

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

**FIRST AMENDMENT TO INTERLOCAL
AGREEMENT FOR WASTEWATER LINE
RELOCATION**

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT ("First Amendment") is made and entered into by and between the City of Austin, a Texas home-rule ("City") and the Upper Brushy Creek Water Control and Improvement District ("District").

**I.
RECITALS:**

1.01. WHEREAS, on July 30, 2014, the City and the District executed an "Interlocal Agreement Regarding Wastewater Line Relocation at Dam 7 Project ("Interlocal Agreement") that set forth agreed terms for the design and construction of certain utility relocations that were determined to be necessary to allow the District to construction improvements to the Dam 7 spillway as more particularly described in the Wastewater Line Relocation Agreement. The City Council approved design and construction reimbursement costs for the Wastewater Line Relocation Project in amount not to exceed \$1,965,000.

1.02. WHEREAS, since the actual costs for the construction of the Wastewater Project came in more than the original cost estimate, on June 23, 2016, the City Council authorized an amendment of the Wastewater Line Relocation Project Agreement to provide for supplemental reimbursement for the additional construction costs associated with the Wastewater Project for a reimbursement amount not to exceed \$3,812,322.50.

1.03. WHEREAS, the City and the District now desire to enter into this First Amendment to the Interlocal Agreement to increase the City's reimbursement amount for costs reimbursable to the District for the Wastewater Line Relocation project for a reimbursement not to exceed amount of \$3,812,322.50.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the City and the District, hereby amend the Interlocal Agreement as follows:

**II.
AMENDMENTS TO THE WASTEWATER RELOCATION PROJECT
INTERLOCAL AGREEMENT**

2.01. From and after the date of this First Amendment, all references in the Wastewater Line Relocation project to the "Interlocal Agreement" shall mean and refer to the Wastewater Line Relocation Interlocal Agreement as amended by this First Amendment.

2.02 The Last Recital is amended to read as follows:

WHEREAS, the Austin City Council authorized the negotiation and execution of this Agreement and for the District to be reimbursed for design and construction costs originally not to exceed \$1,965,000. An increase in the amount of reimbursed construction costs was approved by the Austin City Council on June 23, 2016 for a total not to exceed \$3,812,322.50.

2.03. Section 4.02 (a) (vi) is amended to read as follows:

(vi) The District will require the contractor to obtain performance and payment bonds with respect to the Wastewater Line Relocation; and

III. GENERAL CONDITIONS

3.01. Effect of This Amendment. The terms and conditions of the Wastewater Line Relocation Project Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by this First Amendment, the parties hereby agree that the terms and conditions of the Interlocal Agreement are in full force and effect as written.

3.02. Resolution of Conflicts. If there is any conflict or inconsistency between the provisions of this First Amendment and the Wastewater Line Relocation Interlocal Agreement, the provisions of this First Amendment will control.

3.03. Defined Terms. All terms in this First Amendment that are defined in the Interlocal Agreement shall have the same meaning in this First Amendment as in the Interlocal Agreement. Other terms have the meanings commonly ascribed to them.


3.04. Duplicate Originals. This First Amendment may be executed in duplicate originals, each of equal dignity.

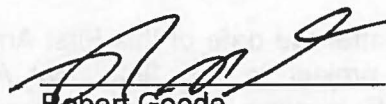
3.05. Effective Date. This First Amendment will be effective from and after the date of execution by the City and the Upper Brushy Creek WCID,

IN WITNESS WHEREOF, the authorized representatives of the City and the Upper Brushy Water Control and Improvement District, have executed this First Amendment, as of the date(s) indicated below.

Approved as to form:

CITY OF AUSTIN:


Maria Sanchez
Assistant City Attorney

By: 
Robert Goode
Assistant City Manager

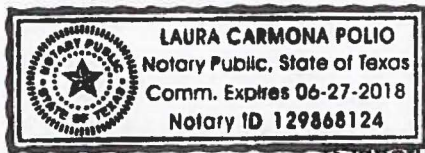
THE STATE OF TEXAS §

COUNTY OF WILLIAMSON

§
§

THIS INSTRUMENT was acknowledged before me on this 7th day of October, 2016, by Robert Goode, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.

