

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

This Interlocal Cooperation Agreement (the “Agreement”) is made and effective as of _____, 2015 (the “Effective Date”) by and between the City of San Marcos, Texas (the “City”), 630 East Hopkins Street 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.”

**ARTICLE I
RECITALS**

1. The Parties are participants in the Habitat Conservation Plan which was implemented to protect endangered species in the San Marcos River.

2. Enhancing stream flows through the San Marcos River will advance the purposes of the Habitat Conservation Plan.

3. The Parties recognize that one means of enhancing stream flows through the most sensitive sections of the San Marcos River is for Texas State to reduce the amount of water it withdraws from the river.

4. Texas State is willing to forego exercising its rights to withdraw surface water from the San Marcos River provided a suitable substitute quantity of reclaimed water is made available to it at a comparable cost.

5. The City operates a reclaimed water system that serves third party users and Texas State is willing to allocate a portion of its surface water rights to the City to enhance stream flows in the San Marcos River in exchange for reclaimed water from the City.

6. Texas State previously participated with the City in the cost to construct a segment of pipeline intended to connect Texas State’s main campus to the City’s reclaimed water

system. By separate agreement, the Parties will participate to complete the pipeline (the “Texas State Reclaimed Waterline Segment”) with the aid of grant funding from the Texas Water Development Board and the Edwards Aquifer Authority.

7. Pursuant to the Texas Interlocal Cooperation Act, Section 791.001, *et seq.* of the Texas Government Code which authorizes the Parties to contract with each other to perform governmental functions and services and in consideration of the mutual promises and benefits contained herein, the Parties enter into this Agreement.

ARTICLE II AGREEMENT

1. **Exchange of Surface Water Rights for Reclaimed Water.** Texas State agrees to allocate its rights to withdraw surface water that flows through the San Marcos River to the City in exchange for the delivery of reclaimed water from the City under the terms set forth below.

a. **Start of Water Delivery.** Within 30 days after completion and acceptance by the City of the Texas State Reclaimed Waterline Segment, the authorized representatives of Parties will coordinate to establish appropriate connections and metering systems for Texas State to receive reclaimed water from the City and to agree upon a date upon which delivery will begin.

b. **Allocation of Surface Water Rights.** 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 1,164 acre feet of water from the San Marcos River under TCEQ permits numbered 18-3865-401 (534 ac-ft) and 18-3865-404 (630 ac-ft).

c. City's Use of Allocated Surface Water. The City agrees that the allocation of surface water rights by Texas State shall be for the purpose of preserving and enhancing stream flows through identified endangered species areas along the San Marcos River and that the water, if withdrawn by the City, may only be withdrawn downstream of IH-35. For example, the water may be withdrawn at the wastewater treatment plant to be pumped as reuse water or be allowed to flow to a withdrawal point for treatment to potable water quality and used in the water system such as the CRWA plant in Martindale. The decision as to amounts withdrawn of the allocated amount shall be at the sole discretion of the City.

d. City to Provide Reclaimed Water. Beginning with the first date delivery of reclaimed water to Texas State as provided above, the City shall make available and deliver to Texas State up to 400 acre feet of reclaimed water per year from the City's reclaimed water system. Delivery of reclaimed water in excess of 400 acre feet per year will be subject to the availability of unallocated reclaimed water from the City's reclaimed water supplies.

e. Charges for Reclaimed Water. The City shall install such meters as are reasonable and customary for measuring the volume of reclaimed water consumed by Texas State. Texas State shall be charged for reclaimed water delivered from the City at the City's then applicable reclaimed water rate. The initial current rate in effect as of the Effective Date of this Agreement is \$1.35 per 1,000 gallons of water or \$439.90 per acre foot. The City shall bill Texas State in accordance with the usual and customary utility billing practices between the City and Texas State, provided that the billing for the first cycle under this Agreement may be prorated if the delivery of reclaimed water begins

during the middle of the normal billing cycle, e.g., monthly, quarterly, yearly, as applicable.

f. Texas State Credit for Unused Water. 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 acre feet, up to 1,164 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 made available to the city at a minimum of 400 acre feet, up to 1164 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 1,164 acre feet of water, the value of such water is \$512,043.60 ($\$439.90 \times 1164 = \$512,043.60$). 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 \$336,083.60 ($\$512,043.60 - \$175,960.00 = \$336,083.60$).

