

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BRYAN
AND THE CITY OF COLLEGE STATION
EMERGENCY WATER TRANSFER**

This **Interlocal Agreement** ("Agreement") is effective as of the _____ day of _____, 2005, by and between the City of Bryan, a Texas Home Rule Municipal Corporation, (hereinafter referred to as "**BRYAN**") and the City of College Station, a Texas Home Rule Municipal Corporation, (hereinafter referred to as "**COLLEGE STATION**") each acting herein by and through its City Council.

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, allows local governments to contract with each other to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, the cities have an existing "Emergency Water Transfer" interlocal agreement dated January 2001, and amended in July 2002, and the cities are engaged in cooperative and mutually beneficial discussion in a number of areas and desire to expand areas of cooperation; and

WHEREAS, the parties wish to terminate the existing Emergency Water Transfer interlocal agreement and replace it with this agreement; and

WHEREAS, the existing Tarrow Drive Interconnection is being removed and needs to be replaced; and

WHEREAS, a potential new location near the Tarrow Drive Interconnection within the City of Bryan has been identified for constructing a replacement for the Tarrow Drive Interconnection; and

WHEREAS, municipal water system interconnections and interconnection improvements are proposed between BRYAN and COLLEGE STATION in those locations as may be established from time to time by the City Managers of both cities for the purpose of providing automatic as well as operator initiated supplemental water flow to assist either city when appropriate emergency conditions exist; and

WHEREAS, BRYAN and COLLEGE STATION, have determined that to further continuing efforts on joint cooperative projects between the cities it would be in the best interests of BRYAN and COLLEGE STATION to enter into this agreement specifying the terms and conditions under which either City will supply the other with supplemental water transfers to satisfy emergency conditions through present and future interconnections.

NOW, THEREFORE, the cities herein enter into this Agreement to outline the joint participation of **BRYAN** and **COLLEGE STATION** as follows:

ARTICLE I DEFINITIONS

- 1.1 For the purposes of this Agreement, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.
- 1.2 For the purposes of the Agreement, the following words, terms, phrases, and their derivatives shall have the meaning given in this Section.
 - 1.2.1 **BRYAN** means the City of BRYAN, Texas, a home rule municipal corporation in the County of Brazos, State of Texas.
 - 1.2.2 **COLLEGE STATION** means the City of COLLEGE STATION, Texas a home rule municipal corporation in the County of Brazos, State of Texas.
 - 1.2.3 **Emergency Conditions** for the purpose of this document means any situation where the municipal water system of either city cannot maintain minimum water system pressure during periods of high system demands; including, but not limited to, water flow requirements necessary to provide fire protection as prescribed in the applicable section(s) of the Insurance Service Office (ISO) standards.
 - 1.2.4 **Interconnection** means a system of pipes, valves, meters, controls, with or without motors and pumps allowing water to flow by system pressure differential or through a pumping facility from the BRYAN water system into the COLLEGE STATION water system, or from the COLLEGE STATION water system into the BRYAN water system
 - 1.2.5 **Municipal Water System** means a water utility system owned, operated, and controlled by a municipality and a public water system as defined by the Texas Commission on Environmental Quality (hereinafter referred to as “TCEQ”), providing potable water under the authority of §13 of the TEXAS WATER CODE, as amended.
 - 1.2.6 **Renewal Date** means three (3) years after the effective date of this Agreement and thereafter annually as provided in Section 8.7 herein.
 - 1.2.7 **Unit Rate** means the cost for each one thousand (1,000) gallons of water supplied.

**ARTICLE II
EMERGENCY WATER TRANSFER**

- 2.1 When appropriate conditions exist in either city, in the general area of the interconnection(s), each city agrees to provide available water to the other city through automatic and/or manually operated interconnection(s).
- 2.2 During emergency conditions, water will be transferred from either city to the other through the interconnection(s) and will discontinue the transfer of water when emergency conditions cease to exist.

