Fern Bluff MUD
Execution Copy

WASTEWATER SERVICE AGREEMENT BETWEEN THE CITY OF ROUND ROCK AND FERN BLUFF MUNICIPAL UTILITY DISTRICT

This Wastewater Service Agreement ("Agreement") is entered into by and between the City of Round Rock ("Round Rock") and Fern Bluff Municipal Utility District (the "District").

RECITALS

WHEREAS, Round Rock, the City of Austin, and the City of Cedar Park (collectively, the "Cities") have entered into a contract with the Lower Colorado River Authority ("LCRA") to purchase from LCRA certain wastewater collection, treatment and disposal facilities known as the Brushy Creek Regional Wastewater System (the "System");

WHEREAS, the District is currently a party to that certain "Subregional Wastewater Disposal Contract" dated October 1, 2000 with LCRA and the Brazos River Authority ("BRA") providing for the collection, treatment and disposal of the District's wastewater flows by LCRA utilizing the System;

WHEREAS, in connection with the pending acquisition of the System by the Cities, Round Rock proposes to provide wholesale wastewater treatment and disposal services to the District; and

WHEREAS, the District and Round Rock desire to enter into this Agreement in order to set forth the terms and conditions pursuant to which Round Rock shall provide wastewater collection, treatment and disposal services to the District.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises and agreements of the parties contained in this Agreement, the sufficiency of which is hereby acknowledged, Round Rock and the District agree as follows:

AGREEMENT

I.
DEFINITIONS

Certain of the capitalized terms and expressions used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

1.01 "Agreement" means this Wholesale Wastewater Service Agreement.

1.02 "Annual Operation and Maintenance Expense Requirement" means the annual amount budgeted for all Operation and Maintenance Expenses associated with the System during any fiscal year.

1.03 "Cities" mean the cities of Austin, Cedar Park, and Round Rock. The term "Cities" shall also be deemed to include any other municipality or entity that acquires an ownership interest in the System.

1.04 "District" means the Fern Bluff Municipal Utility District.

1.05 "Commission" or "TCEQ" means the Texas Commission on Environmental Quality.

1.06 "District Administrative Charge" means $500.00 per month, to be paid by the District to Round Rock as compensation for all administrative and overhead costs and expenses of Round Rock for providing service to the District. This sum will increase on each anniversary date of this Agreement by three percent (3%), compounded annually.

1.07 "District Capital Charge" means the portion of Round Rock's debt necessary to serve the District as established per **Exhibit A**. (The Parties agree that amounts shown on Exhibit A are estimates at the time of the execution of this Agreement. Therefore, Exhibit A will be amended when, in accordance with the terms of the Purchase Agreement, LCRA provides Round Rock with the final amount of LCRA Debt outstanding on December 4, 2009. Exhibit A will also be amended to reflect the True Interest Cost (TIC) when the bonds issued by Round Rock to purchase the System from LCRA are priced and issued; provided, however, that the TIC allocated to the District for purposes of **Exhibit A** shall not exceed 4.75 percent.) Should the City refinance its debt and achieve a net present value savings to the District after consideration of all costs and expenses of issuance, **Exhibit A** shall be amended to reflect such savings to the District. Round Rock may refinance its debt without any net present value savings to the District, in which event the District Capital Charge shall remain unchanged.

1.08 "District Contractual Flows" means the maximum amount of Wastewater, based upon a 30-day average flow, that is permitted to be discharged by the District into the Point(s) of Entry for the System, as set forth in **Exhibit B**.

1.09 "District Flow Charge" means the amount paid each month by the District for those Operation and Maintenance Expenses of the System for which the District is responsible under this Agreement, and which are not paid through the District Capital Charge, the Required Improvements Charge, or the District Administrative Charge.

1.10 "District Surplus Capacity" means that portion of the surplus capacity in the System previously financed by the District and constructed for the potential participation in the System by the City of Leander or another third party, which is identified in **Exhibit I** attached hereto.

1.11 "EPA" means the Environmental Protection Agency.

1.12 "Expansion" means any improvement project that increases or enlarges the System or a System Component to provide additional capacity or service capability.

1.13 "Brushy Creek MUD" means Brushy Creek Municipal Utility District.

1.14 "Fiscal Year" means the twelve (12) month period beginning October 1 of each year.

1.16 "Master Contract" means any one or more agreements entered into by the Cities that relates to, or provides for, the ownership, operation, management, repair, replacement and financing of the System.

1.17 "Operation and Maintenance Expense" means all direct and indirect costs of operation, maintenance, repair, rehabilitation, replacement and decommissioning of the System, save and except: (i) depreciation costs, (ii) any of the costs or expenses identified in Section 6.02; and (iii) costs or expenses that are paid through the District Capital Charge.

1.18 "Party" or "Parties" means the District and Round Rock.

1.19 "Phase I and II of the System" means those components of the System more particularly described on **Exhibit G** attached hereto.

1.20 "Point of Delivery" means each point of delivery at which Round Rock shall receive Wastewater from the District as more particularly described in **Exhibit C**.

1.21 "Purchase Agreement" means that certain "Purchase Agreement for the Brushy Creek Regional Wastewater System" entered into by LCRA and the Cities dated September 10, 2009, a copy of which is attached hereto as **Exhibit I**.

1.22 "Required Improvement" means each Expansion, repair, improvement, replacement, or modification of the System or a System Component as may be necessary for compliance with applicable regulatory requirements, or as may be necessary for the proper and most efficient operation of the System or System Component that is not financed through the District Capital Charge.

1.23 "Required Improvements Budget" means that portion of the Annual Operation and Maintenance Expense Requirement to be funded through the Required Improvements Charge.

1.24 "Required Improvements Charge" shall mean the charge that may be levied by Round Rock for payment of the costs of Required Improvements, as more particularly described in Section 6.09.

1.25 "Reserved Capacity" means the capacities of each of System Components allocated to, and reserved for, the District, as identified on **Exhibit E** attached hereto. In the event of an Expansion, Round Rock shall revise **Exhibit E** to reflect the District's revised capacity in each of the System Components that is the subject of the Expansion.

1.26 "Round Rock" means the City of Round Rock, Texas.

1.27 "Shall", when used in this Agreement, shall be construed as mandatory.

1.28 "Significant Industrial User" has the meaning set forth at 40 CFR §403.3(t).

1.29 "Subregional Agreement" means that certain "Subregional Wastewater Disposal Contract" dated October 1, 2000 between the District, LCRA and BRA providing for the collection, treatment and disposal of the District's wastewater flows by LCRA utilizing the System.

1.30 "System" means the Brushy Creek Regional Wastewater System.

1.31 "System Component" means a specified facility comprising part of the System and listed as a System Component in **Exhibit G** attached hereto.

1.32 "Wastewater" means liquid and water-carried waste discharged from sanitary conveniences of dwellings, business buildings, institutions and the like including garbage which has been shredded to such degree that all particles will be carried freely under flow conditions normally prevailing in public sewers, within no particle greater than one-half inch in any dimension and the liquid wastes from industrial processes, and includes any infiltration water that has migrated from the ground into the System.

II.
STATEMENT OF INTENT

2.01 **GENERAL.** The purpose of this Agreement is to provide for the collection, transportation, treatment and disposal of all Wastewater generated within the District by Round Rock.

