) Volumetric Rate: the volumetric rate to be paid by either Party to the other Party per 1,000 gallons of Water delivered through a Point of Delivery as consideration for the provision of the Service.
- (j) Water: potable water meeting those requirements for human consumption and other domestic uses promulgated by the Texas Department of Health, and/or the Texas Commission on Environmental Quality.

**ARTICLE II.
TERMS AND CONDITIONS
FOR TEMPORARY WATER SERVICE**

2.01 Agreement to Provide Temporary Water Services. Subject to the terms and conditions of this Agreement and the requirements of applicable law, Round Rock agrees to make available Temporary Water Service to Jonah commencing upon the effective date of this Agreement and terminating at 11:59pm, December 31, 2023.

2.02 Quality and Quantity of Temporary Water Service. Round Rock will sell to Jonah and deliver Temporary Water Service, which will be supplied from Round Rock 's water distribution system as extended pursuant to this Agreement, to the Point of Delivery. Round Rock presently has an adequate water supply with which to provide Temporary Water Service to Jonah at a flow rate of 2,083 gallons per minute which equates to 3.0 million gallons per day; however, the supply of water to Jonah may be reasonably limited by Round Rock on the same basis and to the same extent as the supply of water to any other customers within Round Rock. Round Rock will provide potable water meeting the standards of the Texas Commission on Environmental Quality for human consumption and other domestic uses at a minimum pressure of 35 psi at the Point of Delivery.

**ARTICLE III.
TERMS AND CONDITIONS
FOR EMERGENCY WATER SERVICE**

3.01 Agreement to Provide Emergency Water Services. Subject to the terms and conditions of this Agreement and the requirements of applicable law, each Party agrees to make available Emergency Services to the other Party for the term of this Agreement.

3.02 Emergency Service.

(a) In the event of an Emergency experienced by either Party, that Party may request the other Party to provide Emergency Service at a Point of Delivery for a temporary period to assist the Party in responding to such Emergency, and the Party receiving the request shall provide Emergency Service subject to the following conditions:

(i) A good faith determination by the Party receiving the Request that a bona fide Emergency as defined above exists and that delivery of Emergency Service to the other Party will not endanger the public health, safety or welfare of its citizens and customers;

(ii) Emergency Service will be provided only for the shorter of the following periods:

- 1) the reasonable duration of the Emergency giving rise to the request for Emergency Service;
- 2) the reasonable duration needed to repair damage to the water system caused by such Emergency;

3) the duration of the Party's ability to provide Emergency Service to the other Party, as reasonably determined by the Party furnishing Emergency Service; or

4) two (2) weeks.

(iii) In the event that the Emergency exceeds the shortest of the foregoing periods, the Party experiencing the Emergency may make written request to the Party to continue Emergency Service beyond said initial period. The Party providing Emergency Service may continue or resume such Emergency Service for an additional period up to such period as it shall determine appropriate and necessary, but only if it determines in good faith that the Emergency giving rise to the initial request for Emergency Service has not been abated, that the Party receiving Emergency Service has exercised reasonable diligence in attempting to remove the disability giving rise to the initial request for Emergency Service, and that Water in excess of the needs of its customers continues to be available to provide Emergency Service to the other Party.

3.03 Effect of Mandatory Water Conservation Measures. Notwithstanding anything herein to the contrary, the Parties agree that, if the Party providing the Emergency Service institutes mandatory water conservation measures for its own customers, that Party may deny the other Party's request for Emergency Service for the duration of the mandatory conservation measures instituted by the Party providing the Emergency Service.

ARTICLE IV. CONNECTION FACILITIES, METERING AND RATES

4.01 Interconnect Facilities.

(a) The Parties agrees that the Point of Delivery will be near the Southwest corner of the intersection of University Boulevard and County Road 110. The approximate location of the Point of Delivery is shown on the sketch attached as **Exhibit "A"**.

(b) Round Rock shall design, construct, operate and maintain an extension of its existing waterline along the South side of University Boulevard to the Point of Delivery at its sole cost and expense.

