



M E M O FOR RECORD

DATE: 3/17/17

SUBJECT: MA 2200 NI170000010 Agreement to City of Round Rock

This is a Interlocal agreement with the City of Round Rock Round Rock has proposed to initially fund certain unplanned repair, rehabilitation, and other expenses associated with the Brushy Creek System not currently anticipated in the operations and maintenance agreement with the Brazos River Authority NI140000019, and the City of Austin Reimburses for those cost. This is for accounting purposes only and Central Purchasing did not take to council.

A handwritten signature in cursive script, appearing to read "G Billela".

Georgia Billela
Procurement Specialist III

**AGREEMENT FOR PAYMENTS TO THE CITY OF ROUND ROCK RELATED TO THE
BRUSHY CREEK REGIONAL WASTEWATER SYSTEM**

February ~~January~~ THIS AGREEMENT (the "Agreement") is dated and entered into as of the 6th day of February, 2017, by the City of Austin, Texas ("Austin") and the City of Round Rock, Texas ("Round Rock") both home-rule municipalities and political subdivisions of Texas (individually, the "City;" collectively, the "Cities").

RECITALS

1. The Brushy Creek Regional Wastewater System ("BCRWWS") is a wastewater collection and treatment system located in southern Williamson County. The cities of Austin, Round Rock, and Cedar Park jointly purchased the Brushy Creek System from the Lower Colorado River Authority in 2009, and each city is a partial owner of the BCRWWS.
2. The Brazos River Authority operates and maintains the BCRWWS for the cities, and annual funding for estimated expenses are included in each City's budget.
3. The Cities provide management oversight and recommendations to the BRA by and through the Operations Committee composed of representatives from each City.
4. Austin and Round Rock recognize that substantial benefits are derived from joint cooperation with each other in the administration, planning, financing, construction and provision of wastewater utilities in the area.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the terms and conditions here set forth, the Cities mutually agree as follows:

**ARTICLE I
PURPOSE**

Section 1.01 Purpose of this Agreement. The purpose of this Agreement is to establish the terms and conditions under which Round Rock initially funds and make payments on behalf of Austin for certain expenses related to the operation and maintenance of the BCRWWS. This process and the payments made by Round Rock will result in the reduction of the amount of administrative expenses charged by the Brazos River Authority to owners of the BCRWWS.

Section 1.02 Pre-Approval of Expenses. Round Rock will obtain the Operations Committee approval of shared expenses prior to Round Rock actually obtaining services and goods provided by vendors, if not an emergency.

Section 1.03 Timely Reimbursement by Austin. Austin shall reimburse Round Rock within 30 calendar days of receipt of an invoice attached to reasonable documentation requested by Austin.

CM-2017-1310

ARTICLE II
GENERAL PROVISIONS

Section 2.01 Conflicts with Other Agreements. On June 4, 2010, the cities of Austin, Cedar Park, and Round Rock entered into the Amended and Restated Master Contract for the Financing, Construction, Ownership, and Operation of the Brushy Creek Regional Wastewater System and also entered into subsequent amendments hereto (collectively, "Master Contract"). If there are any conflicts between this Agreement and the Master Contract or other agreements related to the BCRWWS executed prior to this Agreement's Effective Date, this Agreement will prevail.

Section 2.02 Participation by the Cities. Each City represents to the other that it is empowered by law to participate in the acquisition, construction, and financing of the BCRWWS improvements and the operation and maintenance of the BCRWWS, and to execute this Agreement and other agreements and documents as are or may hereafter be required to accomplish the same; that its execution of this Agreement has been duly authorized by action of its governing body at a meeting conducted in accordance with the Texas Open Meetings Act, as amended, Chapter 551, Texas Government Code. Each City agrees to execute the contracts and other agreements as the other City may reasonably request, and to take and perform such other and further actions and execute such other agreements, related to the acquisition, construction and financing of the BCRWWS, and documents as may be reasonably required to carry out the provisions of this Agreement.