2.02 **CONDITION PRECEDENT.** A condition precedent to the performance of the Parties' obligations under this Agreement is the termination of the Subregional Agreement.

III.
DESIGN, ACQUISITION, CONSTRUCTION, OPERATION AND MAINTENANCE OF SYSTEM

3.01 **WHOLESALE WASTEWATER SERVICE.** Round Rock will receive, transport, treat, and dispose of all Wastewater delivered by the District. Round Rock, in cooperation with the other Cities, will operate, manage, maintain design, acquire, construct, expand, extend, enlarge, improve and repair the System as required to meet its obligations under this Agreement.

3.02 **EXPANSIONS AND IMPROVEMENTS TO SYSTEM.** The Parties agree that no Expansions to the System are required to meet the service needs of the District to the extent of the District Contractual Flows. Round Rock, in cooperation with the other Cities, shall construct Expansions to the System as requested by the District to meet the service needs of the District in excess of the District Contractual Flows. Round Rock may also, without the consent of the District, construct Required Improvements to the System or a System Component in accordance with the terms and conditions of this Agreement.

3.03 **OPERATIONS COMMITTEE.** The District may appoint one non-voting representative to the "Operations Committee," or any other committee formed by the Cities related to the ownership, operation, maintenance, expansion of the System, and such representative may attend all such meetings and provide input regarding the matters discussed. Round Rock agrees to provide reasonable prior notice to the District of all meetings of the committee(s). Round Rock shall endeavor in good faith to provide such notice by electronic mail or otherwise in writing, but shall be under not contractual obligation to do so.

IV.

DISTRICT AND CITY RESPONSIBILITIES

4.01 **SOLE SOURCE REQUIREMENT.** The District agrees to obtain all of its Wastewater treatment and disposal needs from Round Rock for so long as Round Rock provides service to the District in accordance with the terms of this Agreement.

4.02 **DISTRICT INTERESTS.** In connection with the ownership, operation, management, maintenance, repair, financing and expansion of the System and exercise of the duties and rights provided in this Agreement, Round Rock will not undertake or forego any actions, formally or informally (including its right to vote or make decisions relating to the System), that would be preferential to Round Rock and its retail customers or the Cities relative to the interests of the District and its retail customers. The foregoing provision shall not be construed to prevent the costs of an Expansion or Required Improvement from being paid only by those customers or entities with capacity in the System Components that are subject to the Expansion or Required Improvement. Neither this Agreement in general, nor the foregoing provision in particular, shall ever be construed to create a fiduciary relationship between Round Rock and the District, nor to inhibit in any way the complete flexibility and discretion of Round Rock to set its rates and fees to its retail customers at it deems best.

V.
RESERVED CAPACITY AND DISCHARGE OF WASTEWATER

5.01 **DISCHARGE QUANTITIES.** The District shall have the right to discharge Wastewater into the Point(s) of Entry for the System to the extent described in **Exhibit B**. It shall be the sole responsibility of the District to convey its Wastewater to the designated Point(s) of Entry.

5.02 **RATE AND QUANTITY AT POINT(S) OF ENTRY.** The rate and quantity of Wastewater discharged into the System at the designated Point(s) of Entry by the District shall be determined by "winter averaging" in accordance with the methodology attached hereto as **Exhibit H**. The same methodology shall be utilized for purposes of calculating the flows of each of the Cities. The District shall not discharge Wastewater into the System at such Point(s) of Entry at a rate exceeding the quantities set forth in **Exhibit B**.

5.03 **DISCHARGE QUALITY.** The District shall discharge Wastewater into the System meeting the requirements of quality as set forth in this Article and not containing wastes identified in the List of Inadmissible Wastes attached as **Exhibit D** of this Agreement.

(a) General Requirements. In order to properly treat and dispose of the District's Wastewater, to protect the public health, and to permit cooperation with other agencies which have requirements for the protection of the physical, chemical, and bacteriological quality of public water and watercourses, the District agrees to prohibit discharges into its own collection system at unauthorized points of entry or at rates of flow or of quality not herein specified as admissible.

(b) Admissible Wastes. Discharges into the System by the District shall consist only of waste which the System is designed to treat and process:

(i) so that the effluent and sludge from the System meets the legal standards of the EPA, the Commission or any governmental body having legal authority to set standards for such effluents;

(ii) without causing damage to the System which would result in increased maintenance costs;

(iii) without causing excessive treatment costs; and

(iv) which meets the requirements of the EPA Pretreatment Regulations, 40 CFR Part 403, Round Rock's applicable rules and the EPA-approved pretreatment program **for the System.**

(c) Inadmissible Wastes. A List of Inadmissible Wastes is attached hereto as **Exhibit D**. EPA and the Commission periodically modify standards on prohibited discharges; therefore, revisions to, additions to or deletions from the items listed in this Section will become necessary to comply with these latest standards. It is the intention of this Agreement that prohibited discharge requirements be reviewed periodically by the Cities and that **Exhibit D** be revised by the Cities in accordance with the latest standards of EPA, the Commission or federal or state agency having regulatory authority over the discharges made to the System. **Exhibit D** may also be revised on the basis of changes in the treatment process or the general character of Wastewater received at the treatment plant from the District or indicated in the monitoring data related to the District's discharges collected pursuant to the System pretreatment program. Any required revisions shall be made by the Cities only after notice and opportunity to comment has been provided to the District and shall become effective upon written notice thereof being given to the District. The District shall be responsible for integrating such changes into its local sewer use regulations and notifying all affected users of the change.

5.04 **REGULATIONS.** Discharges to the System shall be governed by the requirements set forth in the EPA pretreatment regulations, Commission pretreatment regulations, the List of Inadmissible Wastes, the System pretreatment program and District's respective sewer use ordinances or regulations.

Periodically, the Cities will promulgate a new List of Inadmissible Wastes, **Exhibit D** of this Agreement, in response to changes in federal or state requirements, changes in the treatment process, or the general character of the Wastewater received at the treatment works, as described in Section 4.04(c) above. The List of Inadmissible Wastes will contain pollutant allocations to the District. The District is responsible for developing specific local limits from the pollutant allocations and enforcing these limits through the District's regulations and sewer use permits. Notwithstanding any provision in this Agreement or Master Agreement to the contrary, the District is subject to the same quality requirements that apply to the Cities.

5.05 **INDUSTRIAL WASTES.** The District agrees to implement and enforce the System pretreatment program for all areas receiving sanitary sewer service from the District. The District also covenants that it will have in effect and will enforce sewer use regulations in accordance with EPA and Commission regulations or regulations of other governmental agencies having lawful jurisdiction to set standards for waste discharges. Furthermore, the District shall, at any reasonable time upon request by Round Rock, produce pretreatment program records for review.

The District also agrees that no new Significant Industrial User shall be allowed to connect to the District's sewer system without prior notification being given by the District to Round Rock of the intent to connect. The District will provide Round Rock with a copy of the draft sewer use permit and permit application at the time such notification is given. All

Significant Industrial Users that are customers of the District will also be required to obtain a sewer use permit.