(c) Jonah shall design, construct, operate and maintain an extension of the waterline from the Point of Delivery through a road bore under County Road 110 to a pressure reducing valve/solenoid control valve assembly near the west right of way line of County Road 110 and before connection of the extension to Jonah's water transmission and distribution lines at its sole cost and expense.

(d) Round Rock shall also design, install, operate and maintain a meter vault, meter and double check valve assembly at the Point of Delivery at its sole cost and expense. Water delivered through the Point of Delivery will be measured by the meter installed by Round Rock

4.02 Ownership, Operation and Maintenance of Facilities.

(a) Each Party shall own, operate and maintain all water system improvements, facilities, equipment and appurtenances located on its respective side of the Point of Delivery. All costs and expenses of operation, maintenance, repair and replacement of each Party's water system shall be paid by the Party, and the other Party shall have no responsibility for any such costs or expenses.

(b) Each Party shall be solely responsible for design and construction of such improvements to its water system as are necessary for the safe and efficient receipt, transportation, storage and distribution of Water received from the other Party at the Point of Delivery. Neither Party shall be responsible for any costs of the other Party related thereto, nor shall either Party be liable for damages to the other Party's water system or to the water facilities of the other Party's customers arising from the distribution of Water received at the Point of Delivery hereunder.

4.03 Metering.

(a) The Parties acknowledge that during Temporary Service, Round Rock shall operate, maintain and read the Point of Delivery Meter to record all Water delivered under this Agreement. During Emergency Service, the Party providing the water shall operate, maintain, and read their respective meter.

(b) Each Party providing Service shall keep records of all measurements of Water delivered to the other Party through the Point of Delivery as recorded by the meter at Point of Delivery.

4.04 Calibration.

(a) Round Rock will calibrate the meter at the Point of Delivery annually, or more frequently at the Jonah's request. Round Rock will provide Jonah with a copy of the calibration report within ten (10) days of Round Rock's receipt of same. If Jonah requests calibration of the meter more frequently than once every 12 months and, upon calibration, the meter proves to be accurate, then the cost of the calibration will be borne by Jonah. If, as a result of any test, the meter at the Point of Delivery is found to be registering inaccurately (more than 5% higher or lower than calibrated volumes), the readings of the meter shall be corrected at the rate of its inaccuracy for any period which is definitely known or agreed upon.

(b) If the meter at the Point of Delivery is out of service or in need of repair such that the amount of Water delivered cannot be ascertained or computed from the reading thereof, the Water delivered through the period such meter is out of service or out of repair shall be estimated and agreed upon by the Parties based upon the best data available. If the Parties fail to agree on the amount of Water delivered during such inoperable period, the amount of Water delivered may be estimated by:

(i) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or

(ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(c) If the meter at the Point of Delivery is consistently registering inaccurately, the Round Rock shall repair, replace or rehabilitate the meter and bear all costs related thereto.

4.05 Connection Fee. Neither Party is authorized to charge a connection fee, impact fee or type of fee to recover capital costs to the other Party for the provision of Temporary Service or Emergency Service under this Agreement.

4.06 Temporary Service Volumetric Rate. Jonah shall pay to Round Rock a volumetric rate per 1,000 gallons of Water (the “Temporary Service Volumetric Rate”) delivered through the Point of Delivery before January 1, 2024. The Temporary Service Volumetric Rate shall be \$3.14 per 1,000 gallons of water received by Jonah..

4.07 Emergency Service Volumetric Rate. In the event either Party provides Emergency Service to the other Party, the Party receiving Emergency Service shall pay to the other Party a volumetric rate per 1,000 gallons of Water (the “Emergency Service Volumetric Rate”) delivered through the Point of Delivery. The Emergency Service Volumetric Rate charged by the Party providing Emergency Service shall be equal to the highest retail tiered-rate charged to the providing Party’s retail customers (whether residential or commercial).

