

**FIRST AMENDED AND RESTATED INTERLOCAL COOPERATION
AGREEMENT BETWEEN THE CITY OF NEW
BRAUNFELS, THE CITY OF SAN MARCOS, AND TEXAS STATE
UNIVERSITY, TO COLLABORATE ON SPONSORING AN ANNUAL
STORMWATER CONFERENCE AND STORMWATER POLLUTION PREVENTION
PUBLIC EDUCATION PROGRAMS**

This First Amended and Restated Interlocal Cooperation Agreement (the “Agreement”) is by and between the City of San Marcos, a municipal corporation located in Hays County, Texas, the City of New Braunfels, Texas, a municipal corporation located in Comal County, Texas, and Texas State University, an institution of higher learning organized under the laws of the State of Texas located in Hays County, (collectively referred to as the “Parties” or singularly as a “Party”) acting by and through their authorized representatives. This Agreement amends and restates that certain Interlocal Agreement dated November 15, 2017 between the Parties.

RECITALS:

WHEREAS, Chapter 791 of the *Texas Government Code* authorizes all local governments including political subdivisions of the state to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government; and

WHEREAS, annual training requirements for staff responsible for conducting MS4 program-related inspections are set forth in each Party's Small Municipal Separate Storm Sewer System (hereinafter referred to as “MS4”) Permit and Stormwater Management Plan; and

WHEREAS, required training areas will include illicit discharge detection and elimination, construction and post construction site stormwater management control and inspections, and pollution prevention and good housekeeping for municipal operations; and

WHEREAS, the Parties, together with the City of Kyle, entered into that certain Interlocal Agreement dated November 15, 2017 in order to collaborate on an annual stormwater management conference (i.e. the Texas Regional Stormwater Conference) to provide education and training in the areas identified above to public employees and officials responsible for compliance with and enforcement of MS4 laws and regulations; and

WHEREAS, the City of Kyle elected to discontinue participation in said Interlocal Agreement dated November 15, 2017 and, therefore, is not a Party hereto; and

WHEREAS, by this Agreement, the Parties wish to amend and restate said Interlocal Agreement to expand its purposes to include the creation mutually beneficial public education and awareness programs regarding the objectives and requirements of MS4 laws and regulations and to clarify the how funds are to be dispersed upon the termination of or a Party's exit from this Agreement; and

WHEREAS, if payment for the performance of governmental functions covered by this

Agreement becomes necessary, then each Party will make those payments from current revenues legally available to that party as required by Ch. 791 to the extent Ch. 791 applies to said Party; and

WHEREAS, the governing bodies of the Parties to this Agreement have authorized this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, promises, and terms contained herein, the parties agree as follows:

ARTICLE I PURPOSES

The purposes of this Agreement are: a) for the Parties to establish a framework for the collaboration by the Parties to plan, organize and provide an annual Stormwater Conference that is focused on providing stormwater management information to the Parties staff to satisfy the training requirements imposed by the Parties' respective MS4 Permits and Stormwater Management Plans; and b) to utilize excess funds generated by such annual conferences to develop public education and awareness programs regarding the objectives of stormwater pollution prevention and compliance with MS4 laws and regulations. Finally, the governing bodies of the Parties find that the performance of this Agreement is in the common interest of each Party.

ARTICLE II TERM

The term of this Agreement will commence on the last date of execution (the "Effective Date") and will remain in full force and effect for one year from that date. This Agreement will automatically renew for successive periods of one (1) year terms in accordance with the terms and conditions stated herein, unless sooner terminated as provided herein.

ARTICLE III TERMINATION

3.1 Notice of Termination. Any Party may terminate its participation this Agreement for any reason by providing at least thirty (30) calendar days prior written notice to each of the other Parties, subject to any options provided in Section 3.2.

3.2 Terminating Party's Options Upon Termination. Concurrent with providing notice of termination, the terminating Party may elect in writing to relinquish its right, title and interest in and to any funds held by the Fiscal Agent. If the terminating Party does not provide such written notice relinquishing its right, title and interest, it shall, within thirty (30) days of the effective date of termination, be entitled to its pro rata share of any fund balance held by the Fiscal Agent as of the effective date of termination, subject to deductions from such balance the amount of any funds already legally obligated or committed for expenditure for the purposes of this Agreement. If the terminating Party is also the Fiscal Agent, it shall continue to manage, as a fiduciary, the funds held on behalf of the remaining Parties until such time as the remaining Parties designate a new

Fiscal Agent and establish an account for the deposit of funds. The terminating Party shall cooperate with the remaining Parties to enable a transfer of funds and responsibilities, including providing an accounting of any funds to the remaining Parties.