**ARTICLE III
UNIT RATE PRICE**

- 3.1 The unit rate per one thousand (1,000) gallons of water transferred through any interconnection will be calculated using the following formula:

$$\frac{\text{BRYAN lowest residential rate} + \text{COLLEGE STATION lowest residential rate}}{2} \times 65\% = \text{Rate}$$

The unit rate per one thousand (1,000) gallons of water transferred initially established by this Agreement is:

$$\frac{\$2.43 \text{ BRYAN lowest residential rate} + \$2.03 \text{ COLLEGE STATION lowest residential rate}}{2} \times 65\% = \$1.45$$

- 3.2 The unit rate for water will be recalculated after a rate change by either city, and upon thirty (30) days prior notification. The rate calculation for water will be recalculated and approved by the City Managers of both cities.
- 3.3 The cities agree that the unit rate will be the same regardless of which city provides or receives the water.
- 3.4 Payments under this agreement will be made from current revenues available to the paying city. The supplying city may waive usage fees owed them by the receiving city, when water is wheeled through College Station's meter from Texas A&M University to Bryan or from Bryan to Texas A&M University; or when the cities have each used substantially the same amounts of water during a billing period and the differential, if any, is less than 100,000 gallons.
- 3.5 Bryan City Council's approval is required for any payment exceeding the Bryan City Manager's spending authority. College Station City Council's approval is required for any payment exceeding the College Station City Manager's spending authority.

**ARTICLE IV
TRANSFER INITIATION AND TERMINATION**

- 4.1 The cities acknowledge that interconnections consisting of automatic valves can experience emergency water transfers during a low pressure event or fire event without the notification or consent of the supplying city. Contact will be made as soon as reasonably possible after either city becomes aware of such transfer and checks the valve.
- 4.2 The cities agree that manually operated interconnections **will not be operated** without an operator from both cities being present.
- 4.3 The following are contact phone numbers for each city:
- | | | |
|-----------------|-----------------------------------|----------------|
| BRYAN | Municipal Service Center (Day) | (979) 209-5900 |
| | Water Production Facility (Night) | (979) 209-5671 |
| COLLEGE STATION | Utility Dispatch | (979) 764-3638 |
- 4.4 The cities agree that the termination of water transfer during emergency fire flow conditions will only occur after consultation between members of both Fire Departments. Individuals designated to order the termination of transfer during fire flow conditions shall be: Fire Chiefs, Assistant Fire Chiefs, Fire Marshals, or Shift Commanders of the BRYAN and COLLEGE STATION Fire Departments in the aforesated order of precedence. The decision to terminate the transfer of water during emergency conditions will take into consideration the following items listed in the enumerated order of importance:
1. Protection of Life
 2. Protection of Exposed Property
 3. Protection of Buildings
 4. Interruption of Water Service.
- 4.5 The cities agree that the party receiving emergency water will use its best efforts to resolve the emergency situation as soon as possible.
- 4.6 The cities agree to jointly calculate the water flow at the conclusion of every transfer of water.

**ARTICLE V
MAINTENANCE, TESTING AND OPERATION**

- 5.1 The city in which the interconnection is located will be responsible for the maintenance, testing and operation of the interconnection. The city responsible for the maintenance, testing and operation will advise the other city whenever it is working on, or operating the interconnection system prior to such activity.
- 5.2 Each city will share equally in the cost of maintenance, testing and operation for all interconnections including repair and replacement of components thereof. At least on a

semi-annual basis, once in December and once in June of each year, each city will calculate the cost of the maintenance, testing and operation for each interconnection located within their jurisdiction for the previous six months and generate an itemized report that will be forwarded to the other city for these expenses. The costs for each city shall be aggregated and multiplied by one-half (1/2) to obtain a total cost after which the cities shall reconcile the payment due or credit owed.

- 5.3 Bryan City Council's approval is required for any payment exceeding the Bryan City Manager's spending authority. College Station City Council's approval is required for any payment exceeding the College Station City Manager's spending authority.
- 5.4 Upon the execution of this Agreement the Division Manager in charge of the water utility for each city will establish a mutually agreeable schedule for maintenance and testing which may be amended as necessary from time to time upon mutual agreement of both Division Managers.
- 5.5 The city accepting water will be responsible for the cost of the electricity, gasoline, diesel, or propane to operate the motor of any pumped interconnection during an emergency water transfer. Cost of power to operate the motor shall be billed to the city accepting water and paid within 30 days of billing.

