

INTERLOCAL AGREEMENT  
CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY- SAN MARCOS FOR  
COLLECTION AND ANALYSIS OF ORGANIC WASTEWATER CONTAMINANTS

The City of San Marcos ("City") and Texas State University – San Marcos ("Texas State"), Edwards Aquifer Research and Data Center ("EARDC") enter into this Interlocal Agreement under the authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended.

Section 1. Purpose of Agreement

The purpose of this Agreement is to provide systematic monitoring of groundwater near the Kissing Tree site from both up gradient and down gradient wells to assess the effects of applying reclaimed water on the golf course, as well as residential herbicides and insecticides over the recharge and contributing zones of the Balcones Fault Zone Edwards Aquifer. Texas State and the City agree that this agreement serves a public purpose.

Section 2. Scope of Services and Payment

a) Texas State agrees to:

1. Monitor water quality during development to assess the effects of local construction, effluent applied to the golf course, and urban runoff that could include insecticides and herbicides used on the development.
2. Continue the systematic water quality monitoring program developed for three wells (one or two up-gradient and one or two down-gradient) among the COSM and San Marcos National Fish Hatchery and Technology Center wells that are located adjacent to the Kissing Tree site.
3. Provide reports of analytical findings and other deliverables to the City and Brookfield Residential on at least an annual basis.

The work to be performed under this Agreement is more specifically described and detailed in the Scope of Services attached hereto and incorporated herein by reference as Attachments A and B

b) Payment. The City agrees to pay Texas State an amount not to exceed \$265,000 (approximately \$53,000 per year for 5 years) for the satisfactory performance of its services under this Agreement. Texas State will submit periodic invoices to City for the work defined in Attachment A. Payments for services will be made to Texas State within 30 days of receipt of the invoice.

Section 3. Term

The term of this Agreement begins immediately upon execution by both parties and shall continue in effect for 5 years. The parties agree and understand that the term of this agreement and the provision of the data and deliverables may be affected by the phasing or progress of the Kissing Tree development. The interlocal may be modified as needed to conform to Kissing Tree build-out.

Section 4. Miscellaneous Provisions

a) Interlocal Cooperation: The City and Texas State agree to cooperate with each other in good

faith at all times during the term of this Agreement in order to achieve the purposes of this Agreement. Each party to this Agreement acknowledges and represents that this Agreement has been executed by its duly authorized representative.

- b) Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement executed by both parties. Neither party may assign this Agreement without the written consent of the other party.
- c) Interpretation: The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Act. All terms and conditions are to be construed and interpreted consistently with the Act.
- d) Invalid Provision: Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.
- e) Choice of Law and Place of Performance: This Agreement is governed by the law of the State of Texas. Performance and all matters related thereto shall be in Hays County, Texas.
- f) Termination: Either party may terminate this Agreement for convenience by giving 30 days advance written notice to the other party.
- g) Dispute Resolution: The parties will use the dispute resolution process provided for in CHAPTER 2260 OF THE TEXAS GOVERNMENT CODE to attempt to resolve any claim that either party makes for breach of this agreement.
- h) Authority to Contract: Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.
- i) Waiver: Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
- j) Headings, Gender, Number: The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
- k) Agreement Read: The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

- l) Multiple Originals: It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- m) Exhibits/attachments: Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein. In the event of any conflict between this Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.
- n) Funding: Funds for the payment of the City's obligations under this Agreement have been provided through the City budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Agreement is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. City Council expects this to be an integral part of future budgets to be approved during the period of this Agreement except for unanticipated needs or events which may prevent such payments against this Agreement. However, the City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. In the event sufficient funds are not appropriated for the City's continued payment, this Agreement may be terminated without recourse by either party.
- o) Approving Modifications to the Agreement: This agreement may be modified upon mutual written agreement approved by the parties.

This Agreement will take effect immediately upon execution by both parties hereof and will inure to the benefit and be binding upon the administrators, successors and assigns of the parties hereto.

City of San Marcos

Texas State University – San Marcos

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 Bert Lumbreras  
 City Manager

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Date: \_\_\_\_\_

Date: \_\_\_\_\_