5.06 **SYSTEM LIMITATIONS.** Round Rock shall be obligated to receive into the System at the Point(s) of Entry only Wastewater meeting the quantity limits and quality requirements of this Article V. Since the capacity required for the District to discharge Wastewater up to the District Contractual Flows has previously been constructed and for so long as the District does not discharge Wastewater into the System in excess of the District Contractual Flows, the District shall not be responsible for, and shall not be allocated any costs or expenses associated with, the discharge by any other customer (including the Cities) of Wastewater in excess of (i) the amount which the System is capable of receiving, treating, and disposing, or (ii) a discharge made into the System by such other customer or the Cities which would cause it to be overloaded or be in violation of its permits from the State of Texas and/or the United States of America.

5.07 **TITLE TO AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER.** Title to and responsibility for the reception, transportation, delivery and disposal of all Wastewater discharged hereunder shall remain with the District to the Point(s) of Entry, and upon passing through the Point(s) of Entry, title to and responsibility for the Wastewater shall, except as provided in Section 7.18, pass to Round Rock, and Round Rock shall be responsible for the proper reception, transportation, treatment and disposal of all such Wastewater, meeting the applicable quality standards, received by it at the Point(s) of Entry. Responsibility for proper reception, transportation, treatment and disposal of Wastewater received by Round Rock at the Point(s) of Entry which does not meet the applicable quality standards shall remain with the District and any expenses incurred by Round Rock in receiving, transporting, treating and disposing of such non-compliant Wastewater shall be charged directly to the District by Round Rock, upon demonstrating that such Wastewater was delivered by the District.

5.08 **UNIT OF MEASUREMENT.** The unit of measurement for Wastewater delivered hereunder shall be one thousand (1,000) gallons, U.S. Standard Liquid Measure.

VI.
CHARGES

6.01 **AUTHORIZED CHARGES.** The Parties agree that the District's payment obligation under this Agreement shall be limited to the following: (i) the District Capital Charge; (ii) the District Flow Charge; (iii) the District Administrative Charge; and (iv) the Required Improvements Charge. Each of the foregoing charges shall be calculated in accordance with the terms of this Agreement, and the District shall not be charged, directly or indirectly, any other costs or expenses relating to the System.

6.02 **INELIGIBLE COSTS AND EXPENSES.**

(a) The following costs and expenses shall not be included within the District Capital Charge, the District Flow Charge, or the Required Improvements Charge, and the District may not be charged, and shall have no responsibility for payment of, the following costs and expenses either directly or indirectly:

(i) Any administrative and overhead costs or expenses of Round Rock or the Cities beyond the District Administrative Charge;

(ii) Any design, engineering, inspection, construction or other costs related to the Expansion, rehabilitation, or improvement of the System or any System Component for which the District is not responsible for payment under this Agreement;

(iii) Except as otherwise provided in this Agreement, any capital costs relating to any portion of the System other than Phase I and Phase II of the System.

(iv) Any debt service costs associated with any capacity within the System or any System Component in excess of the District's Reserved Capacity;

(v) Any costs or expenses relating to refinancing any System debt that does not result in a net present value cost savings to the District after taking into account all costs and expenses of issuance of the debt;

(vi) Any operating, capital, or other financial reserves arising out of or related to the operation, financing, or management of the System;

(vii) Any coverage costs arising out of or related to financing any portion of the System;

(viii) Any portion of the costs referenced in Section 1.2(a), (c), and (d) of the Purchase Agreement constituting the "Purchase Price" paid by the Cities to LCRA for acquisition of the System;

(ix) Any costs and expenses that are not also paid by any City or Cities that hold capacity in the System Component to which the cost or expense relates; and

(x) Any other costs or expenses that do not qualify as Operation and Maintenance Expenses, save and except those capital costs included within the District Capital Charge.

(b) If, within 12 months after adoption of the District Flow Charge, District Capital Charge, or Required Improvements Charge, the District asserts that any such charges include any costs or expenses that are ineligible under this Section 6.02, it may pursue relief by filing a protest within such 12 month period with the Round Rock City Council under the terms set forth under Section 6.03 and Section 6.04 below. If it is subsequently determined by agreement, administrative agency or court decision, or binding arbitration, that the disputed charge(s) includes an ineligible cost or expense as established by this Section, Round Rock shall promptly revise the charges in such manner to exclude such ineligible costs and expenses, and to provide credit for any prior payments made by the District for such ineligible costs and expenses.

(c) As consideration for the transfer and conveyance of the District Surplus Capacity to Round Rock by the District, Round Rock agrees that it will not seek to recover from the District, directly or indirectly, any costs of the type identified in Section 1.2(a), (c), or (d) of the Purchase Agreement.

6.03 **ESTABLISHING CHARGES.**

(a) Initial Proposals. As soon as reasonably possible during the first partial Fiscal Year and not less than forty-five (45) days before commencement of each Fiscal Year thereafter while this Agreement is in effect, Round Rock shall furnish to the District copies of its annual estimates of costs and flows for the System, the Annual Operation and Maintenance Expense Requirement, the Flow Charge Requirement, the Required Improvements Budget, and the resulting estimates of District Capital Charge, Required Improvements Charges, and District Flow Charge projected to be incurred in the next ensuing Fiscal Year. Round Rock shall include such information as may be reasonably necessary for the District to confirm that the District Capital Charge, Required Improvements Charge, and District Flow Charge are calculated in accordance with the terms and conditions of this Agreement.

(b) Approval of Charge if No Protest. If no protest or request for a hearing on such tentative proposed District Capital Charge, District Flow Charge, or Required Improvement Charge is presented within twenty-five (25) days after such filing of the proposed District Capital Charge, District Flow Charge, and Required Improvement Charge and supporting documentation, the proposed District Capital Charge, District Flow Charge, and Required Improvement Charge, when approved by Round Rock's City Council, shall be deemed to be in effect for all purposes for the next ensuing Fiscal Year.

(c) Procedures for Protest of Charges. If a protest or request for a hearing is duly filed with respect to a charge established under this Section 6.03 or under Section 6.02, it shall be the duty of Round Rock to fix a date and time for a hearing on the proposed District Capital Charge, District Flow Charge, and/or Required Improvements Charge to be conducted in a manner to enable interested persons to communicate such information as they shall desire to present any such views as they shall desire to express to the Round Rock City Council. The party filing such protest and the District shall be advised in writing of the time and place of such hearing. After consideration of the information and comments produced at such hearing which shall be reduced to written findings by Round Rock within fifteen (15) days of such hearing, the Round Rock City Council may adopt the proposed District Capital Charge and/or District Flow Charge or make such amendments thereof as may seem proper. The written findings shall substantively address and respond to each issue raised in the protest or request for hearing. The proposed District Capital Charge and/or District Flow Charge thus approved by the City Council of Round Rock shall be deemed to be in effect for the next ensuing Fiscal Year.

(d) The Parties agree that the District Capital Charge, the District Flow Charge, and the Required Improvements Charges shall be just and reasonable, and shall not be unreasonably preferential, prejudicial, or discriminatory.

(e) As soon as reasonably possible during the first Fiscal Year, Round Rock will provide the District with a Flow Charge Requirement for the remaining portion of the first Fiscal Year.