(SEAL)



Laura Carmona Polio
Notary Public, State of Texas

[Signatures continued on following page]

Approved as to form:

[Signature]
Attorney for Owner

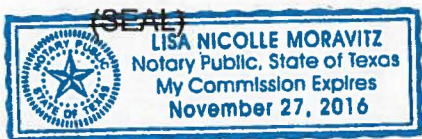
Upper Brushy Creek WCID

By: [Signature]
Name: Jeff Sawyer
Title: Board President

THE STATE OF Texas §

COUNTY OF Williamson §
§

THIS INSTRUMENT was acknowledged before me on this 16th day of September, 2016, by Jeff Sawyer, Board President on behalf of Upper Brushy Water Control and Improvement District.



Lisa Nicole Moravitz
Notary Public, State of Texas

**INTERLOCAL AGREEMENT REGARDING
WASTEWATER LINE RELOCATION**

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON §

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into among the Upper Brushy Creek Water Control and Improvement District ("District") and the City of Austin, Texas, a Texas home-rule city ("City"). In this Agreement, the District and the City are sometimes individually referred to as "Party" and collectively referred to as "Parties".

Recitals

WHEREAS, the City currently has a portion of 15" diameter wastewater line including associated manholes, appurtenances and easement ("Wastewater Line") which are located within the District's easement for Retarding Structure No. 7 ("Dam #7 Easement"); and

WHEREAS, the District is in the process of rehabilitating Dam #7, hereinafter identified as the "Dam #7 Rehabilitation Project", which requires the relocation of the Wastewater Line to another area as necessary to accommodate the Dam #7 Rehabilitation Project; and

WHEREAS, it is agreed that it is financially beneficial and expedient to both Parties to allow the District to relocate the Wastewater Line on behalf of the City, conditioned upon the City's agreement on reimbursing the District for the relocation costs; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions pursuant to which the Parties shall participate in costs defined in Section 1.04; and

WHEREAS, the Austin City Council authorized the negotiation and execution of this Agreement and for the District to be reimbursed for design and construction costs not to exceed \$1,965,000;

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.

DEFINITIONS

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

1.01 "Agreement" means this Interlocal Agreement Regarding Wastewater Line Relocation.

1.02 "Bid Documents" means the plans and specifications, together with all contract documents and bid instructions, relating to construction of the Project.

1.03 "City" means the City of Austin, Texas

1.04 "City Wastewater Line Costs" means all actual and reasonable costs and expenses incurred by the District relating to design and construction of the Project. Costs for District staff and staff expenses are excluded from reimbursement by the City. By way of example, the District Wastewater Line Costs can include the following types of costs and expenses: (i) costs and expenses incurred by the District under the Engineering Services Agreements from and after the effective date of the agreement; (ii) costs and expenses related to the Construction Project; and (iii) costs and expenses related to the acquisition of easements, including attorney fees, appraisal fees, and survey fees.

1.05 "Construction Project" means all costs and expenses related to the construction of the Project.

1.06 "District" means the Upper Brushy Creek Water Control and Improvement District

1.07 "Engineering Services Agreements" means that certain professional engineering services contract entered into by the District relating to the design and construction phase services for the proposed Wastewater Line Relocation.

1.08 "Effective Date" means the last date of execution of this Agreement by the Parties.

1.09 "Existing Wastewater Line Relocation" means the existing 15" diameter gravity wastewater line including associated manholes, appurtenances and easement owned and operated by the City within the Dam #7 Rehabilitation Project Area, which will be abandoned and relocated in accordance with the terms and conditions of this Agreement.

1.10 "Party" or "Parties" means the District and/or the City, individually or collectively, as applicable

1.11 "Project" means the Wastewater Line Relocation, as set forth in this Agreement.

1.12 "Project Area" means the area in which the Project will be undertaken, as said Project Area is more particularly identified in Exhibit A Brushy Creek Dam #7 Project Location Map and Exhibit B "Wastewater Lines to be Relocated" attached hereto.

1.13 "Project Contractor" means the contractor(s) that enter into a contract with the District for construction of the Project.

1.14 "Wastewater Line Design Work" means the engineering consulting and design services to be undertaken by the District and its engineering consultants in connection with the project to install a new 15" PVC gravity sewer line including associated manholes,

appurtenances and easement and provide continuous conveyance of wastewater throughout the relocation Project.

