

**INTRADEPARTMENTAL AGREEMENT REGARDING
THE PURCHASE OF RECLAIMED WATER**

WHEREAS, the City of Wimberley (“City”) has applied for and obtained a Texas Water Development Board Clean Water State Revolving Fund loan for the construction of a wastewater system to serve central Wimberley; and

WHEREAS, as part of the condition of the loan, the City’s Parks Department is required to purchase reclaimed water from the City’s Public Works Department’s wastewater treatment plant that will be used to irrigate land within the Blue Hole Park; and

WHEREAS, the City’s Parks Department has agreed to pay the City’s Public Works Department up to \$200,000 per year for access to and use of the reclaimed water.

WHEREAS, City Council finds that purchase of the reclaimed water by the City’s Parks Department is in the best interest of the City and will benefit the health, safety, and welfare of the City;

NOW, THEREFORE, THE DEPARTMENTS OF THE CITY AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS.

Beneficial use – An economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of Chapter 210 of the TCEQ rules, and which takes the place of potable and/or raw water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

Chapter 210 of the TCEQ rules – Chapter 210 of Title 30 of the Texas Administrative Code as amended from time to time by the TCEQ.

Executive Director – The executive director of the TCEQ, or any authorized individual designated to act for the executive director.

Nuisance – As defined by the ordinances of the City, and including any distribution, storage, or use of reclaimed water, in such concentration and of such duration that is or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

Party or Parties – The City’s Parks Department and the City’s Public Works Department.

Points of Delivery – Locations in which the reclaimed water is delivered by the City to the User and the points in which the User takes control of and responsibility for the reclaimed water.

Provider – The City’s Public Works Department.

Reclaimed water – Domestic or municipal wastewater that has been treated to a quality suitable for a beneficial use, pursuant to the provisions of Chapter 210 of Title 30 of the Texas Administrative Code and other applicable rules and permits.

Service Area – The area where User may use the reclaimed water for beneficial use, which shall be defined prior to the delivery of reclaimed water to the User.

User – The City’s Parks Department.

TCEQ – The Texas Commission on Environmental Quality and any predecessor agencies.

ARTICLE 2: TRANSFER AND USE OF RECLAIMED WATER

2.01 Except as provided in section 2.02, and upon written approval by the Executive Director of the TCEQ as provided in section 3.01, the Provider shall provide to User at the Points of Delivery reclaimed water.

2.02 User shall use the reclaimed water for the irrigation of the City’s parks, including but not limited to the Blue Hole Regional Park.

2.03. Use of the reclaimed water by the User is limited to the Service Area.

2.04 Reclaimed water transferred from the Provider to User shall be done on a demand only basis during times when the reclaimed water can be beneficially used as provided by this Contract. User may refuse delivery of the reclaimed water at any time that the reclaimed water cannot be beneficially used by User, will cause a nuisance, or will cause User to violate Chapter 210 of the TCEQ rules.

2.05 All reclaimed water delivered through the User shall be metered through one or more meters at the Points of Delivery that will be installed, operated, and maintained by the Provider. User agrees to pay the Provider for the installation and maintenance of the meter(s). It will be the duty of each Party to this Contract to notify the other Party in the event any Party becomes aware that the meter(s) is registering inaccurately or malfunctioning. The User has the right to request that the meter be tested at any time. The Provider will make reasonable efforts to test the meter within 48 hours of the request. The User will have the right to witness meter tests. If the User requests a meter test, payment for meter calibration and testing under this section will be the responsibility of the User.

2.06 The Provider has the right to inspect the Service Area, Points of Delivery, meters, storage facilities for the reclaimed water, the use of the reclaimed water by the User, and the records maintained by the User in accordance with this Contract.

2.07 The User shall pay the Provider up to \$200,000 per year for access to and use of the reclaimed water even if the User does not or cannot use the reclaimed water. The fee for access

to and use of the reclaimed water shall be paid to the Provider in twelve (12) equal installments, and is due to the Provider on the first day of each month. The payments for access to and use of the reclaimed water shall commence on the closing of the Texas Water Development Board Clean Water State Revolving Fund loan for the construction of a wastewater system to serve central Wimberley.