6.04 **DISPUTES.**

(a) The District shall retain such rights as it may possess under applicable law to seek administrative or judicial review of Round Rock's charges under this Agreement. If the District at any time disputes the amount to be paid by it under this Agreement, the District shall nevertheless promptly make the payment or payments determined by Round Rock and shall notify Round Rock in writing of the dispute. If it is subsequently determined by agreement, administrative agency or court decision, or binding arbitration, that such disputed payments made by the District should be changed, Round Rock shall promptly revise the charges in such manner

that the District will pay amounts which permit Round Rock to receive the entire amount of the District Capital Charge, District Flow Charge, and Required Improvements Charges permitted hereunder as the same may be modified by final effective order of an administrative agency or court of appropriate jurisdiction, or by binding arbitration. If the District Capital Charge, District Flow Charge, and Required Improvements Charges are redetermined as herein provided, Round Rock will promptly furnish the District with an updated schedule of monthly payments reflecting such redetermination, which shall include credit for any prior payments made by the District for costs or expenses that should not have been levied or collected.

(b) In lieu of seeking judicial or administrative review, the District may submit any protest or dispute relating to the budget or the District Capital Charge, District Flow Charge, and/or Required Improvements Charges to binding arbitration in accordance with Article VIII below. Any such election must be made, and written notice thereof filed with Round Rock, within 30 days after receipt of the written findings of the Round Rock City Council. In the event the District prevails in any such appeal proceeding, the charges shall be recalculated within 30 days to reflect the ruling, and any prior overpayment by the District shall be credited immediately.

6.05 **CHANGES FROM EMERGENCIES AND LEGAL ACTION.**

(a) Round Rock may adopt amendments to the District Capital Charge, District Flow Charge, and Required Improvements Charges by following a process similar to that provided above for the establishment of such matters initially if, during a Fiscal Year, the District Capital Charge, District Flow Charge, or Required Improvement Charge are changed due to:

(i) unanticipated emergency capital expenses are experienced that are properly allocable to the District under this Agreement; or

(ii) an adjustment is necessitated by regulatory requirement.

(b) Any such amendments to the District Capital Charge, District Flow Charge, or Required Improvements Charge shall be subject to all terms, conditions, and limitations of this Agreement relating to initial establishment of the District Capital Charge, District Flow Charge, and Required Improvements Charges.

6.06 **DISTRICT CAPITAL CHARGE; UNCONDITIONAL PAYMENT OBLIGATION.**

(a) General. On or before the fifteenth day of each month, the District shall pay its District Capital Charge. During the term of this Agreement, the District Capital Charge for the District to be paid each month shall be determined by allocating one-twelfth (1/12) of the total District Capital Charge for the Fiscal Year in the amount set forth in **Exhibit A**, which the District and Round Rock believe is a reasonable basis upon which to allocate said costs.

(b) It is hereby agreed that upon the effective date of this Agreement, the District shall be unconditionally obligated to pay the District Capital Charge, District Flow Charge, District Administrative Charges, and Required Improvements Charges regardless of whether or not the District actually discharges Wastewater hereunder, whether due to Force Majeure or otherwise. The District agrees that its obligation to pay the District Capital Charge, District Flow Charge, District Administrative Charges, and Required Improvements Charges shall be absolute and unconditional, irrespective of any rights of set-off, diminution, abatement, recoupment or

counterclaim the District might otherwise have against Round Rock or any other person, and the District covenants not to seek and hereby waives, to the extent permitted by applicable law, the benefits of any rights which it may have at any time to any stay or extension of time for performance or to terminate, cancel or limit its liability to pay the District Capital Charge, District Flow Charge, District Administrative Charges, and Required Improvements Charges. Such additional agreement shall in all respects be consistent with the requirements of this Agreement regarding the payment of the District Capital Charge, District Flow Charge, District Administrative Charges, and Required Improvements Charges by the District. This provision shall not be construed to prevent the District from appealing the amount of the District Capital Charge, District Flow Charge, District Administrative Charges, and Required Improvements Charges in accordance with the dispute provisions of this Agreement.

(c) The preceding paragraph shall not be construed to release Round Rock from the performance of any of its undertakings contained in this Agreement or, except to the extent provided in this section, prevent or restrict the District from asserting any rights which it may have against Round Rock or any other person under this Agreement or under any provision of law or prevent or restrict the District, at its own cost and expense, from prosecuting or defending any action or proceeding against or by third parties or taking any other action to secure or protect its rights under this Agreement.

(d) In the event additional capital costs are incurred for an Expansion, for rehabilitation, or to improve the efficiency of the System or any System Component, the City of Round Rock will either pay cash or issue additional debt for such improvements. To the extent that the capital costs of such project are allocable to the District under this Agreement and the District elects to not pay for its share of the capital costs by cash, **Exhibit A** will be amended accordingly, such that the District's share of the additional capital costs of the project will be added to its debt, which will be based on the District's Reserved Capacity, relative to the total capacity, of the System Components being improved. In the event that Round Rock issues debt to finance the additional capital costs, **Exhibit A** will reflect the same interest rate as incurred by Round Rock. In the event that Round Rock pays for the costs by cash but the District elects not to do so, then **Exhibit A** shall reflect an interest rate as if such amounts had been borrowed at the then current market interest rate by a governmental entity similar to Round Rock and with a similar credit rating based on the Delphis Hanover Corporation's Range of Yield Curves' yield, or a comparable index if such yield does not exist.

6.07 DISTRICT FLOW CHARGE

(a) Round Rock shall adopt, or cause the adoption, of the Annual Operation and Maintenance Expense Requirement, the Flow Charge Requirement, and the Required Improvements Budget each year, and furnish a copy thereof to the District, in accordance with Section 6.03 of this Agreement.

(b) Except for the initial partial year of this Agreement, the District Flow Charge shall be equal to 1/12 of the amount calculated by multiplying the flows of Wastewater from the District's collector system into the System during the twelve (12) month period ending on April 30 preceding the beginning of the fiscal year for which the calculation is being made, expressed in thousands of gallons, by the quotient obtained by dividing the Flow Charge Requirement for the period for which the calculation is being made, expressed in dollars, by the total flows into the System, also expressed in thousands of gallons, during the twelve (12) months period ending on such April 30. For the purposes of this paragraph, the District's flows will be determined in accordance with the methodology set forth in Section 5.02.

(c) For the initial partial year of this Agreement, the District Flow Charge shall be equal to the fraction obtained by dividing 1 by the number of complete months in the remainder of the fiscal year in which this Agreement is executed multiplied by the quotient obtained by dividing the Flow Charge Requirement for the same number of months, expressed in dollars, by the total estimated flows into the System, expressed in thousands of gallons, during the same monthly period. For the purposes of this paragraph, the District's flows will be determined in accordance with the methodology set forth in Section 5.02.

(d) The Parties further agree as follows with respect to the District Flow Charge:

(i) The District will not be allocated any costs or expenses in the Flow Charge Requirement that are not also charged to, and paid by, Brushy Creek MUD and the Cities.

(ii) Brushy Creek MUD and each of the Cities will pay for the Flow Charge Requirement through the payment of a unit charge per 1,000 gallons of Wastewater contributed to the System during the same accounting period for which the District Flow Charge is calculated, such that the District and each of the Cities will pay the same cost per 1,000 gallons of Wastewater to contribute to that portion of the Annual Operation and Maintenance Expense Requirement allocated to the Flow Charge Requirement.