4.08 Payment Terms.

(a) The Party providing Emergency Service shall, upon completion of Emergency Service, submit to the other Party an itemized statement of the amount of Emergency Service furnished, as measured by the meter at the Point of Delivery, and a statement of the payment due for such services. The statement shall specify a due date, which date shall not be less than fifteen (15) days after the date of the statement. The statement shall be paid on or before the due date, which due date shall comply with the Texas Prompt Payment Act.

(b) In the event that either Party fails to make timely payment in full by the due date, then the other Party shall furnish a late notice to the Party that received Emergency Service. If such Party does not provide payment within fifteen (15) days of receipt of the late notice, then the Party shall pay a late payment charge of two percent (2%) of the amount of the statement for each calendar month or fraction thereof that the statement remains unpaid; provided, however, that such rate shall never be usurious or exceed the maximum rate permitted by law.

(c) If any Party remains delinquent in any payments due hereunder for a period of sixty (60) days, then the Party due payment may exercise any legal right or remedy to which it is entitled, including termination of this Agreement.

ARTICLE V. SERVICE AREA AMENDMENT

5.01 As consideration for the provision of Temporary Service under this Agreement, the Parties agree to amend their respective water service areas, including their Certificates of Convenience and Necessity (“CCN”), if any, so that the boundary line between their service areas from County Road 112 north to the City of Georgetown CCN boundary (CCN No. 12369) will be the west right of way line of County Road 110, as shown on **Exhibit “B”**. In addition, the service area boundary south of this location located near Highway 79 will also be amended as shown in Exhibit B.

ARTICLE VI. GENERAL PROVISIONS

6.01 Term of Agreement. This Agreement shall be for an initial term of twenty (20) years from the Effective Date. Upon the mutual consent of both Parties, the Agreement may be extended. After the term for provision of Temporary Service under this Agreement has passed, either Party may terminate Emergency Service under this Agreement by providing at least 120 days prior written notice to the other Party.

6.02 Authority. This Agreement is made pursuant to the authority conferred by V.T.C.A. Government Code, Chapter 791, and V.T.C.A. Local Government Code Secs. 402.001 and 402.017.

6.03 Payments from Current Revenues. All payments, if any, required to be made by a governmental entity hereunder shall be payable from current revenues or other funds lawfully available for such purpose.

6.04 Force Majeure. If, by reason of Force Majeure (as hereinafter defined), either Party shall be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, 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. Payment obligations shall not be considered to be affected by Force Majeure.

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.

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

6.06 Amendments. Any amendment hereof must be in writing and signed by the authorized representative of each Party hereto.

6.07 No Amendment of Other Agreements. Unless otherwise expressly stipulated herein, this Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the Parties.

6.08 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.

6.09 Assignment. The rights and obligations of a Party arising under this Agreement shall not be assignable.

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

6.11 Venue. Venue for any action arising hereunder shall be in Williamson County, Texas.

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

JONAH:

Jonah Water Special Utility District
Attn: Bill Brown, General Manager
4050 FM 1660 (hand delivery)
P. O. Box 455 (mail)
Hutto, Texas 78634 Telephone: (512) 759-1286
Email: bbrown@jonahwater.com

with copy to:

John Carlton
2705 Bee Cave Road, Suite 200
Austin, Texas 78646
Telephone: (512) 614-0901
Email: john@carltonlawaustin.com

ROUND ROCK:

City of Round Rock
221 East Main
Round Rock, Texas 78664
Attn: City Manager
Telephone: (512) 218-5410
Email: citymanager@roundrocktexas.gov

with copy to:

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

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

6.14 Effective Date. This Agreement shall be effective from and after the ____ day of _____, 2020.

IN WITNESS WHEREOF, the authorized representatives of Round Rock and Jonah have executed this Agreement as of the date(s) shown below.

