

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF SAN MARCOS AND THE
GUADALUPE BLANCO RIVER AUTHORITY**

This Interlocal Cooperation Agreement (the "Agreement") is made and effective as of September 30, 2019 (the "Effective Date") by and between the City of San Marcos, Texas (the "City"), 630 East Hopkins Street and the Guadalupe-Blanco River Authority ("GBRA"), 933 East Court Street, Seguin, Texas. The City and GBRA are each referred to hereinafter as a "Party" and collectively as the "Parties."

**ARTICLE I
RECITALS**

1.01 The City of San Marcos is a member entity of the Alliance Regional Water Authority (ARWA) and is contracted for Carrizo Aquifer water from the ARWA for future water supply to the City.

1.02 The Guadalupe Blanco River Authority holds groundwater leases permitted to produce water from the Carrizo Aquifer and has contracted with ARWA to treat and deliver said water to GBRA delivery points including the San Marcos Regional Water Treatment Plant (SMRWTP).

1.03 The Parties recognize that certain improvements are required at the San Marcos Regional Water Treatment Plant including storage tankage, pumping facilities, pipelines, meters, and associated appurtenances to accommodate additional sources of water to be sourced from Carrizo Aquifer groundwater (the "Carrizo Facilities"). Other improvements, including additional back-up power facilities (the "Additional Plant Improvements") need to be added to the existing Plant, but are not part of the Carrizo Facilities. Collectively, these improvements shall be referred to herein as the "SMRWTP Improvements."

1.04 The Parties also recognize that they have differing quantities of water to be delivered by ARWA to the SMRWTP but economies of scale can be realized through a single project to design and construct the needed additional facilities.

1.05 The purpose of this Agreement is to outline the responsibilities of the Parties for the design and construction of the needed SMRWTP Improvements and the manner in which the costs will be allocated.

1.06 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.

1.07 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 Capacity Identification Requirement.

(a) The Parties will coordinate with ARWA on the volume of water to be delivered to the SMRWTP, in accordance with the terms of their respective water supply agreements with ARWA. The Parties shall also coordinate their capacity requirements in existing

SMRWTP storage and pumping facilities as well as the SMRWTP Improvements that are necessary to support the delivery and use of treated groundwater delivered from ARWA to the City and GBRA.

(b) The various components of the Carrizo Facilities requiring construction including a new storage tank; pumping facilities/equipment, associated electrical and control instrumentation, metering equipment, and associated appurtenances and pipelines that will connect the ARWA delivery pipeline to the plant storage and pumping systems are described in Exhibit A attached hereto and incorporated by reference for all purposes. Exhibit A also includes their relative capacities in the Carrizo Facilities described therein.

(c) The costs of the Additional Plant Improvements shall also be allocated as reflected in Exhibit A.

2.03 Design. In consultation with GBRA, the City has awarded a professional engineering services contract to Alan Plummer and Assoc. for design and construction phase services (the "Engineer") in an amount not to exceed \$480,440.00 for the design of the SMRWTP Improvements. The final plans and specifications developed by the Engineer for the SMRWTP improvements will be subject to review and approval of GBRA.

2.04 Construction. Upon agreement between the authorized representatives of the Parties, following approval by the Parties of the specifications and cost estimates under Section 2.03, the City will solicit bids for construction of the SMRWTP 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.

2.05 Cost Participation, Adjustments in Cost, and Payment.

(a) **Cost Participation.** GBRA agrees to share in the costs for professional engineering services provided by the Engineer for and the costs for construction of the SMRWTP Improvements. Design costs for the pump station by the sub-consultant HDR will be paid for solely by GBRA. The remaining costs for engineering services for SMRWTP Improvements will be apportioned between the City and GBRA based upon the amounts shown in Exhibit A, attached hereto and made a part hereof. In conjunction with the development of construction plans and specifications, each bid line item will be paired with a corresponding percentage allocation between the City and GBRA (“Bid Line Percentage Allocation”). Prior to bidding, estimated construction costs will be provided for approval by GBRA. Based upon the awarded construction contract, the Bid Line Percentage Allocations shall be used to determine construction cost allocation between the City and GBRA.

(b) **Adjustments in Cost.** The actual amount payable by GBRA 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 methodology described above.

(c) **Payment.** GBRA 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. GBRA represents that it has obtained sufficient financing to cover its estimated share of the SMRWTP Improvements. Before Notice to Proceed is given for construction, GBRA will deposit with the City GBRA’s proportionate share of the contract amount, such that the City’s financial obligation may be fully funded.

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

ARTICLE III AMENDMENTS

3.01 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

4.01 This Agreement shall be effective on the date first shown above and shall terminate on the later of:

- (a) Completion and acceptance of construction and full payment of all contractors, subcontractors, engineers and consultants; or,
- (b) Payment by GBRA of all reimbursement amounts due to the City under this Agreement.
- (c) The expiration of the last warranty period under one or more contracts for the construction of the SMRWTP Improvements.

ARTICLE V NOTICES

5.01 Notices

(a) 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 GBRA:

Guadalupe-Blanco River Authority
933 East Court Street
Seguin, Texas 78155
Attn: General Manager/CEO

gm@gbra.org

(b) Either Party may change the address for notice by providing written notice of such change to the other Party in accordance with Subsection (a) of this section.

ARTICLE VI INFORMATION

6.01 The City will provide to GBRA periodic written reports documenting the progress of the services of the Engineer in connection with the SMRWTP Improvements. During construction, GBRA's representatives will be allowed to attend all regular scheduled construction progress meetings. The City will provide notice of each meeting to GBRA promptly after a meeting is scheduled.

ARTICLE VII GENERAL

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

7.02 This Agreement constitutes the entire agreement between the Parties related to the subject matter contained herein, and there are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein.

7.03 No amendments to this Agreement shall be binding on the Parties hereto unless in

writing and signed by both Parties.

7.04 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.

7.05 No waiver shall be deemed to have been made unless it is in writing and signed by the waiving Party.

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

7.07 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.

7.08 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.

7.09 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.

7.10 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.

7.11 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.

7.12 Each Party certifies that it has the legal authority to enter into this Agreement.

7.13 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.

7.14 This Agreement is for the exclusive benefit of the Parties and no third party may claim any right, title or interest in any benefit arising under this Agreement.

7.15 A Party will not be deemed to be in breach, default or otherwise in violation of any term of this Agreement to the extent such Party's action, inaction or omission is the result of a *Force Majeure* Event. "*Force Majeure* Event" means any event or occurrence that is not within the control of such Party and prevents a Party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance; civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Party, over the activities of the Party related to this Agreement, or over a Party's operations.

[signatures on following page]

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.

City of San Marcos

Guadalupe-Blanco River Authority

Bert Lumbreras
City Manager

Kevin Patteson
General Manager/CEO

EXHIBIT A

EXHIBIT B