

EXHIBIT

"A"

WHOLESALE UTILITY SERVICE AGREEMENT BETWEEN THE CITY OF ROUND ROCK, TEXAS AND THE ROUND ROCK RANCH PUD UTILITY, INC.

This Wholesale Utility Service Agreement (this "Agreement") is entered into as of the ____ day of _____, 2021 between the CITY OF ROUND ROCK, TEXAS (the "City"), a home rule municipality located in Williamson County, Texas, and ROUND ROCK RANCH PUD UTILITY, INC (the "Utility"), a Texas corporation. In this Agreement, the City and the Utility are sometimes referred to individually as "a Party" and collectively as "the Parties".

WITNESSETH:

WHEREAS, the City owns and operates a water treatment and distribution system serving territory within the City's corporate boundaries; and

WHEREAS, the City owns wastewater collection facilities and capacity in regional wastewater treatment and disposal facilities serving territory within the corporate boundaries of the City; and

WHEREAS, the City owns and operates a stormwater collection and detention utility system; and

WHEREAS, the Utility is located within the City and has been created to provide, among other services, retail water and wastewater services to the land within its boundaries;

NOW, THEREFORE, for and in consideration of the premises and the mutual obligations and benefits herein contained, the Parties agree as follows:

ARTICLE I. Definitions

1.01 In addition to the terms defined in the preceding paragraphs of this Agreement, the following terms, when used in this Agreement, have the following meanings:

- a. "Board" or "Board of Directors" means the Board of Directors of the Utility.
- b. "Director" means the Director of the City's Water and Wastewater Utility.
- c. "Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of the government of the United States or the State of Texas or any civil or military authority other than the Parties; insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, and droughts; 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 the inability.

- d. “Impact Fees” means the amounts charged by the City to pay for a portion of the capital costs of the City’s water supply and treatment system and wastewater collection, treatment and disposal system necessary to provide fresh water supply and wastewater collection, treatment, and disposal services to the Utility.
- e. “Living Unit Equivalent” or “LUE” means the amounts of water and wastewater service required to serve a service unit, as determined under City Ordinances.
- f. “Ordinances” means City ordinances, as amended from time to time.
- g. “Commission” means the Texas Commission on Environmental Quality, or its successor agency.

ARTICLE II.

Impact Fees

2.01 The Utility will collect the City’s standard water and wastewater Impact Fees on behalf of the City prior to initiation of service to any new water and/or wastewater connection within the Utility. The Utility will not provide service to any new connection until the City’s Impact Fees have been paid by the customer requesting the connection. Impact Fees collected by the Utility during each month will be remitted to the City by the 15th day of the following month. The City will give written notice to the Utility of any change in the City’s Impact Fees at least 30 days prior to the change becoming effective, in order to allow the Utility adequate time to amend its rate order and adjust the amounts which it is collecting on behalf of the City under this Section.

2.02 Upon the payment of each water or wastewater Impact Fee described in this Article 2.02, the Utility will have a guaranteed reservation and commitment of capacity in the City Systems for the amount of capacity (in LUEs) for which a water and/or wastewater Impact Fee has been paid.

2.03 All other fees required by the City will be paid as required by City Ordinances.

ARTICLE III.

Water Services

3.01 The City will sell and deliver water, which will be supplied from the City’s water distribution system to the boundaries of the Utility. The point or points of delivery of water to the Utility are shown on Exhibit “A”. The City presently has an adequate water supply with which to provide water service to the Utility at the same level that water services are provided to other retail customers within the City; however, the supply of water to the Utility may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customers within the City. The City will provide potable water meeting the standards of the Commission for human consumption and other domestic uses at a minimum pressure of 35 psi at each customer meter and a minimum flow rate of 0.6 gallons per minute per LUE, and in compliance with all applicable requirements for wholesale contracts for purchased water systems, including Section 290.45(f), *Texas Administrative Code*, and any other applicable regulatory requirements. Service by the City to the Utility will be nondiscriminatory and consistent with the City’s standard service policies and regulations, as established by the Round Rock City Council. The City will be the sole

source of potable water to the Utility and the Utility will not seek to develop its own potable wells or alternate supplies, except in the event that the City is no longer able to provide potable water service as contemplated hereby.