1.15 "Wastewater Line Relocation" means the construction of the Wastewater Line, including all related manholes, appurtenances, and easement to each of these improvements.

II. STATEMENT OF INTENT

2.01 General. The purpose of this Agreement is to provide for the City to relocate an existing 15" diameter wastewater line including associated manholes, appurtenances and easement out of an area planned for construction of a new auxiliary spillway for Retarding Dam Structure No. 7; and to allow for the construction of the Wastewater Line Relocation by the District, with prompt reimbursement by the City of all related design and construction costs, determined to be actual and reasonable by the City. The District shall have the primary project management responsibility and the City will provide a supporting role.

2.02 The District will obtain a new easement for the relocated wastewater line in accordance with City standards. The easement document will include language that states that if the relocated wastewater line and associated easement are within the limits of an existing dam or impoundment related easement, any future relocation of the wastewater line required by the District will not be borne by the City. By this Agreement, the City specifically authorizes the District's legal counsel to conduct any eminent domain actions related to the acquisition of easements on behalf of the City.

2.03 Indemnity. The City will not be liable to the District, the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors. The District shall, in contracting with the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors, cause these parties to waive all claims against the City, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about Wastewater Relocation Project. The District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors hereby agree to indemnify, defend and hold the City harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursement, arising from or related to any use or occupancy of the wastewater line, any condition of the wastewater line, any default in the performance of the District, the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors obligations under this agreement, any damage to any property, or any bodily or personal injury, illness or death of any person occurring in, on or about the wastewater line relocation or any part thereof, arising at any time, and from any cause whatsoever. This section will survive the termination of this agreement.

III.

DESIGN OF PROJECT

3.01 Design of Wastewater Line Relocation. Promptly after execution of this Agreement by the Parties, the District will authorize its engineering consultants to provide engineering consulting services for the Wastewater Line Design Work in accordance with the Engineering Services Agreements. The City will review and comment on the scope of services and associated costs.

3.02 Cost of Design. The District will advance and pay the cost of the Wastewater Line Design Work, subject to its right to reimbursement from the City in accordance with the terms of this Agreement.

3.03 Reimbursement of District Wastewater Line Costs. Upon the District's approval of each invoice for the Wastewater Line Design Work under the Engineering Services Agreements, the District will transmit a copy of the invoice to the City. Each invoice shall identify all Wastewater Line Costs incurred by the District relating to the Project. Within 5 business days of the City receiving the invoice and supporting information, the City will either approve the invoice or request additional information to complete the review process. The City shall mail full payment for each invoice within 30 business days of the City's approval of the invoice. Each invoice submitted by the District for reimbursement will clearly describe the work done for which reimbursement is sought, and will not seek reimbursement or payment for any costs or expenses other than City Wastewater Line Costs. Upon request of the City, the District agrees to make available documentation in reasonable detail evidencing all Wastewater Line Costs for which reimbursement is sought. Payment not mailed within 30 business days of approval by the City will accrue interest at the rate set forth in Government Code Section 2251.025(b).

3.04 Work Product. Upon receipt of a request from the City, the District agrees to make available to the City a copy of any work product produced by its engineering consultant in connection with the Wastewater Line Design Work within 5 business days of receipt of the request.

IV.

CONSTRUCTION OF PROJECT

4.01 General. The Parties mutually acknowledge and agree that the District shall construct all physical improvements that constitute the Project, including the Wastewater Line Relocation, subject to reimbursement by the City as provided in Section 3.03.

4.02 Approval of Bid Documents.

(a) Without limitation, the Bid Documents must include the following requirements relating to the construction of the Wastewater Line Improvements:

(i) The City's existing wastewater system shall remain operational at all times until the Wastewater Line Relocation is completed, operational, and accepted by the City. The operational status may be maintained by gravity flow or bypass pumping for limited periods when necessary;

(ii) The wastewater relocation work must meet the City's minimum standards presented in the City's Utility Design Criteria Manual, Standard Details, and Standard Specifications.