Section 2.03 Force Majeure. If by reason of "Force Majeure", either City is rendered unable wholly or in part to carry out its obligations under this Agreement, and if that City gives notice and full particulars of such "Force Majeure" in writing to the other City within a reasonable time after occurrence of the event or cause relied on, the obligation of the City giving such notice will be suspended during the continuance of the inability then claimed, but for no longer period, and such City will endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein will mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States or the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of Wastewater systems or water supply and inability on the part of such City to provide water necessary for operation of its water and Wastewater system hereunder, and impossibility by operation of law. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the City having the difficulty and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing City when such settlement is unfavorable in the judgment of the City having the difficulty.

Section 2.04 Term of Contract. This Agreement will be effective upon the day and year recited above, and will continue until the Master Contract is terminated. Either City may terminate this Agreement by giving the other City 30 days written notice of its desire to do so.

Section 2.05 Amendment and Modification. This Agreement may not be amended or modified except in writing executed by the authorized representatives of the Cities and authorized by their respective governing bodies. There will be no amendment to this Agreement that will adversely affect the prompt payment of all money required to be paid under the terms of this Agreement.

Section 2.06 Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (collectively, "Notice") to be given, made, or accepted by any party to the other City must be in writing and may be given or be served by depositing the same in the

United States mail postpaid and registered or certified and addressed to the City to be notified, with return receipt requested, or by delivering the same to an officer of such City, or by prepaid telegram when appropriate, addressed to the City to be notified. Notice deposited in the mail in the manner described will be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner will be effective only when received by the City to be notified. For the purposes of notice, the addresses of the Cities will, until changed as herein provided, be as follows:

If to Austin:
City of Austin
Director, Austin Water
P.O. Box 1088
Austin, Texas 78767

If to Round Rock:
City of Round Rock
City Manager
221 E. Main St.
Round Rock, Texas 78664

The Cities have the right at any time to change their respective addresses and will specify its address by at least 15 calendar days' written notice to the other City.

Section 2.07 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.

Section 2.08 Remedies Upon Default. It is not intended hereby to specify an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either City hereto and will be cumulative. Recognizing that failure in the performance of the Cities' obligations hereunder could not be adequately compensated in money damages alone, each City agrees in the event of any default on its part that the other City will have available to them the remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to them. Notwithstanding anything to the contrary contained in this Agreement, any right or remedy or any default hereunder will be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two years plus one day after the occurrence of such default. No waiver of any breach or default by either City or the performance by either City of any duty or obligation hereunder will be deemed a waiver in the future, nor will any such waiver be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

Section 2.09 Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

Section 2.10 Statutory Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Chapter 552, *Texas Local Government Code*.

Section 2.11 Agreement for Benefit of the Cities. This Agreement is made for the exclusive benefit of the Cities only, and not for any third party or parties, and such third parties may not assert any rights or remedies under or by reason of this Agreement.

Section 2.12 Payments from Current Revenues. Any payments required to be made by a City under this Agreement will be paid from current revenues or other funds lawfully available to the City for such purpose.

Section 2.13 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

Section 2.14 Entire Agreement. This Agreement constitutes the entire agreement among the Cities with respect to the matters described herein.

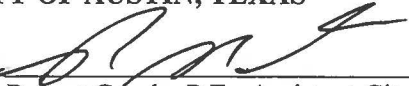
Section 2.15 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the Cities hereunder will be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 2.16 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which will be an original and all of which together will constitute but one and the same instrument.

IN WITNESS WHEREOF, the Cities hereto acting under authority of their respective governing bodies has caused this Agreement to be duly executed as of the day and year first above written.

**** SIGNATURE PAGES TO FOLLOW ****

CITY OF AUSTIN, TEXAS

By: 
Robert Goode, P.E., Assistant City Manager

CITY OF ROUND ROCK, TEXAS

By: Raunee Hodley
Alan McGraw, Mayor

Laurie Hailey
City Manager

Attest:

By: Sara White
Sara White, City Clerk