(iii) In the event that the Cities' payment for the Flow Charge Requirement are adjusted based on actual calculated flows or actual Operation and Maintenance Expenses, then Round Rock shall report to the District the difference, if any, between the amounts collected from the District and the actual District Flow Charge. The difference, if any, shall be applied as an adjustment in calculating the District Flow Charge for the fiscal year immediately following the fiscal year in which the actual District Flow Charge are known; provided, however, that the District shall not be allocated any Ineligible Costs and Expenses.

(iv) The Flow Charge shall not recover any costs or expenses associated with Required Improvements, it being understood that such costs and expenses shall be recovered through the Required Improvement Charge or Capital Charge.

6.08 **DISTRICT ADMINISTRATIVE CHARGE.** Each month, the District shall be required to pay the District Administrative Charge.

6.09 **REQUIRED IMPROVEMENTS CHARGES.**

(a) In the event of any Required Improvement to the System for which the District is responsible for payment under this Agreement and the costs of which are not otherwise paid through the Capital Charge, then the District shall provide payment of the Required Improvements Charge within 30 days of a receipt of an invoice for payment. Any budgeted Required Improvement shall be included within the Required Improvements Budget. Any invoice for payment of a Required Improvements Charge shall include a description of the Required Improvement, the total cost of the Required Improvement, and the costs associated therewith allocated to the District and to each of the Cities. In connection with the Required Improvements Charge, Round Rock agrees as follows:

(i) Round Rock shall provide in writing to the District as much advance notice as is reasonably practicable of any Required Improvement that is not included within the Required Improvements Budget;

(ii) The amount of the Required Improvements Charge shall be based on the District's Reserved Capacity in the System Component that is the subject to the Required Improvement relative to the total capacity of such System Component;

(iii) The remaining costs of the Required Improvement shall be allocated to each of the Cities and to Brushy Creek MUD according to their respective Reserved Capacities, if any, in the System Component that is the subject of the Required Improvement;

(iv) Except in the case of emergencies, any Required Improvements Charge shall not exceed $100,000.00 per Required Improvement without the District's prior consent. In the event that additional capital costs are incurred by Round Rock for any Required Improvement, the City of Round Rock will either pay cash or issue additional debt for such costs. To the extent that the capital costs of such project are allocable to the District under this Agreement and the District elects to not pay for its share of the capital costs by cash, **Exhibit A** will be amended accordingly, such that the District's share of the costs of the Required Improvement will be added to its debt, which will be based on the District's Reserved Capacity, relative to the total capacity, of the System Components being improved. In the event that Round Rock issues debt to finance the costs of the Required Improvement, **Exhibit A** will reflect the same interest rate as incurred by Round Rock. In the event that Round Rock pays for the costs by cash but the District elects not to do so, then **Exhibit A** shall reflect an interest rate as if such amounts had been borrowed at the then current market interest rate by a governmental entity similar to Round Rock and with a similar credit rating based on the Delphis Hanover Corporation's Range of Yield Curves' yield, or a comparable index if such yield does not exist.

(v) The same methodology shall be utilized to recover the costs of Required Improvements from the Cities, such that any of the Cities that hold capacity in the System Component undergoing the Required Improvement shall be invoiced and required to pay its share of such costs for the Required Improvement in a lump sum payment, under the same terms and conditions as the District; and

(vi) Round Rock shall not charge the District in a Required Improvement Charge any costs or expenses for which the District is not responsible for payment under the terms of this Agreement.

(b) In the event that the operator of the System or any other entity pays the costs of any Required Improvements during a Fiscal Year and recovers the costs thereof from one or more of the Cities during the subsequent Fiscal Year in one or more payments, then Round Rock agrees that the District shall have the same right to pay its pro rata share of the costs of a Required Improvement during such next Fiscal Year under the same terms and conditions as the City or Cities responsible for payment of such costs.

6.10 **COSTS OF EXPANSIONS AND OTHER IMPROVEMENT PROJECTS.**

(a) The District shall not be allocated any costs of any Expansion of the System unless all or a portion of the Expansion is constructed at the District's request to meet the District's needs. Except in the event of emergencies, for any proposed Expansion for which the District will be allocated costs under this Agreement, Round Rock agrees to provide to the District not less than 120 days prior written notice, along with information regarding the necessity and purpose thereof, the projected costs thereof, the allocation of costs associated therewith between the District and each of the Cities (as applicable), and the revised percentage capacities of the Cities and the District in the System Component(s) subject to the Expansion. Round Rock shall provide an opportunity to the District to fund its pro rata share of each Expansion through cash rather than amendment of the Capital Charge.

(b) In the event additional capital costs are incurred to improve the efficiency of the System or of any System Component utilized for service to the District, the City of Round Rock reserves the right to issue additional debt for such improvements on behalf of the District. **Exhibit A** will be amended accordingly, such that the District's share of the additional debt will be based on the District's Reserved Capacity, relative to the total capacity, of the System Components being improved. Round Rock agrees to provide not less than 120 days prior written notice of any such proposed improvement, along with a sealed independent engineering report addressing the projected costs thereof, the benefits and projected cost savings of the improvement, and the allocation of costs associated with the improvement between the District and each of the Cities. Round Rock shall provide an opportunity to the District to fund its pro rata share of such improvements through cash rather than amendment of the Capital Charge.

(c) In the event additional capital costs are incurred due to rehabilitation of the System or any System Component that serves the District, Round Rock reserves the right to issue additional debt for such improvements on behalf of the District. **Exhibit A** will be amended accordingly, such that the District's share of the additional debt will be based on the District's Reserved Capacity, relative to the total capacity, of the System Component(s) being rehabilitated. Except in the event of emergencies, Round Rock agrees to provide not less than 180 days prior written notice of any such proposed rehabilitation project, along with information regarding the necessity thereof, the projected costs thereof, and the allocation of costs associated therewith between the District and each of the Cities. Any such notice must include a sealed engineering report from an independent engineering firm recommending the proposed rehabilitation project and specifying the allocation of costs between the District and each of the Cities. Round Rock shall provide an opportunity to the District to fund its pro rata share of each rehabilitation project through cash rather than amendment of the Capital Charge.

(d) In the event any rehabilitation or efficiency improvement project also includes an Expansion, then the sealed engineering report furnished to the District will specifically address and make a recommendation regarding the allocation of costs associated therewith to the District, based upon consideration of the following factors: (i) that the District should not pay any costs associated with the Expansion of capacity in the System Component(s); and (ii) the District should pay a pro rata share of the costs associated with the rehabilitation and/or improvement in efficiency based on the capacity that replaces the District's existing Reserved Capacity in the System Component(s).

(e) The costs of any engineering reports required under this Section shall be considered a project cost and funded as a capital charge and allocated to the participants in the project accordingly.