3.3 Remaining Parties' Options Upon Termination. Upon termination by a Party under Section 3.1, the remaining Parties may continue to conduct the activities authorized under this Agreement. If the terminating Party is the Fiscal Agent, the remaining Parties shall, within fifteen (15) days of the effective date of termination, designate a new Fiscal Agent and establish a new account into which the balance of all funds shall be deposited. If a terminating Party elects to relinquish its right, title and interest in and to any funds as provided in Section 3.1 and the remaining Parties terminate this Agreement in its entirety as to all remaining Parties within three (3) months of the effective date of the terminating Party's termination, the remaining Parties agree that they shall refund to the terminating Party the amount relinquished by the terminating Party.

ARTICLE IV RIGHTS AND DUTIES

4.1 Designated Fiscal Agent. The representatives of the Parties shall designate one Party to be the Fiscal Agent. The Parties understand and agree that the Fiscal Agent for this Agreement shall be responsible for establishing and maintaining a separate account for revenues and expenditures needed to effectuate the purposes of this Agreement that will comply with all applicable state laws. The Parties may designate a new Fiscal Agent from among the Parties from time to time. The representatives of the Parties responsible for management of the activities under this Agreement shall establish in writing minimum reporting and accounting requirements for the Fiscal Agent. Upon termination of this Agreement in its entirety as to all Parties, the Fiscal Agent shall provide a written accounting to all Parties. The responsibilities of the Fiscal Agent shall continue after termination until such time as each Party has provided its written approval of the final disbursement of funds and payments to any outside parties.

4.2 Voluntary Participation. Participation by the Parties is voluntary. Nothing in this Agreement will prevent a Party from purchasing and/or accepting and awarding contracts subject to this Agreement on its own behalf without a right to reimbursement from the funds collected pursuant to this Agreement.

4.3 Payment Process. Each Party, identified as a municipal organization herein, will make payments directly to the vendor under the contract made pursuant to applicable procurement procedures of the *Texas Local Government Code*. Texas State University shall pay all invoices in accordance with the Texas Prompt Payment Provisions of *Texas Government Code* 2251. The vendor will bill the Party placing the order for goods and services directly and said Party will be responsible for the respective vendor's compliance with provisions relating to the quality of items and terms of delivery. The Party that placed the order will then submit invoices or receipts within thirty (30) calendar days of receiving such invoices or receipts to the Fiscal Agent for reimbursement from the account referenced in section 4.1.

4.4 Distribution of Costs. The estimated total budget for the annual stormwater conference is approximately Two Thousand Five Hundred Dollars (\$2,500.00) to Four Thousand Dollars

(\$4,000). The goal is to collect sufficient funds through vendor sponsorships and registrations fees from attendees not affiliated with the Parties to cover all costs associated with this Agreement; however, the Parties acknowledge that there is always the possibility that sponsorship funding may not cover all costs. In this event, the Parties understand and agree that each Party shall pay an equal portion of the costs provided costs do not include attorney fees incurred by a Party and provided further that no Party shall pay more than a maximum of One Thousand Dollars (\$1,000.00). All costs incurred by the Parties in planning and organizing the conference shall be reimbursed from the funds collected by the Fiscal Agent for this Agreement. Whenever possible, payments should be paid directly by the Fiscal Agent. If another Party receives sponsorship funding or donations pursuant to this Agreement, then such shall be tendered to the Fiscal Agent.

4.5 Public Education Programs. The representatives of the Parties will collaborate to identify mutually beneficial opportunities to educate the public regarding stormwater pollution prevention and the objectives of and compliance with MS4 laws and regulations. Such programs may include, but are not limited to, creating public service announcements and advertisements, creating posters, flyers and handouts, sponsoring contests and giveaways, hosting booths at public events and similar activities. All public education programs and materials created under this section shall be for the mutual benefit of the Parties and no Party shall have exclusive rights thereto. Funding for such public education programs will be from excess revenue generated by the annual Texas Regional Stormwater Conference or other programs. The representatives of the Parties will determine the budget each year during the term of this Agreement to be spent on such public education programs. All costs incurred by any Party in developing or procuring goods or services for a public education program shall be reimbursed from the funds collected by the Fiscal Agent for this Agreement. Whenever possible, payments should be paid directly by the Fiscal Agent.

4.6 Administrative Duties. For any decisions required to be made by the Parties under this Agreement, such decisions shall be based upon the approval of at least a majority of the Parties, each Party having only one “vote” regardless of the number of designated representatives of a Party participating in the activities under this Agreement. The representatives for the Parties will agree on who is responsible for all administrative duties as may be necessary to lawfully facilitate execution of the duties necessary under this Agreement that may include staff support, compliance with procurement laws as may be required for the purchase of any equipment, supplies, services, insurance, high technology, professional services and other expenditures needed to effectuate the purposes of this Agreement.

