

AGREEMENT FOR EXCHANGE OF WATER CCN AREAS AND PURCHASES OF ASSOCIATED WATER UTILITY ASSETS

This agreement (the "Agreement") is entered into on _____ (the "Effective Date") by and between Maxwell Special Utility District ("Maxwell") and the City of San Marcos, Texas, a home rule municipal corporation (the "City"), for the exchange of water CCN areas and the mutual sale and purchase of associated water utility assets. Maxwell and the City may be referred to individually as a "Party" or, collectively, as the "Parties."

I. RECITALS

1. Maxwell is a special utility district created under Chapters 49 and 65 of the Texas Water Code for the purpose of providing potable water to retail customers under a Certificate of Convenience and Necessity ("CCN") No. 10293 issued by the Public Utility Commission of Texas ("PUC"). Maxwell previously operated and provided such water service as a Water Supply Corporation.

2. The City is a home rule municipal corporation that owns and operates a municipal water system providing potable water to customers within its corporate boundaries under PUC water CCN No. 10298.

3. In connection with the provision of water under their respective CCN's, Maxwell and the City each own assets, including real property interests, equipment, facilities and pipelines necessary for potable water transmission and distribution, together with associated retail water customer service agreements and accounts.

4. The Parties have mutually determined that a portion of the area covered by Maxwell's CCN (the "Maxwell Exchange Area") is more efficiently served by the City and that a portion of the area covered by the City's CCN (the "City Exchange Area") is more efficiently served by Maxwell. The Parties, therefore, wish to exchange with each other such portions of the areas covered their respective CCN's, together with any customer accounts and assets related to the provision of potable water in the areas sought to be exchanged. The Maxwell Exchange Area and the City Exchange Area are each described in Exhibit A, attached hereto and made a part hereof (the Maxwell Exchange Area and the City Exchange Area are, collectively, the "Exchange Areas").

5. The purpose of this Agreement is to set forth the terms and conditions under which the Parties will execute the transfer of the Exchange Areas and the conveyance of associated assets necessary to provide service in such Exchange Areas. In consideration of the foregoing and the mutual benefits and obligations of the Parties herein, the Parties enter into this Agreement.

II. AGREEMENT

1. Preliminary Matters.

A. In order to execute this Agreement, the Parties must petition the PUC, and

provide all notices to customers affected by this Agreement, pursuant to Title 16 Texas Administrative Code, Section 24.253.

B. Delegation of Authority. Subject to applicable laws or applicable internal policies and procedures of the Parties, by approval of this Agreement, the City Council of the City authorizes its City Manager (or his designees), and the Board of Directors of Maxwell authorizes its General Manager. to execute all agreements, instruments, applications and requests, to retain any professionals and consultants and to assign appropriate staff representatives as reasonably necessary to complete the activities under this Agreement.

C. State Agency Approvals. Within 30 days after the Effective Date, the duly assigned representatives of the Parties shall approve a written schedule of required state agency or political subdivision approvals necessary to enable the purposes of this Agreement. The written schedule shall outline each specific approval needed and the dates by which formal applications, petitions or other forms of request shall be submitted to the approving state agency or political subdivision. The Parties shall be jointly responsible for submitting all necessary applications under this paragraph. Among the anticipated approvals required are the PUC's approval of the sale of assets and transfer of the Exchange Areas from each Party's respective water CCN to the other Party's water CCN.

i. Responsible Party. The duly assigned representatives of the Parties may mutually agree to designate authorized employees or agents to execute specific tasks in the completion of activities for which the Parties are jointly responsible. For example, the Parties may join in an application, but the designated employee of one Party may be assigned the responsibility file the application.

ii. Expenses. The Party contracting for professionals and consultants assisting in the preparation or prosecution of applications for approvals required to transfer the Exchange Areas will be responsible for payment for those services. Each respective Party is responsible for its own legal expenses. The Parties believe no additional land boundary survey will be needed for transfer of the CCN Exchange Areas. However, in the event surveys are required by the PUC, the Parties will share the expense equally. Subject to applicable procurement laws, the Parties will get quotes for local survey firms to conduct the work and agree on the firm to be used, if necessary.

iii. Information. The Parties agree to cooperate in good faith to provide such information as is reasonably necessary to submit any applications, petitions or requests required to be submitted under the written schedule.

iv. Agreement Subject to Agency Approvals. This Agreement and the obligations of the Parties herein are subject to all necessary state agency approvals under the written schedule and as otherwise required by applicable laws. If all necessary approvals are not obtained, then this Agreement shall terminate at the option of either Party by providing written notice of termination to the other or

by written mutual agreement to terminate.