(iii) The wastewater design must be reviewed by the AWU plan reviewers at the 30%, 60%, and 90% phases and the 100% bid set must meet the approval of the AWU plan reviewers. The City will provide comments within 10 business days of receipt of the documents. During construction, design changes or modifications must be processed as a design modification through the AWU plan reviewers;

(iv) The design documents must include a new, recorded wastewater line easement in the City's standard language;

(v) The City shall be named as an additional insured on the contractor's insurance policies for work related to the Wastewater Line;

(vi) The City shall be named as additional beneficiary under the contractor's performance and payment bonds with respect to the Wastewater Line Relocation; and

(b) The District agrees that it shall not amend any aspect of the Bid Documents as it relates to the Wastewater Line Relocation without the City's prior written consent. The District agrees that the bid process will conform to State laws.

4.03 Bid Award.

(a) All construction contracts for the Project will be competitively bid and awarded by the District in the manner provided by State laws, and in accordance with this Section.

(b) The bid tabulation and related information for the construction of the Project as they relate to the Wastewater Line Relocation will be submitted to the City for review and consideration. The City shall consider the advice and recommendations of the District, but the decision as to the acceptance of any bid pertaining to the Wastewater Line Relocation shall be within the sole discretion of the City.

(c) The District shall furnish the bid tabulation and recommended award pertaining to the Wastewater Line Relocation to the City not less than 10 business days prior to awarding a contract for construction of the Project. Within 10 business days after receipt of the bid tabulation, the City must inform the District in writing as to whether or not to proceed with the bid award for the Wastewater Line Relocation.

4.04 Construction of Wastewater Line Improvements.

(a) **General.** The District shall be responsible for causing the Project to be constructed and acquiring all related equipment, materials and supplies. In connection with the construction of the Wastewater Line Relocation, the District agrees to use good faith and reasonable efforts to ensure that the Project Contractor completes construction of the Wastewater Line Relocation in accordance with the plans and specifications and other requirements set forth in the Bid Documents.

(b) Payment of Costs.

(i) The District shall enter into to one or more contracts for the Wastewater Line Relocation work as part of the District's dam improvements. The invoices from the District's contractor(s) must include a breakout of costs between the Wastewater Line Relocation efforts and any dam improvement work included in the contract(s). The District will require its contractors to provide invoices on a monthly basis.

(ii) **Monthly Invoices.** The District shall provide the City with two (2) copies of each pay application and supporting documentation on a monthly basis. The documentation must demonstrate that the work associated with the pay application is directly associated with Wastewater Line Relocation. Within five (5) business days of receipt of the pay application and supporting information, the City will either approve the pay application or request additional information. The City will mail payment to District within 30 business days of the City's approval of the pay application. Payment not mailed within 30 business days of approval by the City will accrue interest at the rate set forth in Government Code Section 2251.025(b).

(iii) **Change Orders.** In the event that the contractor(s) submits any change orders in response to unanticipated conditions encountered during construction relating to the Wastewater Line Relocation, the District will provide the City with change order request and supporting information. Within five (5) business days of receipt of the change order and supporting information, the City will either approve the change order or request additional information. The District agrees to facilitate any meetings requested by the City to discuss and resolve change order requests. Upon approval of the change order by the City, the costs associated with the change order may be included on the next pay application.

(iv) Any change order that results in an increase to the City Council approved Not to Exceed maximum amount must be approved by the City Council prior to the expenditure. This approval process may take up to 6 months. In that instance, no interest will accrue until thirty business days from the date of Council approval.

(c) Inspection.

(i) The District shall retain a full-time construction inspector to inspect construction of the Project. The District will notify the City of any construction

defects relating to the Wastewater Line Relocation coming to its attention as soon as practicable and in no event later than three (3) business days after obtaining knowledge of the defect. The City may elect to have its employees or staff inspect or observe construction of the Wastewater Line Relocation. The District agrees to provide the City at least 5 business days notice prior to the beginning construction of the Wastewater Line Relocation.

(ii) The City's representatives shall have a reasonable right to access and inspect the Wastewater Line Relocation as construction progresses, and the District shall not interfere with such access or inspection by the City or its designated representative(s).

4.05 Acceptance.

(a) The City will provide an inspection and prepare a list of any remaining work or corrections to be performed at substantial and final completion.

(b) Upon completion of construction of the Project, the District shall obtain the approval of the City prior to acceptance and final payment of retainage to the Project Contractor.