2. Term. This Agreement shall be effective on the date first shown above and shall continue for a period of 99 years, unless renewed by mutual written agreement of the Parties.

3. Subject to TCEQ Approvals. This Agreement and the obligations of the Parties under it are subject to approval by the Texas Commission on Environmental Quality of a change in the classification of the surface water allocated to the City from “Industrial” use to “Municipal” use and the change in location of the surface water withdrawal points downstream of the identified endangered habitat areas of the San Marcos River. The Parties agree to

cooperate in effecting such transfers in accord with all State statutes and requirements or those of any entity having jurisdiction. In the event such approvals are not obtained, Texas State may still purchase reclaimed water from the City at the following rates:

a. \$1.35 per 1,000 gallons of reclaimed water for a period of 10 years from the first date of delivery;

b. \$1.35 per 1,000 gallons of reclaimed water, plus one-third of the difference between such rate and the then applicable rate in effect for year 11;

c. \$1.35 per 1,000 gallons of reclaimed water, plus two-thirds of the difference between such rate and the then applicable rate then in effect for year 12; and

d. the applicable rates then in effect for year 13 and all subsequent years..

4. Notices. All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed properly delivered if sent by U.S. Mail return receipt requested, a nationally recognized overnight courier service, or by facsimile transmission or email to the following:

If to the City:
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: City Manager
citymanagerinfo@sanmarcostx.gov

If to Texas State:
William A. Nance
V.P. for Finance and Support Services
Texas State University
601 University Drive
San Marcos, Texas 78666
wn02@txstate.edu

Either Party may change the address for notice by providing written notice of such change to the other Party.

5. Miscellaneous. The following additional terms shall govern this Agreement.

a. Amendments. Any amendments to this Agreement shall be in writing and executed by a duly authorized representative of each of the Parties.

b. Current Funds. All payments under this Agreement shall be made from current revenues available to the paying Party. All obligations of either Party requiring an expenditure of funds beyond the current fiscal year shall be subject to appropriation of funds during the fiscal year in which the obligation is incurred. The City, however, may discontinue the delivery of reclaimed water to Texas State if Texas State fails to timely pay for such service in accordance with the usual and customary utility billing and payment practices between the parties, subject to resuming service upon receipt of payment.

c. Sole Agreement. This Agreement constitutes the entire agreement between the Parties, and there are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein.

d. Waiver. No delay or failure by either Party to exercise any right, power or remedy, under this Agreement, and no partial or single exercise of that right, power or remedy, shall constitute a waiver of that or any other right, power or remedy unless otherwise expressly provided herein. No waiver shall be deemed to have been made unless it is in writing and signed by the waiving Party.

e. Applicable Law and Venue. This Agreement is deemed to have been made in and to be performable in the Hays County, Texas, and shall be construed in accordance with and governed by the laws of the State of Texas.

f. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. Assignment. The provisions of this Agreement shall be binding upon and

inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that neither Party may assign any of their respective rights nor delegate any of their respective duties hereunder without the other Party's prior written consent.

h. Severability. The invalidity of any provision or provisions of this Agreement shall not affect any other provision of this Agreement, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Agreement affect the balance of such provision.

i. Interpretation. This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion thereof.

j. Dispute Resolution. To the extent applicable to this Agreement, the parties will use the procedures in Chapter 2260, Subchapter B of the Texas Government Code to resolve any disputes arising under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Interlocal Cooperation Agreement in duplicate counterparts, both having equal force and effect, as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF SAN MARCOS:

By: _____
Jared Miller, City Manager

THE TEXAS STATE UNIVERSITY SYSTEM:

Examined and Recommended:

President _____
Texas State University

Date

Chancellor _____
The Texas State University System

Date

Approved as to legal form:

Vice Chancellor and General Counsel

APPROVED by the Board of Regents on ____ [date of meeting] ____ at ____ [place of meeting] ____.

The Honorable _____
Chairman of the Board

Date