3.02 Retail water service within the Utility will be provided by the Utility. Water meters meeting City specifications for customers of the Utility will be provided by the Utility at the Utility's cost. The Utility will adopt a water conservation and drought management plan which is at least as stringent as the City's, as amended from time to time and will amend its plan from time to time to correspond with any amendments adopted by the City. The Utility will provide the City with a copy of said water conservation and drought management plan within forty-five (45) days after the effective date of this Agreement. In addition, the Utility will implement water rationing and water conservation measures under its water conservation and drought management plan when those measures are activated by the City. The City will give the Utility notice of any activation of water rationing and water conservation measures. The Utility may not sell or deliver water to any customer outside the boundaries of the Utility without the City's approval.

3.03 Water delivered to the Utility will be measured by a master meter or meters at all connections to the City water distribution system. Metering equipment and related facilities, including a meter vault and standard-type devices required for properly measuring the quantity of water delivered to the Utility have been installed at each point of delivery at the Utility's cost. The City will operate and maintain the metering equipment. The Utility will calibrate the master meters annually, or more frequently at the City's request. The Utility will provide the City with a copy of the calibration report within ten (10) days of Utility's receipt of same. If the City requests calibration of a master meter more frequently than once every 12 months and, upon calibration, the master meter in question proves to be accurate, then the cost of the calibration will be borne by the City. Any master meter registering within three percent (3%) accuracy will be deemed to be accurate. If any master meter tests to be inaccurate by more than three percent (3%), all testing and calibration costs will be borne by the Utility, the master meter will be recalibrated or replaced, and a billing adjustment will be made based on the degree of the meter's inaccuracy, as determined by the test. If the Parties can reasonably estimate the time at which the master meter became inaccurate, the City will make a billing adjustment based on that time period. If the Parties cannot reasonably estimate the time at which the master meter became inaccurate, then the City will make a billing adjustment to no more than the previous six months' billings. If a master meter is out of service or under repair so that the amount of water delivered cannot be ascertained or computed from the readings, the water delivered during the period the master meter was out of service or repair will be estimated and agreed upon by the Parties based on the best data available. The Utility will read all master meters on a daily basis, except on weekends and state and federal holiday and will keep accurate records of all measurements of water passing through the master meters. Such records will be open to the City for inspection or copying at all times during the Utility's regular business hours. Both the Utility and the City will be entitled to access the master meters at all times and the City will read the master meters once each City billing cycle, for billing purposes.

3.04 The rate to be charged by the City to the Utility for water supplied under this Agreement will be a monthly base fee of \$1,046.86 plus a monthly volumetric rate of \$2.24 per 1,000 gallons of water consumed. The rates set by the City and charged to the Utility may be

reviewed and/or amended annually based on a cost-of-service study performed by the City. The City may include a reasonable rate of return in its rates.

3.05 The Utility agrees to pay the City in accordance with City Ordinances, to bill users of potable water within the Utility and to set and maintain rates sufficient to pay the following:

- a. For water delivered by the City pursuant to this Agreement.
- b. For all Utility operation and maintenance expenses as they come due.

3.06 The Utility agrees to provide the City with a copy of each resolution or order adopted by the Utility setting water rates within seven days of adoption. The City agrees to give written notice to the Utility at least 30 days prior to approval of any wholesale rate change in order to allow the Utility to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

ARTICLE IV.

Wastewater Collection, Treatment and Disposal Services

4.01 The City will collect and transport wastewater generated by customers within the Utility, from the boundaries of the Utility, through its system, to the City's wastewater treatment facilities. The point or points of collection of wastewater to the City's system are shown on Exhibit "A". The City presently has or will obtain adequate wastewater collection, treatment and disposal facilities with which to provide service to the Utility. Retail wastewater collection service within the Utility will be provided by the Utility. The Utility will adopt an order prohibiting industrial waste from entering its collection system. The City will be the sole source of wastewater treatment services for the Utility and the Utility will not seek to develop its own sanitary treatment capacity or an alternate source of service, except in the event that the City is no longer able to provide wastewater collection, treatment and disposal service as contemplated hereby.

4.02 The City shall charge and Utility shall pay the City for wastewater service provided at the applicable wholesale wastewater rate and under the billing, payment, collection and disconnect procedures as established by the City Council and as amended from time to time. The initial rate for wastewater service provided under this Agreement shall be \$3.90 per 1,000 gallons of wastewater delivered. The amount of wastewater delivered each month shall be equal to Utility's Winter Average Usage or its actual water consumption, whichever is less.