(c) Within 30 business days after completion of construction and prior to final payment to the engineers for the Project, the District will cause the Project engineers to provide to the City a concurrence letter certifying that construction of the Wastewater Line Relocation has been completed in accordance with the approved plans, specifications and any change orders, that the facilities have been tested and approved for use in accordance with the approved contract documents.

(d) Within 60 business days after substantial completion of construction of the Project, and prior to final payment to the engineers, the District will cause the Project engineers to provide to the City a copy of the final record drawings of the completed Wastewater Line Relocation in an electronic format requested by the City.

(e) The District agrees that upon such final payment and submittal of the final record drawings, the Wastewater Line Relocation and any associated easements will be conveyed to the City with all rights and obligations. The District agrees that it does not and will not have any rights to the City's infrastructure or associated easements. Upon the time of final completion of the Wastewater Relocation by the District and the City's inspection and final acceptance of same, the City will own, operate, and maintain the project as part of the City's wastewater system and shall be responsible for all costs associated with same.

4.06 Warranties. The District agrees to cause the Project Contractor to repair all defects in materials, equipment or workmanship appearing within one year from the date of acceptance of the Wastewater Line Improvements. Upon receipt of written notice from the City of the discovery of any defects during this period, the District shall promptly cause the Project Contractor to remedy the defects and repair or replace any property damaged as a result thereof.

V.
NEGOTIATION AND MEDIATION OF DISPUTES

5.01 Remedies. The Parties agree that their respective obligations under this Agreement are unique and the failure by any Party to perform its obligations under this Agreement would not be 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 for any performance bond.

5.02 Dispute Resolution. The Parties agree to attempt first to resolve disputes concerning this Agreement amicably by entering into negotiations in good faith. The Parties agree that they will not refer any dispute to mediation or litigation until they have first made reasonable and good faith efforts to settle their differences by joint negotiations conducted in a timely manner.

5.03 Mediation. If any dispute cannot be resolved through good faith negotiation, then the Parties shall select within fifteen (15) business days, a trained mediator to assist with resolution of the dispute. The parties will share the mediator's fees equally and the parties will bear their own cost of participation, such as fees for any consultants or attorneys they may utilize to represent them or assist them in the mediation.

VI.
GENERAL PROVISIONS

6.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

6.02 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.

6.03 Assignment. Except as otherwise provided herein, the assignment of this Agreement by any Party is prohibited without the prior written consent of the other Party. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party.

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

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

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

6.07 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

6.08 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

6.09 Contacts. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; or (ii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

DISTRICT: Upper Brushy Creek WCID
Attn: General Manager
4000 Sunrise Rd.
Building 1, Suite 1200
Round Rock, Texas 78664
Telephone: (512) 284-7685
Ruth.Haberman@UpperBrushyCreekWCID.org

CITY Austin Water Utility
Collection System Engineering Div.
Attn: Mike Russ, P.E.
2600 Webberville Rd, 2nd Floor
Austin, TX 78702
Telephone 512-972-2054
Michael.Russ@AustinTexas.gov

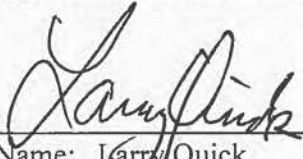
6.10 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by reference:

Exhibit A - Brushy Creek Dam 7 Project Location Map
Exhibit B - Wastewater Lines to be Relocated

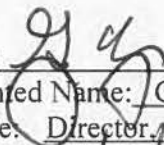
6.11 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

6.12 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement. The City of Austin City Council must approve this agreement.

UPPER BRUSHY CREEK WCID

By: 
Printed Name: Larry Quick
Title: President
Date: 5-16-14

CITY OF AUSTIN, TEXAS:

By: 
Printed Name: Greg Meszaros
Title: Director, Austin Water Utility
Date: 7/21/14

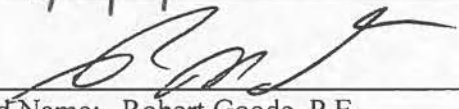
By: 
Printed Name: Robert Goode, P.E.
Title: Assistant City Manager
Date: 7/31/14

EXHIBIT "A"