2. Property Conveyed. Upon Closing, each Party shall sell, transfer and convey to the other all of its rights, title and interest in and to existing real property assets, if any, and personal property assets associated with the provision of service in each Party's respective Exchange Area that is being transferred to the other Party. (the "Exchange Area Assets"). Exchange Area Assets generally known to the Parties as of the date of execution of this Agreement are identified in Exhibit B, attached hereto and made a part hereof for all purposes. Within 60 days after execution of this Agreement, the authorized representatives will cooperate to identify specifically all real and personal property assets associated with the Exchange Area. When the specific Exchange Area Assets are later identified by the authorized representatives, Exhibit B will be administratively amended to specifically list them (e.g., a map of and description of specific pipelines, a list of any specific easements indicating the recording information and locations, etc.). The Parties will promptly request a title commitment from the Title Company (identified below) for any real property interests identified by the authorized representatives. The Exchange Area Assets shall be conveyed free and clear of all liens, assessments, security agreements and encumbrances, except for matters of record agreed to be accepted by the receiving Party, in its sole discretion.

A. Manner of Conveyance. Any conveyance of a fee simple interest in real property, if any, shall be conveyed by special warranty deed in a form agreed to by the assigned representatives of and legal counsel for the Parties. Easement interests, if any, shall be conveyed in a form agreed to by the assigned representatives of and legal counsel for the Parties. Personal property shall be conveyed by a bill of sale in a form agreed to by the assigned representatives of and legal counsel for the Parties.

B. Surveys. As a proper legal description is necessary to convey an interest in real property, each Party will procure, at its sole expense, surveys for any portions of the real property interests for which a definite boundary is not ascertainable from any documents submitted to the other Party under paragraph 8.

3. Equal Value Exchange. The Parties have determined and agree that the value of the Exchange Area Assets being conveyed by each Party to the other are of comparable value and that no further consideration beyond the obligations and benefits under this Agreement shall be paid by the receiving Party.

4. Interconnections Within City Exchange Area. The City will provide for connection of the existing City system piping to connect to the Maxwell system piping to supply the City's Exchange Area with Maxwell water service and cutting and capping the supply piping from the City to complete cessation of City water service. The City will be responsible for any engineering, construction and inspection services.

5. Interconnections Within Maxwell Exchange Area. Maxwell will disconnect the service tie-in to the Maxwell main piping that supplies the Maxwell Exchange Area with Maxwell water service.

6. Closing.

A. Date. The Parties hereto shall use their best efforts to close the purchase transaction provided herein within 30 days of the date of the last state agency or political subdivision approval required under this Agreement (the "Closing").

B. Closing Agent and Closing Location. San Marcos Title Company (the "Title Company") shall serve as the closing agent for the conveyances of Exchange Area Assets required under this Agreement. The Closing shall occur at the offices of the Title Company. The Parties will procure policies of title insurance for any real property interests being conveyed. All escrow, closing agent and title insurance policy fees charged by the Title Company shall be shared equally between the Parties.

7. Further Representations and Agreements. Each Party hereby represents and agrees that on or after the Effective Date of this Agreement and until Closing:

A. It will not encumber its respective Exchange Area Assets with any liens, security Agreements or other encumbrances associated with the issuance of bonds or other indebtedness;

B. It is and will be the legal and equitable owner of the Exchange Area Assets;

C. It will not make any alterations to any real or personal property which is a part of the Exchange Area Assets, except for routine or required maintenance and repairs, and will notify the other Party of any alterations, change in condition or damage to such property, reasonable wear and tear alone excepted;

D. There will be no judgment in existence and no lawsuits or governmental sanctions threatened or pending against it that affect the Exchange Area Assets, except as specifically disclosed in writing to and consented to by the other Party;

E. It is not bound by any contract or agreement that prevents the sale of the Exchange Area Assets or transfer of its respective Exchange Area to the other Party; and

F. It will maintain in full force and effect, all insurance policies or governmental risk pool coverage presently in effect, if any, in relation to the Exchange Area Assets.

8. Documents and Reports. Within 30 days after the Effective Date of this Agreement, each Party shall furnish to the other the following:

A. Copies of all engineering plans, specifications and surveys of existing pipelines, equipment and appurtenances within the Party's respective Exchange Area;

B. Copies of any inspection reports and repair or maintenance information for such pipelines, equipment and appurtenances;

630 East Hopkins Street
San Marcos, TX 78666
citymanagerinfo@sanmarcostx.gov

PO Box 158
Maxwell, TX 78656
GM@maxwellsho.com

3. Taxes and Assessments-Proration. The Parties are tax exempt entities. However, to the extent any Exchange Area Assets are subject to taxes or assessments, such taxes and assessments, shall be prorated through the date of Closing. It is understood and agreed by the Parties that, after Closing, the receiving Party may forward any tax bills or assessments attributable to the conveying Party's ownership of the Exchange Area Assets directly to the conveying Party and the conveying Party shall promptly pay such bill. Alternatively, if the receiving Party pays such bill, it may forward an invoice to the conveying Party for reimbursement and the conveying Party shall promptly pay such invoice.

