

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN  
THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY**

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**

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

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

**1.03.** 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 by replacing such water with reclaimed water from the City’s reclaimed water system.

**1.04.** Funding has been provided by the Texas Water Development Board (“TWDB”) and the Edwards Aquifer Authority (“EAA”) to assist with the City’s extension of a reclaimed waterline for delivery of reclaimed water to Texas State.

**1.05.** Concurrently with this Agreement, the Parties are entering into a separate interlocal agreement that addresses manner in which Texas State will allocate its rights to withdraw water from the San Marcos River to the City and the charges to be paid by Texas State for reclaimed water supplied by the City.

**1.06.** The purpose of this Agreement is to outline the responsibilities of the Parties for the design and construction of facilities associated with the extension of the City's reclaimed water system to Texas State and the manner in which the costs will be shared after applying any outside funding.

**1.07.** The Texas Interlocal Cooperation Act, Section 791.001, *et seq.* of the Texas Government Code authorizes the Parties to contract with each other to perform governmental functions and services. This Agreement concerns the performance of governmental functions and services.

**1.08.** For the reasons stated in these Recitals and the mutual benefits and obligations herein, the Parties wish to enter into this Agreement

## **ARTICLE II OBLIGATIONS OF THE PARTIES**

**2.01. Coordination and Scheduling.** Upon execution of this Agreement by both Parties, each Party shall designate one or more representatives responsible for coordinating the various activities under this Agreement.

**2.02. Design.** The provision of reclaimed water service to Texas State will require construction of a new pipeline segment between Texas State's main campus and the City's reclaimed water system, together with related facilities, equipment and appurtenances, including a storage reservoir (the "Extension Improvements"). In consultation with Texas State, the City has awarded a professional engineering services contract to Espey Consultants, Inc., dba, RPS (the "Engineer") in an amount not to exceed \$824,742.00 for the design of the Extension Improvements. The final plans and specifications developed by the Engineer for the Extension Improvements will be subject to review and approval of Texas State.

**2.03. Construction.** Upon agreement between the authorized representatives of the Parties, following approval by the parties of the specifications and cost estimates under section 2.02, the City will solicit bids for construction of the Extension Improvements under applicable municipal bidding procedures. The final bid price for any contract proposed to be awarded shall be approved by the Parties, after which time the City shall initiate the process for award of the construction contract by the San Marcos City Council.

**2.04. Cost Participation.** Texas State agrees to share in the costs for professional engineering service provided by the Engineer for and the costs for construction of the Extension Improvements in the percentages and amounts shown in Exhibit A, attached hereto and made a part hereof.

**a. Outside Agency Funding.** Funding from TWDB and EAA has been provided for design costs associated with the Extension Improvements and may be provided for construction costs as well. To the extent such funds can be applied toward the costs for the professional services provided by the Engineer or the construction contractor, the amounts owed by Texas State may be reduced by a percentage of the outside agency funding amount equal to percentages of Texas State's participation shown in Exhibit A.

**b. Adjustments in Cost.** The actual amount payable by Texas State under this section may be adjusted based upon actual authorized costs charged by the Engineer or the contractor for construction pursuant to the terms of the construction contract awarded by the City, applying the same percentages of participation shown in Exhibit A.

**c. Payment.** Texas State will pay any amounts due within 30 days after receipt of an invoice from the City for costs incurred by the City for professional services

provided by the Engineer, together with invoices from the Engineer to the City for services performed. Before award of the contract for construction, Texas State will deposit with the City its proportionate share of the contract amount, such that the City's financial obligation is fully funded on the date of contract award.

**Section 2.05. Construction of the Storage Reservoir.** After the mutual approval of the final plans and specifications for the Extension Improvements, and final construction cost estimates it is anticipated that the Parties will enter into a separate interlocal agreement outlining the responsibilities of the Parties and allocation of costs associated with construction of the Storage Reservoir.

**Section 2.06. Schedule.** The Parties will make reasonable efforts to coordinate and complete the construction of the Extension Improvements in accordance with the schedule set forth in Exhibit "B," attached hereto and made a part hereof.

### **ARTICLE III AMENDMENTS**

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

### **ARTICLE IV TERM OF AGREEMENT**

This Agreement shall be effective on the date first shown above and shall terminate upon the completion of all services by the Engineer under its professional services contract with the City and payment by Texas State of all reimbursement amounts due to the City under this Agreement.

### **ARTICLE V 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:

V.P. for Finance and Support Services  
Texas State University  
601 University Drive  
San Marcos, Texas 78666  
*pp03@txstate.edu*

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

## **ARTICLE VI REPORTS**

The City will provide to Texas State periodic written reports documenting the progress of the services of the Engineer in connection with the Extension Improvements.

## **ARTICLE VII GENERAL**

**7.01.** All payments under this Agreement shall be made from current revenues available to the paying Party.

**7.02.** 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. No amendments to this Agreement shall be binding on the Parties hereto unless in writing and signed by both Parties;

**7.03.** No delay or failure by either Party hereto 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.

**7.04.** 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.

**7.05.** 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.

**7.06.** 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.

**7.07.** 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.

**7.08.** The captions of the various sections of this Agreement are for descriptive purposes only and shall not alter or affect the terms and conditions of this Agreement.

**7.09.** 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.

**7.10.** The Parties each certify that it has the legal authority to enter into this Agreement.

**7.11.** Nothing in this Agreement will be construed to constitute either Party as a partner, employee or agent of the other Party, nor will either Party have the authority to bind the other in

any respect. Each Party will remain an independent contractor responsible for its own actions except as otherwise specifically provided herein.

**7.12.** 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 NEXT 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



## **EXHIBIT A**

## **EXHIBIT B**