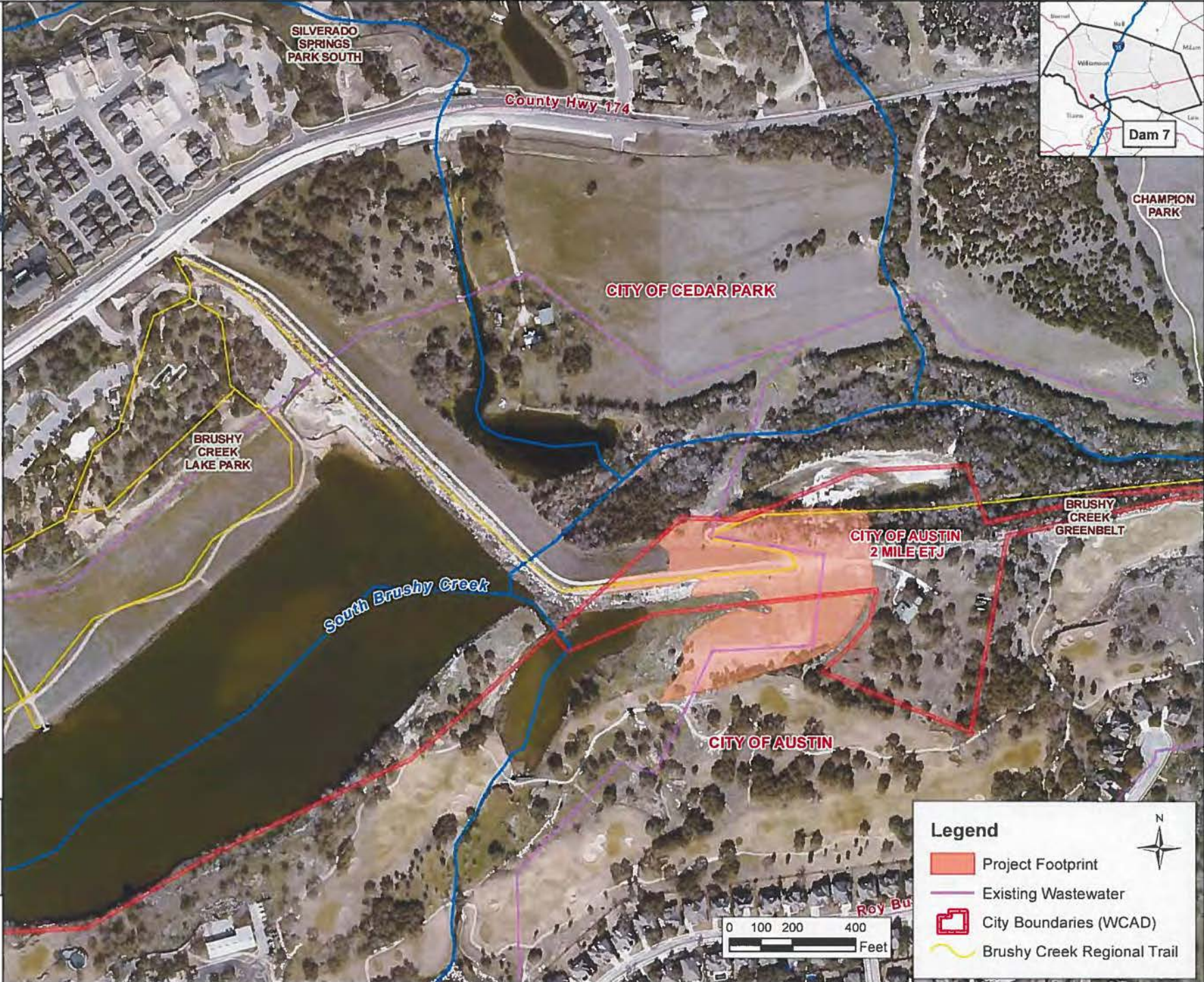
PROJECT NO: 2003-0001
 DATE CREATED: 04/17/2014
 FILE NAME: Upper Brushy Creek W.C.L.D.
 DRAWN & COORDINATE BY: J. Nichols
 CHECKED BY: J. Nichols



Project Location Dam 7 Modernization Project UPPER BRUSHY CREEK W.C.L.D.