ARTICLE V IMMUNITY/ INSURANCE

5.1 Immunity. To the extent permitted by Texas law, the Parties agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, through its public officials, employees, and agents without waiving any sovereign or governmental immunity available to the Party under Texas law.

5.2 Insurance. The Parties, identified as a municipal organization herein, shall be responsible for providing all necessary insurance to cover its own premises, personal property and employees during the term of this agreement. Texas State University is self-insured under Texas Law. The

Texas statutes providing for this self-insurance are found in Chapter 104 of the *Texas Civil Practice and Remedies Code* and Chapter 2259 of the *Texas Government Code*.

ARTICLE VI MISCELLANEOUS

6.1 Relationship of Parties. This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement will not create any rights in third Parties not signatories hereto.

6.2 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties will be governed by the laws of the State of Texas; and venue for any action concerning this Agreement will be in the appropriate State District Court of Hays, Texas. This provision will survive termination or expiration of the Agreement.

6.3 Entire Agreement. This Agreement, including any appendices and attachments, recitals and exhibits represents the entire and integrated Agreement between the Parties and supersedes all prior proposals, negotiations, representations, Agreements, arrangements or understandings either written or oral between the Parties. No verbal Agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement will affect or modify any of the terms or obligations hereunder. The terms and conditions of this Agreement may only be amended or modified by written amendment executed by all of the parties.

6.4 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, will in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of any Party thereafter to enforce each and every provision hereof. No term of this Agreement will be deemed waived or breach excused unless the waiver is in writing and is 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.

6.5 Legal Construction. In the event any one or more of the provisions contained in this Agreement are for any reason deemed invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, in any respect, this Agreement will be construed as not containing the provision and all other provisions of this Agreement which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared severable. The Parties will use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the Parties as necessary.

6.6 Recitals. The recitals to this Agreement are incorporated herein.

6.7 Compliance with Applicable Laws. Each Party agrees to comply with all applicable local, state and federal laws, ordinances rules and regulations.

6.8 Interlocal Cooperation. The Parties agree to cooperate with each other in good faith at all times during the term of this Agreement in order to achieve the purposes and intent of this Agreement. Each Party to this Agreement acknowledges and represents that this Agreement has been executed by its duly authorized representative.

6.9 Notice. Unless otherwise specified, any notice required or permitted to be delivered hereunder will be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered to the following addresses:

City of New Braunfels:	City Manager City of New Braunfels 550 Landa Street New Braunfels, Texas 78130
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City of San Marcos:	City Manager City of San Marcos 630 E. Hopkins San Marcos, Texas 78666
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Texas State University:	Vice President of Finance and Support Services Texas State University 601 University Drive San Marcos, Texas 78666-4684
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6.10 Public Information Act. The Parties understand that each Party is governed by the Texas Public Information Act, Chapter 552 of the *Texas Government Code*. This Agreement and all written and or digital information generated under this Agreement may be subject to release under the Act.

6.11 Funding. In addition, the Parties acknowledge that funds for the payment for work performed by any of the Parties under the Agreement have been provided through the budget approved by the individual governing bodies for the current fiscal year only. State statutes (*Government Code* Ch. 791) prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Parties cannot guarantee the availability of funds, and enter into the Agreement only to the extent such funds are made available. The Parties acknowledge and agree that they will have no recourse against another for its failure to appropriate funds for the purposes of the Agreement in any fiscal year other than the year in which the Agreement was executed.

6.12 Consent and Approval. Unless otherwise expressly stated in this Agreement, whenever the consent or approval of a Party is required prior to the action to be taken by the other Party, such consent or approval will not be unreasonably withheld, denied, or delayed.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement will survive termination.

6.14 Binding Effect. The Parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement. 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. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.15 Representations and Warranties. The Parties represent and warrant that each respective signatory below has the full and complete authority to enter into this Agreement on behalf of their respective entity, and that the joinder of no other person is required in order to cause this Agreement to be fully binding upon their respective Parties. Parties further warrant that all institutional, agency, governmental or other action necessary for such Party to execute, enter into, and perform obligations in this Agreement have been duly taken by such Party.

6.16 Amendment. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by the duly authorized representative of the Parties.

6.17 Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes, but all of the counterparts will constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of the date of the last signature below.

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

Date: _____

CITY OF SAN MARCOS

By: _____
Bert Lumbreras, City Manager

Date: _____

TEXAS STATE UNIVERSITY

By: _____
Eric Algoe, Vice President of
Finance and Support Services

Date: _____