4.03 Utility's Winter Average Usage shall be calculated by taking the Utility's Service Area's total water usage during the consecutive months of December, January, and February, and then dividing said total water usage by the number of months in the winter averaging period. The winter averaging period is subject to change by the City Council.

4.04 The Utility agrees to pay the City in accordance with City Ordinances, to bill users of wastewater treatment services within the Utility and to set and maintain rates sufficient to pay the following:

- a. For wastewater services provided by the City pursuant to this Agreement.

- b. For all Utility operation and maintenance expenses in an amount sufficient enough to meet such expenses as they come due.

4.05 The Utility agrees to supply the City with a copy of each resolution or order adopted by the Utility setting sewer rates within seven days of such adoption. The City agrees to give notice to the Utility at least 30 days prior to approval of any wholesale rate change in order to allow the Utility to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

Article V

Stormwater Detention and Collection Utility

5.01 The City will collect and detain stormwater generated by customers within the Utility, from the boundaries of the Utility, through its system, to the City's stormwater facilities.

5.02 The initial rate to be charged by the City to the Utility for stormwater detention and collection services under this Agreement will be a monthly fee of \$4.75 per residential unit. The rate charged for stormwater detention and collections services is subject to change by the City Council

5.03 The Utility agrees to pay the City in accordance with City Ordinances, to bill customers within the Utility and to set and maintain rates sufficient to pay the following:

- a. For stormwater detention and collection services provided by the City pursuant to this Agreement.
- b. For all Utility operation and maintenance expenses in an amount sufficient enough to meet such expenses as they come due.

5.04 The Utility agrees to supply the City with a copy of each resolution or order adopted by the Utility setting stormwater detention and collection rates within seven days of such adoption. The City agrees to give notice to the Utility at least 30 days prior to approval of any rate change in order to allow the Utility to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in costs.

ARTICLE VI

Miscellaneous

6.01 If, by reason of Force Majeure, a Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, such Party will give written notice and the full particulars of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, to the extent it is affected by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with all reasonable dispatch. The City will not be liable to the Utility or any customer of the Utility for the failure of the City to provide water or wastewater treatment service where the failure results from Force Majeure.

6.02 This Agreement is subject to all valid rules, regulations and laws applicable thereto promulgated by the United States of America, the State of Texas, or any agency thereof or regulatory body having lawful jurisdiction.

7.01 This Agreement will be for the sole and exclusive benefit of the City and the Utility and will not be construed to confirm any benefit or right upon any other parties.

7.02 This Agreement may be amended by consent of both of the Parties.

7.03 The provisions of this Agreement are severable and, if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement will be construed as if such invalid provision was not contained herein.

7.04 This Agreement will be in force and effect from the date of execution by both Parties and will continue in effect for 40 years thereafter. The foregoing notwithstanding, if all of the land within the Utility is annexed and the Utility is dissolved, this Agreement will terminate on the date of dissolution of the Utility.

7.05 This Agreement will be construed under and in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

7.06 Any notice given under this Agreement must be in writing. Notice may be given: (i) by depositing the notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by delivering the notice to the Party, or an agent of the Party or (iii) by confirmed facsimile, provided that a copy of the notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: City of Round Rock
221 East Main Street
Round Rock, Texas 78664
Attn: City Manager
Facsimile: (512) 218-7097

UTILITY: Round Rock Ranch PUD Utility, Inc.
230 Klattenhoff Lane
Suite 100
Hutto, TX 78634

The Parties may change their respective addresses for purposes of Notice by giving at least five days written notice of the new address to the other party.

7.07 If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

7.08 Each party has been represented by legal counsel who have participated equally in the formulation, drafting, and approval of this Agreement. Therefore, in the event of any ambiguity, the provisions of this Agreement will not be construed for or against either party based on draftsmanship. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

IN WITNESS WHEREOF, the City and the Utility, acting under the authority of their respective governing bodies, have caused multiple counterparts of this Agreement to be duly executed, each of which will be of equal dignity, all as of the _____ day of _____, 2021.

CITY OF ROUND ROCK, TEXAS

By: _____
CRAIG MORGAN, Mayor

Date: _____

ATTEST:

Sara White, City Clerk

ROUND ROCK RANCH PUD UTILITY,
INC.