PRESTON AND NICHOLS, INC.
 10834 JOLIVILLE ROAD
 AUSTIN, TX 78739
 PHONE: 512.817.3100

EXHIBIT
 A



Legend

- Project Footprint
- Existing Wastewater
- City Boundaries (WCAD)
- Brushy Creek Regional Trail

EXHIBIT "B"

**INTERLOCAL AGREEMENT REGARDING
WASTEWATER LINE RELOCATION**

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON §

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into among the Upper Brushy Creek Water Control and Improvement District ("District") and the City of Austin, Texas, a Texas home-rule city ("City"). In this Agreement, the District and the City are sometimes individually referred to as "Party" and collectively referred to as "Parties".

Recitals

WHEREAS, the City currently has a portion of 15" diameter wastewater line including associated manholes, appurtenances and easement ("Wastewater Line") which are located within the District's easement for Retarding Structure No. 7 ("Dam #7 Easement"); and

WHEREAS, the District is in the process of rehabilitating Dam #7, hereinafter identified as the "Dam #7 Rehabilitation Project", which requires the relocation of the Wastewater Line to another area as necessary to accommodate the Dam #7 Rehabilitation Project; and

WHEREAS, it is agreed that it is financially beneficial and expedient to both Parties to allow the District to relocate the Wastewater Line on behalf of the City, conditioned upon the City's agreement on reimbursing the District for the relocation costs; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions pursuant to which the Parties shall participate in costs defined in Section 1.04; and

WHEREAS, the Austin City Council authorized the negotiation and execution of this Agreement and for the District to be reimbursed for design and construction costs not to exceed \$1,965,000;

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**I.
DEFINITIONS**

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

1.01 "Agreement" means this Interlocal Agreement Regarding Wastewater Line Relocation.

appurtenances and easement and provide continuous conveyance of wastewater throughout the relocation Project.

1.15 "Wastewater Line Relocation" means the construction of the Wastewater Line, including all related manholes, appurtenances, and easement to each of these improvements.

II. STATEMENT OF INTENT

2.01 General. The purpose of this Agreement is to provide for the City to relocate an existing 15" diameter wastewater line including associated manholes, appurtenances and easement out of an area planned for construction of a new auxiliary spillway for Retarding Dam Structure No. 7; and to allow for the construction of the Wastewater Line Relocation by the District, with prompt reimbursement by the City of all related design and construction costs, determined to be actual and reasonable by the City. The District shall have the primary project management responsibility and the City will provide a supporting role.

2.02 The District will obtain a new easement for the relocated wastewater line in accordance with City standards. The easement document will include language that states that if the relocated wastewater line and associated easement are within the limits of an existing dam or impoundment related easement, any future relocation of the wastewater line required by the District will not be borne by the City. By this Agreement, the City specifically authorizes the District's legal counsel to conduct any eminent domain actions related to the acquisition of easements on behalf of the City.

2.03 Indemnity. The City will not be liable to the District, the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors. The District shall, in contracting with the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors, cause these parties to waive all claims against the City, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about Wastewater Relocation Project. The District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors hereby agree to indemnify, defend and hold the City harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursement, arising from or related to any use or occupancy of the wastewater line, any condition of the wastewater line, any default in the performance of the District, the District's design engineer, the design engineer's subcontractors, the District's construction contractor, and the District's construction contractor's subcontractors obligations under this agreement, any damage to any property, or any bodily or personal injury, illness or death of any person occurring in, on or about the wastewater line relocation or any part thereof, arising at any time, and from any cause whatsoever. This section will survive the termination of this agreement.

(i) The City's existing wastewater system shall remain operational at all times until the Wastewater Line Relocation is completed, operational, and accepted by the City. The operational status may be maintained by gravity flow or bypass pumping for limited periods when necessary;

(ii) The wastewater relocation work must meet the City's minimum standards presented in the City's Utility Design Criteria Manual, Standard Details, and Standard Specifications.