(SIGNATURES ON FOLLOWING PAGES)

CITY OF ROUND ROCK:

ATTEST:

City Clerk

By: _____
Craig Morgan, Mayor

Date: _____

JONAH SPECIAL UTILITY DISTRICT

ATTEST:

By: _____

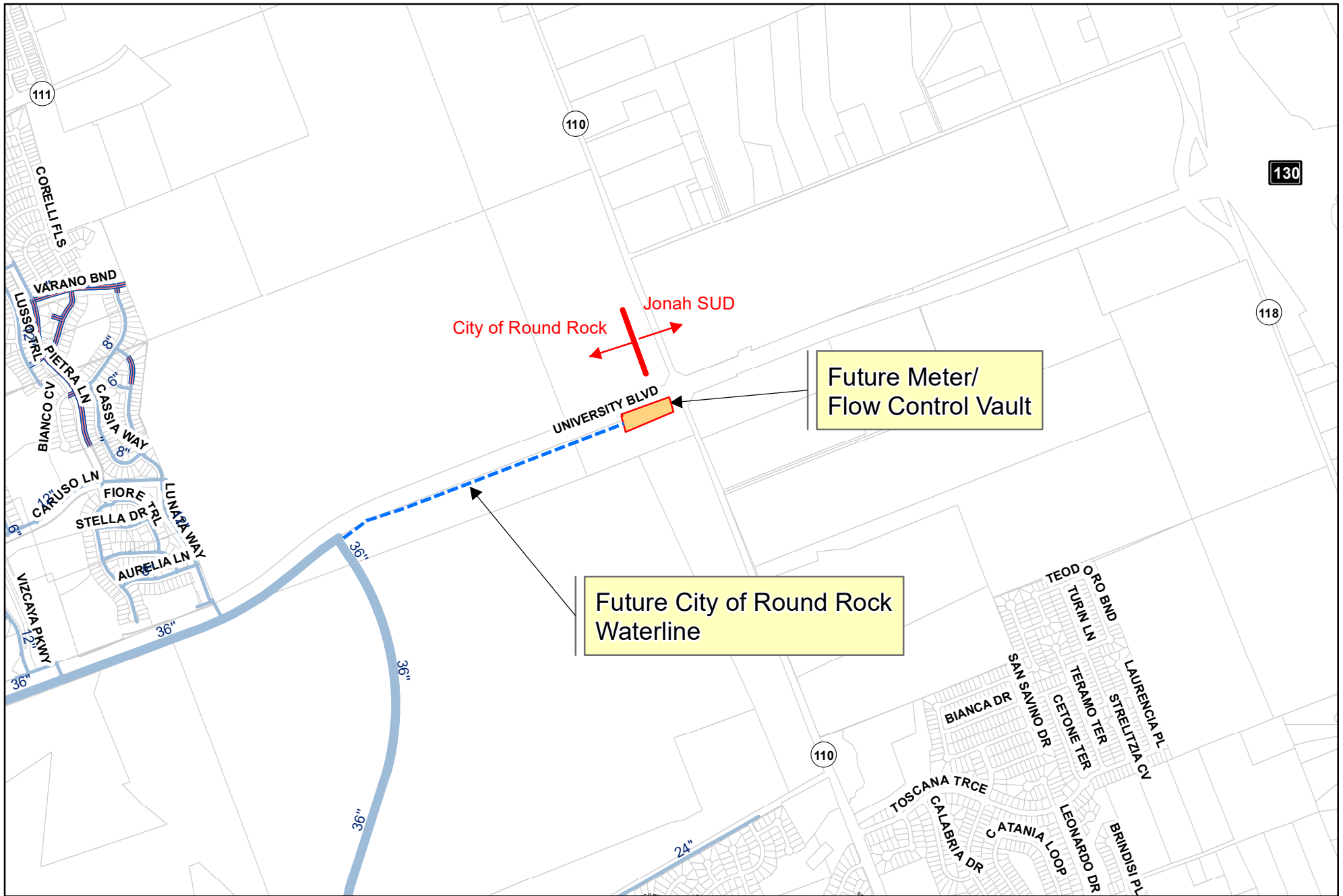
Printed Name: _____

Title: _____

Date: _____

EXHIBIT “A”

(Map showing Overlap Area)



Date: 5/21/2020

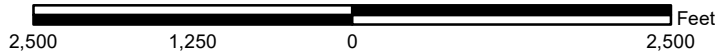


Exhibit A - Point of Delivery/Interconnect Vault

EXHIBIT “B”

