

**FIRST AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY
CONCERNING EXCHANGE OF RECLAIMED WATER FOR
SURFACE WATER RIGHTS**

This First Amendment to the Interlocal Cooperation Agreement (the “Agreement”) is made effective as of _____ (the “Effective Date”) by and between the **CITY OF SAN MARCOS** (the “**CITY**”), 630 East Hopkins Street, San Marcos, Texas 78666 and **TEXAS STATE UNIVERSITY** (“**TEXAS STATE**”), 601 University Drive, San Marcos, Texas 78666. The **CITY** and **TEXAS STATE** are each referred to hereinafter as a “Party” and collectively as the “Parties.”

WHEREAS, **TEXAS STATE** and the **CITY**, entered into an Interlocal Cooperation Agreement concerning the exchange of Reclaimed Water for Surface Water Rights executed December 2, 2015 and December 3, 2015, (the “Agreement”); and

WHEREAS, **TEXAS STATE** and the **CITY** desire to amend the Agreement to correct TCEQ permit numbers and the stated acre feet of surface water for withdrawal;

NOW, THEREFORE, the Parties agree to be legally bound to this First Amendment to Interlocal Cooperation Agreement as follows:

1. **Article II AGREEMENT, Section 1 b. Allocation of Water Rights.** This section of the Agreement is revised to correctly reflect the acre feet of water permitted to be withdrawn and TCEQ permits numbers. Section 1 b is deleted in its entirety and replaced with the following:

“Concurrent with the start of the **CITY**’s delivery of reclaimed water to **TEXAS STATE**, **TEXAS STATE** will forego its rights to withdraw surface water that flows through the San Marcos River and hereby allocates its rights to the **CITY** to withdraw, 1,117 (One Thousand One Hundred Seventeen) acre feet of water from the San Marcos River under TCEQ permits numbered 3865, Seq #1, Amendment D (513 ac ft, municipal/domestic use); 3865, Seq #2, Amendment D (534 ac ft, industrial use); and 3865, Seq #4, Amendment D (70 ac ft, consumptive use).”

2. **Article II AGREEMENT, Section 1 f Texas State Credit for Unused Water.** This section of the Agreement is revised to correctly reflect the maximum acre feet of surface water rights made available to the **CITY**. Section 1 f is deleted in its entirety and replaced with the following:

“The **CITY** will provide a credit to **TEXAS STATE** for amounts of surface water rights made available to the **CITY** at a minimum of 400 (Four Hundred) acre feet, up to 1,117 (One Thousand One Hundred Seventeen) acre feet, annually, which credit will be applied against any charges for **CITY** water or wastewater utilities of any type provided to **TEXAS STATE** as explained in this paragraph. The credit will be calculated by: i) multiplying the current reclaimed water rate by the amount of surface water rights used

by the CITY at a minimum of 400 (Four Hundred) acre feet, up to 1,117 (One Thousand One Hundred Seventeen) acre feet, annually; ii) multiplying the current reclaimed water rate by the actual volume of acre feet of reclaimed water consumed by TEXAS STATE; and iii) providing a credit in the amount of the difference, if any. For example, if the current reclaimed water rate of \$439.90 per acre foot is multiplied by 1,117-acre feet of water, the value of such water is \$491,368.30 ($\$439.90 \times 1,117 = \$491,368.30$). If TEXAS STATE consumes 400-acre feet of water during a one-year period at a cost of \$175,960.00, TEXAS STATE will be entitled to a credit in the amount of \$315,408.30 ($491,368.30 - \$175,960.00 = \$315,408.30$).”

3. **Article II AGREEMENT, Section 5 b Current Funds.** This section of the Agreement is deleted in its entirety and is replaced with the following:

“All payments under this Agreement shall be made in accordance with the Prompt Payment Provisions of Texas Government Code 2251. Performance by either party under this Agreement may be dependent upon the appropriation and allotment of funds. If funds are not appropriated or if an allotment of the necessary funds fails to be made, then the City or TEXAS STATE will issue written notice and the parties will renegotiate this Agreement in good faith to preserve the underlying tenets. If unable to reach agreement, the parties will participate in non-binding mediation using a mutually agreeable mediator and sharing equally in the mediation expenses. The City and TEXAS STATE acknowledge that appropriation, allotment, and allocation of funds are beyond their control.

4. **Article II AGREEMENT, Section 5 Miscellaneous.** This section of the Agreement is revised with the addition of the following paragraphs after **Section 5 j**:

“k. Sovereign Immunity. Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by either party of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.

l. Public Records. It shall be the independent responsibility of the City and Texas State to comply with the provisions of Chapter 552, Texas Government Code (the “Public Information Act”), as those provisions apply to the parties’ respective information. The City is not authorized to receive public information requests or take any action under the Public Information Act on behalf of Texas State. Likewise, Texas State is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of The City.

m. Nondiscrimination. In their execution of this Agreement the Parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans’ status, sexual orientation, gender

identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

n. Right to Audit. The City understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency ("Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. The City shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all the information as requested. The City's failure to comply with this requirement shall constitute a material breach of Agreement and shall authorize TEXAS STATE and the State of Texas to assess immediately appropriate damages for such failure. The City acknowledges and understands that the acceptance of funds under Agreement shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. The City shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through the City and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

o. Independent Audit. The City agrees that Texas State, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of the City (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related City's charges incurred in its performance under this Agreement. Such records will be kept by the City for a period of four years after Final Payment under this Agreement. The City agrees to refund to TEXAS STATE within thirty days of being notified by TEXAS STATE of any overpayments disclosed by any audits.

p. Ethics Matters; No Financial Interest. The City and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf> and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). The City represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Neither the City nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy, The System's Ethics Code, or applicable state ethics laws or rules

Further, the City agrees to comply with §2252.908, [Texas Government Code](#) (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and The System with information required on the form promulgated by TEC. The City may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.

5. This First Amendment to Interlocal Cooperation Agreement shall be effective on the Effective Date.
6. All remaining provisions of the Agreement shall remain in full force and effect as to all other terms and conditions and shall remain binding on the Parties hereto.
7. Consent from the San Marcos City Council is necessary as a condition precedent to the legal effect of this Amendment.
8. The Agreement and First Amendment contain all agreements, promises, or understandings between TEXAS STATE and the CITY. In the event any provision of the Agreement and this First Amendment is found to be invalid or unenforceable, such a finding shall not affect the validity and enforceability of the remaining provisions of the Agreement and this First Amendment.

{Signatures to follow on next page}