(iii) The wastewater design must be reviewed by the AWU plan reviewers at the 30%, 60%, and 90% phases and the 100% bid set must meet the approval of the AWU plan reviewers. The City will provide comments within 10 business days of receipt of the documents. During construction, design changes or modifications must be processed as a design modification through the AWU plan reviewers;

(iv) The design documents must include a new, recorded wastewater line easement in the City's standard language;

(v) The City shall be named as an additional insured on the contractor's insurance policies for work related to the Wastewater Line;

(vi) The City shall be named as additional beneficiary under the contractor's performance and payment bonds with respect to the Wastewater Line Relocation; and

(b) The District agrees that it shall not amend any aspect of the Bid Documents as it relates to the Wastewater Line Relocation without the City's prior written consent. The District agrees that the bid process will conform to State laws.

4.03 Bid Award.

(a) All construction contracts for the Project will be competitively bid and awarded by the District in the manner provided by State laws, and in accordance with this Section.

(b) The bid tabulation and related information for the construction of the Project as they relate to the Wastewater Line Relocation will be submitted to the City for review and consideration. The City shall consider the advice and recommendations of the District, but the decision as to the acceptance of any bid pertaining to the Wastewater Line Relocation shall be within the sole discretion of the City.

(c) The District shall furnish the bid tabulation and recommended award pertaining to the Wastewater Line Relocation to the City not less than 10 business days prior to awarding a contract for construction of the Project. Within 10 business days after receipt of the bid tabulation, the City must inform the District in writing as to whether or not to proceed with the bid award for the Wastewater Line Relocation.

defects relating to the Wastewater Line Relocation coming to its attention as soon as practicable and in no event later than three (3) business days after obtaining knowledge of the defect. The City may elect to have its employees or staff inspect or observe construction of the Wastewater Line Relocation. The District agrees to provide the City at least 5 business days notice prior to the beginning construction of the Wastewater Line Relocation.

(ii) The City's representatives shall have a reasonable right to access and inspect the Wastewater Line Relocation as construction progresses, and the District shall not interfere with such access or inspection by the City or its designated representative(s).

4.05 Acceptance.

(a) The City will provide an inspection and prepare a list of any remaining work or corrections to be performed at substantial and final completion.

(b) Upon completion of construction of the Project, the District shall obtain the approval of the City prior to acceptance and final payment of retainage to the Project Contractor.

(c) Within 30 business days after completion of construction and prior to final payment to the engineers for the Project, the District will cause the Project engineers to provide to the City a concurrence letter certifying that construction of the Wastewater Line Relocation has been completed in accordance with the approved plans, specifications and any change orders, that the facilities have been tested and approved for use in accordance with the approved contract documents.

(d) Within 60 business days after substantial completion of construction of the Project, and prior to final payment to the engineers, the District will cause the Project engineers to provide to the City a copy of the final record drawings of the completed Wastewater Line Relocation in an electronic format requested by the City.

(e) The District agrees that upon such final payment and submittal of the final record drawings, the Wastewater Line Relocation and any associated easements will be conveyed to the City with all rights and obligations. The District agrees that it does not and will not have any rights to the City's infrastructure or associated easements. Upon the time of final completion of the Wastewater Relocation by the District and the City's inspection and final acceptance of same, the City will own, operate, and maintain the project as part of the City's wastewater system and shall be responsible for all costs associated with same.

4.06 Warranties. The District agrees to cause the Project Contractor to repair all defects in materials, equipment or workmanship appearing within one year from the date of acceptance of the Wastewater Line Improvements. Upon receipt of written notice from the City of the discovery of any defects during this period, the District shall promptly cause the Project Contractor to remedy the defects and repair or replace any property damaged as a result thereof.

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

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

6.07 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

6.08 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

6.09 Contacts. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; or (ii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

DISTRICT:	Upper Brushy Creek WCID Attn: General Manager 4000 Sunrise Rd. Building 1, Suite 1200 Round Rock, Texas 78664 Telephone: (512) 284-7685 Ruth.Haberman@UpperBrushyCreekWCID.org
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CITY	Austin Water Utility Collection System Engineering Div. Attn: Mike Russ, P.E. 2600 Webberville Rd, 2 nd Floor Austin, TX 78702 Telephone 512-972-2054 Michael.Russ@AustinTexas.gov
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6.10 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by reference:

Exhibit A -	Brushy Creek Dam 7 Project Location Map
Exhibit B -	Wastewater Lines to be Relocated

6.11 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

EXHIBIT "A"

EXHIBIT "B"