(Map showing Potential Commercial Development Area)

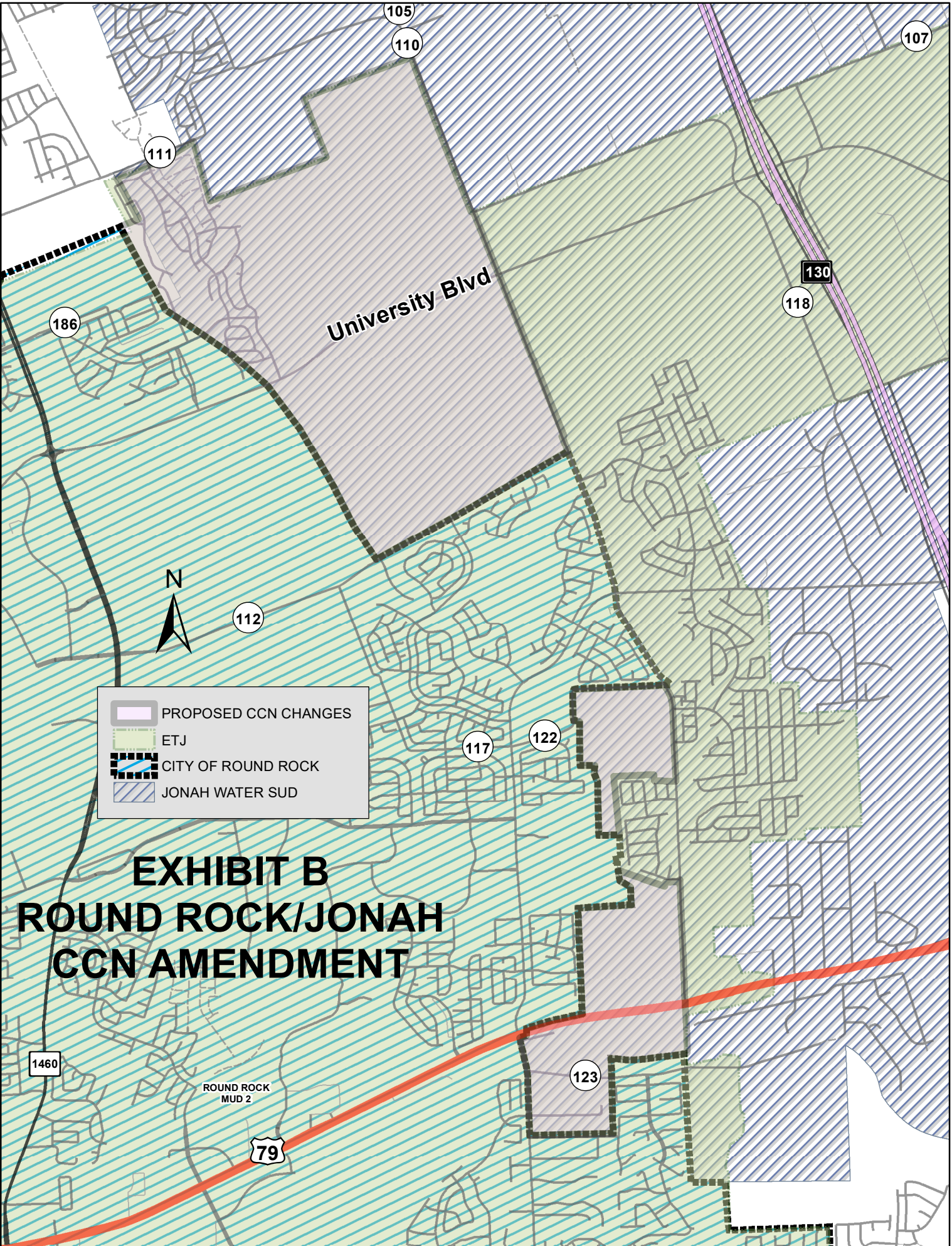


EXHIBIT B ROUND ROCK/JONAH CCN AMENDMENT