6.11 **HOW, WHEN AND WHERE PAYMENTS ARE TO BE MADE.** Delivery to the District of the final budgets for a Fiscal Year, together with the schedule of resulting District Capital Charge, District Flow Charge, and the District Administrative Charge, shall constitute the invoice for same for the entire Fiscal Year. Payment of all District Capital Charge, District Flow Charge, Required Improvements Charges, and the District Administrative Charge required to be paid by the District under the provisions of this Agreement shall be made to Round Rock. All charges payable for any calendar month shall be due and payable in Williamson County, Texas, on or before the fifteenth day of such month. Past due payments shall bear interest from the date due until paid at the lower of ten percent (10%) per annum or the highest lawful rate in the State of Texas. Should the District desire, Round Rock agrees to cooperate in good faith to permit the District to prepay any District Capital Charge owed or anticipated to be owed under this Agreement.

6.12 **DEFAULT.**

(a) Monetary Defaults by District. In the event the District defaults in the payment of the District Capital Charge, District Flow Charge, Required Improvements Charges, or the District Administrative Charge required hereunder, Round Rock shall immediately give notice of such default to the District; provided, however, that nothing in this section shall prevent the District from paying under protest any amount alleged as owed to Round Rock or prevent Round Rock from accepting any payment even if less than the amount alleged by Round Rock as owed by the District. Payment or receipt of any such disputed amount shall not be construed as a waiver of any right of the party making or receiving such disputed amount to contest such matter and to demand payment or receipt of a different amount. Thereafter, the District shall take all appropriate steps to correct such default and shall correct such default within ten (10) days after receipt of such notice. Any past due amount shall be paid, together with interest at the rate of ten percent (10%) per annum or the maximum legal rate of interest then in effect, whichever is greater.

(b) Other Defaults by District or Round Rock. In the event that the District or Round Rock defaults in the performance of any of their respective obligations under this Agreement, other than the obligation to make payments of the District Capital Charge, District Flow Charge, Required Improvements Charges, or the District Administrative Charge, the non-defaulting party, after giving reasonable notice of the default and opportunity to cure same, may exercise any remedy at law or in equity or as provided below in Article VIII.

VII.
GENERAL PROVISIONS

7.01 **PAYMENTS TO CONSTITUTE OPERATING EXPENSES OF DISTRICT.** The District represents and covenants that the services to be obtained pursuant to this Agreement are essential and necessary to the operation by the District of its own wastewater facilities and the provision of sanitary sewer services to its constituents, and that all payments to be made hereunder by it will constitute essential and necessary operating expenses of the District's waterworks and sanitary sewer systems, and the provisions of all resolutions, as appropriate, authorizing the issuance of all bonds of the District which are payable from revenues of the District's waterworks and sanitary sewer systems payable from the revenues of said system and from the proceeds of its maintenance tax. The parties acknowledge that Round Rock intends, in cooperation with the other Cities, to own and operate the System as capital improvements on behalf of the District within the meaning of Section 395.002(1), Texas Local Government Code. The parties understand and agree that the decision as to whether the capital improvements

constructed or acquired by Round Rock on behalf of the District are used to serve new development (within the meaning of Section 395.001(6), Texas Local Government Code) and the decision as to whether to impose any impact fees (within the meaning of Section 395.001(4), Texas Local Government Code) is exclusively that of the District. Round Rock agrees, upon receiving a written request from the District, to provide information and other assistance regarding Round Rock's calculation of the District Capital Charge to assist the District in its efforts to implement or defend any capital recovery fee or impact fee of the District related to the System. Expenses incurred by Round Rock in providing such information to the District shall be paid through the District Administrative Charge.

7.02 **DISTRICT'S RATES, FEES AND CHARGES.** Round Rock acknowledges that the District has the right under applicable law to assess, charge and collect such District maintenance taxes, impact fees, capital recovery fees, connection fees, meter fees, or other service fees, rates, taxes or other charges as it will deem appropriate. Round Rock will not construe this Agreement to require (except as provided otherwise in this Section), limit or restrict the governmental power of the District to implement the same. The District will be solely responsible for the proper exercise of its governmental power to assess and collect such fees and charges and for ensuring that all fees, taxes, rates and charges the District elects to charge are in compliance with applicable law. The District agrees to establish and collect such taxes, rates and charges for its waterworks and sanitary sewer services to be supplied by its system as will make possible the prompt payment of all expenses of operating and maintaining its system including the payments committed hereunder, and the prompt payment of the principal of and interest on its obligations, if any, payable from the revenues of its waterworks and sanitary sewer systems.

7.03 **USE OF PUBLIC PROPERTY.** By these presents, the District, to the extent capable under existing law, authorizes use by Round Rock of general utility or sewer easements and rights-of-way of the District for construction, operation and maintenance of the System, so long as such use is in compliance with the terms of any easement or right-of-way utilized by District and does not interfere with any lawful use or proposed use by the District and subject to all of the District's rules and regulations respecting the manner of such use and restoration of lands, pavement or improvements resulting from exercise of the rights provided in this section, including the cost of relocation of any facilities located within any such easement or right-of-way as an expense of the System. Round Rock will cooperate with the District in the timing, planning and installation of the System to be constructed and installed hereunder.

7.04 **FORCE MAJEURE.** In case by reason of "Force Majeure" any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, with the exception of the obligation to pay amounts owed hereunder, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall 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 of Texas 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 water supply and inability on the part of the District to provide water necessary for operation of its water and wastewater system hereunder or of Round Rock to receive Wastewater on account of any other causes not reasonably within the control of the party claiming such inability. It is

understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

7.05 **GOVERNMENTAL REGULATION.** This Agreement shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them. In each instance herein where reference is made to a federal or state regulation, it is the intention of the parties that at any given time the then current edition of any such federal or State regulation shall apply. Round Rock and the District agree that their obligations under this Agreement shall include compliance with the requirements made under said laws, and any rules and regulations issued pursuant thereto. New standards shall be adopted by the District, and Round Rock which are in compliance with applicable State and federal laws and any valid rules and regulations issued pursuant thereto.

7.06 **DISTRICT COOPERATION TO ASSURE REGULATORY COMPLIANCE.** Since Round Rock and the other Cities must comply with all federal, state and local requirements to obtain permits, grants and assistance for system construction, studies, etc., the District will cooperate with the Cities in good faith at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation by the District may subject Round Rock to penalties, loss of grants or other funds, or other adverse regulatory action. In making the determinations called for herein, Round Rock covenants that such determinations will be made only after detailed studies of statistical data available as to the need and feasibility have been made and after consulting with engineers and financial advisors. The District will be kept advised at all times of planning and implementing Required Improvements. In that regard, the District agrees to adopt and enforce, and to provide in its wholesale contracts with its water customers in the future that they shall adopt and enforce, an appropriate water conservation and/or drought management plan as required by the Texas Water Development Board.

7.07 **CONTRACTS WITH OTHERS IN RELATION TO SYSTEM.**

(a) Subject to obtaining the consent of Round Rock as set forth in Section 7.08, the District shall have the right to enter into contracts with other persons natural or corporate, private or public, to receive Wastewater from such persons. The District covenants that it will provide Round Rock with copies of all such written contracts and will, if requested by Round Rock, furnish Round Rock with a list of all customers other than retail, residential customers. Initially, within thirty (30) days after execution of this Agreement, and thereafter for each calendar year the tenure hereof, the District will send to Round Rock by January 15 of each year an annual report containing the following data about the District's customers that the System ultimately serves:

(1) actual number of connections as of the end of the calendar year;
(2) number of new wastewater connections made in the previous calendar year;
(3) classification, by number and percentage, of accounts according to the following:

(i) residential;
(ii) multi-family;
(iii) business/commercial; and
(iv) other; and

(4) if business or commercial connections, a copy of any District industrial waste discharge permit issued to such premises.