4. Subject to Applicable Laws. All activities under this Agreement, including recommendations and actions of the duly assigned representatives of the Parties, are subject to applicable rules, laws, ordinances and procedures governing such activities and neither Party may rely upon nor be bound by the unauthorized actions of such duly assigned representatives.

5. Entire Agreement. The full Agreement of the Parties is set forth in the text of this instrument, and no other representations or obligations other than those set forth herein will be recognized.

6. Venue: Venue for any dispute arising under this Agreement shall be in the appropriate state court in Hays County, Texas having jurisdiction or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

7. Binding on Successors: This Agreement shall bind and inure to the benefit of the Maxwell and the City and their respective successors and assigns.

8. Multiple Counterparts. This Agreement may be executed in identical multiple copies, all of which shall be deemed to be an original.

9. Copy to Title Company. The City will provide a copy of this Agreement to the Title Company within 30 days after execution hereof by both Parties. The City may direct the Title Company to act as the closing agent in accordance with the terms of this Agreement.

EXECUTED by the Parties to be effective as of the Effective Date stated above.

CITY:

By:

Bert Lumbreras, City Manager

MAXWELL:

By:

Justin Truitt, General Manager

EXHIBIT A-1
Maxwell Exchange Area Boundary Map

EXHIBIT A-2
City Exchange Area Boundary Map

EXHIBIT B-1

Interests in Real Property to be Conveyed

1. All fee simple, easement and other interests in real property, if any, associated with the provision of service within each Party's respective Exchange Area being transferred to the other Party.

[To be supplemented administratively if any specific interests are identified]

EXHIBIT B-2

Personal Property to be Conveyed by the Parties

1. All pipes, tanks, meters, structures, fixtures, meters, machinery, and above ground and underground appurtenances and equipment associated with, and in place as of the Effective Date within the easements or tracts of land being conveyed by this Agreement.
2. All customer accounts as of the Closing Date for customers being served within each Party's respective Exchange Area (subject to Article II, Section 10 of this Agreement). This shall include all deposits on hand for such accounts unless the authorized representatives of the Parties agree in writing to refund such deposits and have the receiving Party collect new deposits under such Party's normal utility account policies.

[To be supplemented administratively with specific listing and description of personal property]

C. Copies of all conveyance instruments, surveys, and title reports, commitments or policies for all real property interests, both fee simple and easement, being conveyed under this Agreement;

D. Copies of all geological and environmental assessments in connection with any real property interests, pipelines, equipment or appurtenance within its respective Exchange Area;

E. A complete list of customers within its respective Exchange Area, together with the deposit amounts in hand for each customer; and

9. **Inspections.** Until the date of the last state agency or political subdivision approval under paragraph 1(B), each Party shall have the right and each Party shall afford the other Party, its employees, agents, contractors and representatives the opportunity to make such inspections of the Exchange Area Assets, including books and records related to customer accounts, during regular business hours. If any inspections require digging or excavation, the Party conducting the inspection shall restore the surface area of the area that was disturbed.

10. **Allocation of Customer Account Revenues.** All revenues for water utility services and related charges accruing to, but not collected by a Party as of the date of Closing ("Accounts Receivable"), for services furnished to customers in the Party's respective Exchange Area prior to the date of Closing, shall remain the property of that Party and the receiving Party shall have no right title, interest or claim in or to the Accounts Receivable.

11. **Default and Cure.** If one Party believes the other Party to be in default of any obligation under this Agreement, the Party will notify the other Party of the specific nature of the default in writing by email, hand-delivery or certified mail, return receipt requested. The other Party will have 15 business days from the date the notice is received to cure the default. If the default is not cured within this period, the Party asserting the default may terminate this Agreement by written notice and it may exercise any other remedy at law or in equity for enforcement of this Agreement. For defaults that occur after the date of Closing, either Party may pursue any remedy available at law or in equity to enforce the continuing obligations under this Agreement.

III. MISCELLANEOUS.

1. **Terms Survive.** All of the terms, representations, and covenants set forth in this Agreement are continuing terms, representations and covenants, and shall survive the Closing.

2. **Notices.** The following contact information shall be used for notices and communications by the Parties and shall remain in effect until changed by written notice to the other Party:

CITY:
City of San Marcos
Attn: City Manager

MAXWELL:
Maxwell Special Utility District
Attn: Justin Ivicic