By: 

TIMOTHY TIMMERMAN

Title: President

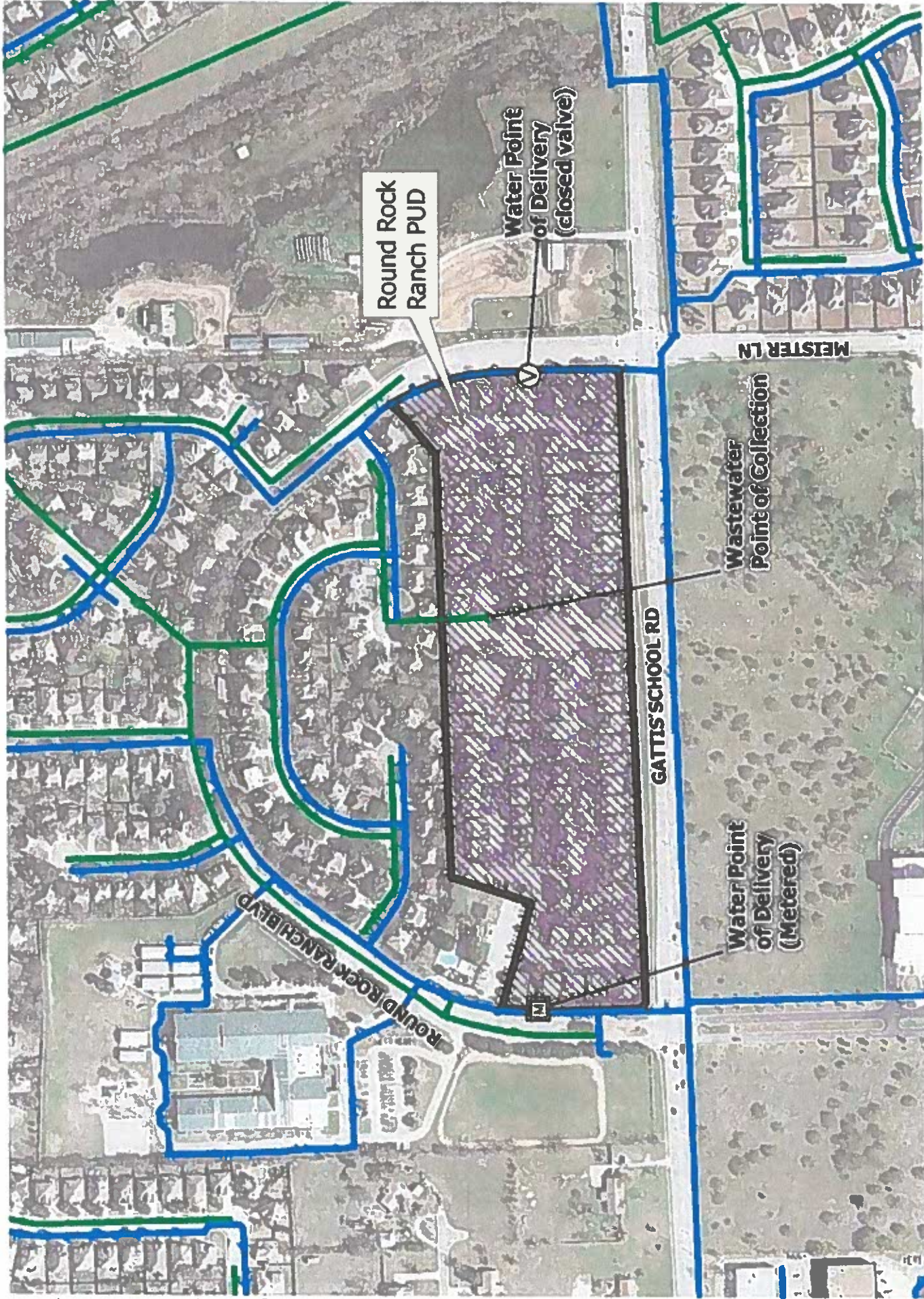
Date: 7/9/21

ATTEST:

Secretary, Board of Directors

EXHIBIT A

**MAP SHOWING POINTS OF DELIVERY OF WATER
AND COLLECTION OF WASTEWATER**



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Date: 6/10/2021



EXHIBIT A - POINTS OF WATER DELIVERY AND POINT OF WASTEWATER COLLECTION