Notwithstanding the foregoing, in the event that the wastewater flow calculation methodology does not require such data to calculate the quantity of Wastewater flows discharged into the System, then the District's obligation to furnish such data shall terminate.

(b) Subject to the following subsection (c), Round Rock shall have the right to enter into or amend agreements with other persons so long as such agreements or amendments do not prevent Round Rock from meeting its obligations to provide service to the District from the System in accordance with this Agreement and do not result in alienation of Reserved Capacity necessary to meet the District's needs. Under no circumstances may Round Rock enter into such agreements that would require the use of Wastewater facilities owned or operated by the District without the District's prior written consent.

(c) To the extent of any conflict between the Master Contract and this Agreement, the terms of this Agreement shall control.

(d) The District hereby releases any right or claim to the District Surplus Capacity, and further agrees as follows with respect thereto: (i) as of the Effective Date, Round Rock shall be the owner of the District Surplus Capacity; and (ii) Round Rock shall be entitled to all consideration that may be received from Leander (or any third party) in connection with the District Surplus Capacity, and the District shall have no right to any portion of such consideration. Round Rock agrees that from and after the Effective Date, the District Capital Charge, District Flow Charge, and the Required Improvements Charges shall not include any costs or expenses associated with the District Surplus Capacity, and Round Rock shall not seek to recover, either directly or indirectly, any such costs from the District.

7.08 **NON-INFRINGEMENT.** The District agrees that it will not provide or enter into an agreement to provide Wastewater service directly or indirectly outside of its service area unless Round Rock and the City in whose service area the service is to be provided consents. For purposes of this Section, the District's service area shall mean the area presently served by the District as shown in **Exhibit F** and the property known as the Ivie Tract as described in **Exhibit F**.

7.09 **ANNUAL REPORT OF SYSTEM AND AUDITS.**

(a) Round Rock shall cause to be prepared an annual report of the System each year. Such report shall contain such matters and information as may be considered necessary and useful by Round Rock. A copy of the annual report and Round Rock's annual audit, and accompanying management letters will be posted on Round Rock's webpage or otherwise made available to the District.

(b) Round Rock agrees that the District may retain, at its sole cost and expense, an independent auditor from time to time to confirm the District is allocated costs and expenses in accordance with the terms of this Agreement. Round Rock agrees to reasonably cooperate with, and make information available to, the auditor.

7.10 **NO ADDITIONAL WAIVER IMPLIED.** No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, conditions, or liability hereunder, or of performance by the other parties of any duty or obligation hereunder,

shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

7.11 **ADDRESSES AND NOTICE.** Unless otherwise provided, in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the others 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 party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by telecopier, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Round Rock, to:

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

with a copy to:

Stephan L. Sheets
Sheets & Crossfield
309 E. Main St.
Round Rock, Texas 78664

If to the District, to:

General Manager
Fern Bluff Municipal Utility District
7320 Wyoming Springs Drive
Round Rock, Texas 78681
Fax No. (512) 238-7323

with a copy to:

Phil Haag
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Ave., Suite 2100
Austin, Texas 78701
Fax (512) 505-6308

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties.

7.12 **MODIFICATION.** This Agreement may not be changed or modified without the mutual consent of the governing bodies of each of the parties hereto, which consent shall not be unreasonably withheld or delayed.

7.13 **ASSIGNABILITY; SUCCESSORS IN INTEREST.** This Agreement shall not be assignable by any party without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Round Rock hereby consents to the assignment of this Agreement by the District to any municipality that is incorporated and encompasses the territory within the District. Upon assignment of this Agreement by the District, or upon dissolution of the District by operation of law as a result of annexation of the entire District by a municipality, the rights and obligations of the District under this Agreement shall be binding upon, and inure to the benefit of, the District's assignee or successor in interest.

7.14 **SEVERABILITY.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

7.15 **MERGER.** Other than the other contracts mentioned herein, this Agreement constitutes the entire agreement between the parties relative to the subject matter thereof. Except as noted in the previous sentence, there have been and are no agreements, covenants, representations or warranties between the parties other than those expressly stated herein or expressly provided for herein.

7.16 **VENUE.** Venue for any action arising hereunder will be in Williamson County, Texas.

7.17 **NO THIRD PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto, any rights, benefits, or remedies under or by reason of this Agreement.

7.18 **REUSE OF TREATED EFFLUENT FROM SYSTEM.** Nothing contained herein shall be construed as the District relinquishing its reuse rights to Wastewater effluent attributable to the Wastewater flows of the District that are delivered to the System. Round Rock agrees that it will not in any way reuse the Wastewater effluent attributable to the District's flows without the express written consent of the District.

7.19 **CAPITAL IMPROVEMENT PLANS, ENGINEERING REPORTS, AND STUDIES.** Round Rock agrees to promptly furnish to the District copies of all engineering reports, capital improvement plans, operation reports, and similar studies or reports relating to the maintenance, operation, repair, rehabilitation, or Expansion of the System or any System Component, as they are prepared or received from time to time.

VIII.
NEGOTIATION AND ARBITRATION OF DISPUTES

8.01 **AGREEMENT REGARDING REMEDIES.** The parties agree that their respective obligations under this Agreement are unique and recognize that Round Rock may be issuing its bonds to acquire, construct, expand, improve or replace the System and may pledge the

revenues from this Agreement to secure payment of principal of, premium, if any, and interest on the bonds. The failure by any party to perform its obligations under this Agreement would not be capable of being appropriately remedied by award of damages to any other affected party to this Agreement and in any event, such damages would be difficult, if not impossible, to determine because of the unique nature of the parties' obligations to each other hereunder. Further, the parties agree that the remedy of termination of this Agreement by any party is inappropriate and not in the public interest. Therefore, the parties agree that they shall be entitled, and limited, to the remedies of specific performance, mandamus and injunction in the event of any breach of any obligation by any party under this Agreement. The parties hereby waive any requirement that they be required to provide any bond or other surety in order to obtain any of the agreed upon remedies. The parties also agree that attorney's fees and court costs incurred by any party prevailing in any legal action to enforce this Agreement or collect or defend any amounts owed or claimed as owed shall be paid by the non-prevailing party.

8.02 **AGREEMENT TO NEGOTIATE FIRST TO RESOLVE ISSUES.** The parties agree to attempt first to resolve disputes concerning this Agreement amicably by promptly entering into negotiations in good faith. The parties agree that they will not refer any dispute to another dispute resolution procedure including arbitration or litigation until they have first made reasonable and good faith efforts to settle their differences by joint negotiations conducted in a timely manner.

8.03 **ELECTION OF REMEDIES.** If any dispute cannot be resolved through good faith negotiation, then the parties may resolve the dispute by binding arbitration as provided herein. An election to arbitrate any dispute by either party shall be binding, and shall preclude the same dispute from being resolved by judicial or administrative proceeding (except to the extent required to enforce the arbitrator's decision).