ARTICLE 3: NOTICE TO AND APPROVAL FROM TCEQ

3.01 The Provider's obligation to provide the reclaimed water to User is contingent upon the City obtaining written approval from the Executive Director of the TCEQ and no reclaimed water will be provided to User unless and until the City obtains such approval. Notwithstanding the foregoing, the User is obligated to pay the Provider under section 2.07 prior to the Provider obtaining written approval from the Executive Director.

3.02 Upon completion of the construction of the City's wastewater treatment plant, the City, on behalf of the Provider, shall notify the Executive Director of the Provider's intent to provide reclaimed water to User for the purposes described in this Contract.

3.03 If the City obtains approval to provide the reclaimed water to User as provided in this Contract, within thirty (30) days after receipt the approval or the completion of the facilities necessary to deliver the reclaimed water, whichever is later, the Provider shall begin delivery of the reclaimed water as provided by this Contract.

ARTICLE 4: OBLIGATIONS OF USER

4.01 User shall comply with the provisions contained in an Operation and Maintenance Plan prepared in accordance with Chapter 210 of the TCEQ's rules.

4.02 User shall not change or alter its use of reclaimed water or the method of application to the Service Area of the reclaimed water without prior written consent from the Provider.

4.03 User shall:

- (A) use the reclaimed water in accordance with Chapter 210 of the TCEQ rules;
- (B) comply with the requirements of Chapter 210 of the TCEQ rules; and
- (C) maintain and provide records as required by Section 210.36(a) of the TCEQ rules and shall maintain all records relating to the use of the reclaimed water on site for a period of five years.

4.04 User shall not use the reclaimed water in a manner so as to cause nuisance conditions, as defined by City ordinance or state law, as a result of the distribution, the use, and/or storage of reclaimed water.

4.05 User shall not use the reclaimed water in a way that degrades ground water quality to a degree adversely affecting its actual or potential uses.

ARTICLE 5: EFFECTIVE DATE; TERMINATION OF CONTRACT

5.01 This Contract shall be effective on the date of the last signatory to this Contract.

5.02 This Agreement shall remain in effective until the later of the date the City makes its last payment on its Texas Water Development Board Clean Water State Revolving Fund loan for the construction of a wastewater system to serve central Wimberley, or upon thirty (30) days written notice indicating the Party's intent to terminate this Contract with or without cause.

ARTICLE 6: MISCELLANEOUS PROVISIONS

6.01 Assignability. This Contract shall not be assignable by any Party except with the written consent of the other Party.

6.02 Amendment. This Contract may be amended only by an instrument in writing signed by the parties.

6.03 Necessary Documents and Actions. Each party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Contract.

6.04 Entire Agreement. This Contract constitutes the entire agreement of the Parties and supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding the provision of reclaimed water to the User.

6.05 Applicable Law. This Contract will be construed under and in accordance with the laws of the State of Texas.

6.06 Venue. All obligations of the Parties created in this Contract are performable in Hays County, Texas, and venue for any action arising under this Contract will be in Hays County, Texas.

6.07 No Third Party Beneficiaries. Nothing in this Contract, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Contract.

6.08 Duplicate Originals. This Contract may be executed in duplicate originals each of equal dignity.

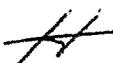
6.09 Notices. All notices by the Parties shall be provided to the City Administrator of the City.

6.10 Severability. Should any court declare or determine that any provisions of this Contract is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision

had never comprised a part of this Contract and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

IN WITNESS WHEREOF, each party hereto has signed this Contract or caused this Contract to be signed in its corporate name by its officer thereunto duly authorized.

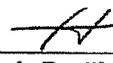
**CITY OF WIMBERLEY, TEXAS (USER)
WIMBERLEY PARKS DEPARTMENT**



Herschel P. "Mac" McCullough, Mayor of the City of
Wimberley

Date: 8-9-17

**CITY OF WIMBERLEY (PROVIDER)
WIMBERLEY PUBLIC WORKS DEPARTMENT**



Herschel P. "Mac" McCullough, Mayor of the City of
Wimberley

Date: 8-9-17