8.04 **PRESENTATION OF WRITTEN CLAIM REGARDING DISPUTES NOT RESOLVED BY NEGOTIATION.** In the event that a dispute is not resolved as a result of such negotiations, either party may at any time give formal written notice to the other of a "claim." A "claim" as used herein means a demand or assertion by one of the parties (the "claimant") seeking, as a matter of right, adjustment or interpretation of contract terms, the payment of money, an extension of time for performance or other relief with respect to the terms of this Agreement or any other dispute or matter in question among the parties arising out of or related to this Agreement. By way of example and without limitation, a claim may relate to the calculation of charges, the allocation of costs, the reasonableness of costs, compliance with this Agreement, and calculation or allocation of flows within the System. Such notice shall be in writing, and shall specify whether the forum for resolution of the dispute shall be judicial, administrative, or binding arbitration. If a party elects to resolve a claim by binding arbitration, the dispute resolution procedure provided for below shall immediately enter into effect.

8.05 **PERFORMANCE DURING ARBITRATION.** The claimant shall continue with performance under this Agreement pending arbitration of the dispute.

8.06 **APPOINTMENT OF ARBITRATOR.** Promptly following the making of a written claim by any party, the parties will consult with one another to agree on the appointment of an arbitrator acceptable to all parties. The arbitrator shall have experience in matters of the kind giving rise to the claim. If within five (5) business days the parties are unable to agree on the appointment of an arbitrator, then any party may request the appointment of an arbitrator by the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law. The parties shall endeavor to secure such appointment from the Center for Public Policy Dispute

Resolution within ten (10) business days after the request for same is made. The parties agree to utilize the arbitrator appointed by the Center unless they ultimately reach agreement on an alternative selection and give notice to the Center that another selection has been made by agreement.

8.07 **RULES FOR BINDING ARBITRATION.** The parties agree to the following stipulations concerning the conduct of the arbitration:

(a) The arbitrator shall be impartial among the parties and shall have no conflict of interest.

(b) The arbitrator shall not have any past, present or anticipated financial interest in the Agreement or the System except for the payment for services as arbitrator nor shall the arbitrator have been previously employed or acted as a consultant, attorney, employee, engineer, architect, contractor or subcontractor of any party nor have any present or anticipated future engagement of kind described. Before the engagement of the arbitrator is finalized, the arbitrator shall provide to the parties a disclosure statement containing a resume of experience, a description of past, present or anticipated future relationships to the System and the parties, their engineers, contractors, subcontractors, attorneys, architects, or consultants.

(c) The arbitration shall be held at a time and location mutually agreeable to the parties and the arbitrator provided, however, that the arbitration shall commence no later than fifteen (15) business days following the confirmation of appointment.

(d) At least five (5) business days prior to the arbitration, the claimant shall submit to the parties and the arbitrator a statement of the claimant's position, the issues that need to be resolved and a summary of the arguments supporting the claimant's position. At least two (2) business days prior to the arbitration, the responding parties shall submit their written response to the claimant's statement and provide a summary of their arguments in response.

(e) If the parties agree that independent expert or technical advice would be helpful in facilitating a negotiated resolution of the dispute, the arbitrator may make arrangements to obtain such advice, and may, with the agreement of the parties, make arrangements for an independent expert to render a non-binding advisory opinion with respect to any technical matters in dispute after hearing the contentions of the parties with respect thereto. The expenses of obtaining such independent advice or advisory opinion shall be borne equally by the parties.

(f) No party shall engage in any private interview, discussion or argument with the arbitrator concerning the subject matter of the arbitration.

(g) The fees of the arbitrator and any other costs of administering the arbitration shall be borne equally by the parties unless otherwise agreed among them in writing.

(h) The arbitrator may promote settlement in any manner the arbitrator believes appropriate at one or several arbitration sessions as agreed to by the parties. The arbitration shall continue only so long as desired by the parties and with the consent of all of them.

(i) Arbitration sessions shall be private unless otherwise required by law. Persons other than the representatives of the parties may attend arbitration sessions only with the permission of all parties and the consent of the arbitrator.

(j) All communications made in the course of the arbitration process including any advice or advisory opinions rendered shall be confidential in accordance with V.T.C.A. Civil Practice and Remedies Code, Section 154.073.

(k) The arbitrator's decision shall be final and binding upon the parties.

8.08 **EXCEPTION.** Notwithstanding the foregoing provisions of Sections 8.02-8.07, the parties agree that those provisions shall not be applicable in emergency situations.

8.09 **WAIVER OF SOVEREIGN IMMUNITY.** The Parties acknowledge and agree that this Agreement is a written contract stating the essential terms of an agreement for providing goods and services to the District, and that the parties intend to waive their sovereign immunity to suit for the sole purpose of adjudicating a claim for breach of this Agreement, subject to the terms and conditions of Subchapter I of Chapter 271 of the Texas Local Government Code or any other applicable statute.

8.10 **ATTORNEYS' FEES.** Pursuant to § 271.159 of the Texas Local Government Code, the prevailing party in a claim arising out of or to enforce this Agreement shall be entitled to recover from the other party its reasonable and necessary attorneys' fees. This provision specifically applies to but is not limited to judgments awarding damages, court orders compelling performance, and arbitrator decisions pursuant to Section 8.07 herein.

8.11 **DELEGATION OF AUTHORITY.** The Parties agree that the dispute resolution procedures set forth herein are not intended to unlawfully delegate the ratemaking or other legislative authority of any party to this Agreement. Instead, the purpose of the dispute resolution provisions is to provide each party an opportunity to appeal to an independent third party for a determination as to whether the non-appealing party has acted in accordance with the terms and conditions of this Agreement. In the event of binding arbitration, it is the parties' mutual intent that such arbitration determine whether the parties have acted in accordance with the terms of this Agreement, and not to delegate the performance of any duties hereunder to such arbitrator. Each party agrees to take such actions as soon as practicable to comply with the arbitrator's decision.

IX.
EFFECTIVE DATE AND TERM OF AGREEMENT

9.01 **EFFECTIVE DATE.** This Agreement shall become effective upon the closing date of the sale of the System to Round Rock. This Agreement shall constitute the sole and only contract between the District and Round Rock regarding Wastewater disposal services and the District hereby recognizes and affirms its responsibility to make the payments required hereunder.

9.02 **TERM OF AGREEMENT.** This Agreement shall continue in force and effect from the effective date hereof until December 31, 2050, or any date thereafter for which the Master Contract is/are extended. Upon expiration of this Agreement, Round Rock agrees to provide the District an opportunity to enter into a wholesale wastewater service agreement on the same general terms and conditions available to other wholesale customers of Round Rock; provided, however, that such agreement shall reflect and provide credit for the costs of any System Components and capacity utilized by Round Rock that have been funded by the District as of said date.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all of the 30 day of October, 2009.

THE CITY OF ROUND ROCK

By: _____
Name: Alan McGraw
Title: Mayor

ATTEST:

By: _____
Name: Sara L. White
Title: City Secretary

FERN BLUFF MUNICIPAL UTILITY DISTRICT

By: _____
Name: Patrick Savarese
Title: President, Board of Directors

ATTEST:

By: _____
Name: JOSEPH F. TEIBER
Title: SECRETARY, BOARD OF DIRECTORS

(SIGNATURE PAGE TO WASTEWATER SERVICE AGREEMENT)