ARTICLE VI INTERCONNECTION LOCATION(S)

- 6.1 Existing interconnections located in COLLEGE STATION are:
 1. College Main Street at the approximate city limits, and
 2. Tarrow Drive at the approximate city limits.
- 6.2 Locations may be added or deleted by mutual agreement of the City Manager for each city in writing as outlined in the GENERAL PROVISIONS. The terms and conditions of this Agreement shall apply to all interconnections so added.
- 6.3 When an interconnection is added the cities agree that:
 1. The city in which the interconnection is located shall:
 - (a) negotiate the purchase of the property to be used for the new interconnection location, and
 - (b) will have the interconnection designed, bid, and constructed, and
 - (c) both cities shall agree to the location, design, and construction costs for each proposed interconnection to proceed through each stage of development.
 2. Each city shall share equally in the cost of purchasing property, design and construction of the interconnection, and maintenance of the interconnection.
 3. Bryan City Council's approval is required for any payment exceeding the Bryan City Manager's spending authority. College Station City Council's

approval is required for any payment exceeding the College Station City Manager's spending authority

- 6.4 When an interconnection is removed the cities agree that:
1. The city in which the interconnection is located shall:
 - (a) sell the property that was used for the interconnection location by public bid or public auction, and
 - (b) if the property was paid for by both cities distribute the revenue from the sale proceeds according to the proportion of investment, and
 - (c) remove all unneeded pipes, valves, and other infrastructure using utility operations crews or by contracting the work through the competitive bidding process.
 - (d) As an alternative, retain title to the real property upon payment to the other City of ½ of the fair market value of the property as determined by an appraisal that is based on the property having been restored to its original condition.
 2. Each city shall share equally in the cost of removing any interconnection if the interconnection was installed for both city's mutual benefit.
- 6.5 The cities of BRYAN and COLLEGE STATION propose to relocate the Tarrow Drive interconnection location from its present site onto East 29th Street in the BRYAN city limits. The new interconnection will have a dedicated motor driven pump. The cost of the relocation of the interconnection will be shared by both cities as outlined above.

ARTICLE VII DELEGATION OF ADMINISTRATIVE AUTHORITY

- 7.1 The City Council of the City of Bryan and of College Station hereby delegate the following administrative functions to their respective City Managers in this Agreement:

To modify, move, or install new interconnections provided that costs for such modifications, relocations or installations are within the spending authority of each City Manager per city, to adjust the recovery rate charged in this Agreement for Emergency Water Transfers to reflect any residential rate increases approved by the City Councils for each City for its respective water utility operations, and for decisions regarding normal operations of the interconnections.

ARTICLE VIII GENERAL PROVISIONS

- 8.1 **Amendment or Modification.** Except as otherwise provided herein, the terms and conditions of this Agreement may be modified at any time by the mutual consent of both cities. Mutual consent will be demonstrated by the approval of each city's governing body or by the signatures of both the City Manager of the City of BRYAN and the City

Manager of the City of COLLEGE STATION for administrative matters specifically delegated to the City Managers in this Agreement. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by the City Manager of each city.

- 8.2 **Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual listed below or if it is delivered or sent by certified mail to the business address as listed below. Each city has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other city in writing.

BRYAN: City of Bryan
Attn: City Manager
300 South Texas Avenue
Bryan, Texas 77801

COLLEGE STATION: City of College Station
Attn: City Manager
1101 Texas Avenue
College Station, Texas 77840

- 8.3 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 8.4 **Jurisdiction and Venue.** This Agreement has been made under and shall be governed by the laws of the State of Texas. The cities agree that performance and all matters related thereto shall be in Brazos County, Texas.
- 8.5 **Governmental Immunity and Hold Harmless. To the extent permitted by law and without waiving each respective party's governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act, College Station and Bryan agree to hold each other harmless from and against any and all claims or causes of action arising out of or in connection with the provision of water.**
- 8.6 It is understood that this Agreement contains the entire agreement between the cities and supersedes any and all prior agreements, arrangements, or understandings between the cities relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the cities, either before or after the execution of this Agreement, shall affect or modify any terms or obligations hereunder.
- 8.7 The initial term of this Agreement is for three (3) years and shall automatically renew thereafter annually unless either city terminates this Agreement by providing written

notice to the non-canceling city at the address listed in 7.2 of this Agreement one year in advance of the cancellation date.

- 8.8 Each city has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each city has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective cities.
- 8.9 Failure of any party, at any time, to enforce a provision of this Agreement, shall 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 either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and 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.
- 8.10 This Agreement and all rights and obligations contained herein may not be assigned without the prior written approval of the other party.
- 8.11 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 8.12 This Agreement represents the entire and integrated agreement between COLLEGE STATION and BRYAN and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by written instrument approved and executed by the parties.
- 8.13 Notwithstanding any provision herein to the contrary, this Agreement is terminable at the will of either City Council for non-appropriation of funds during any fiscal year during the term hereof.
- 8.14 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

SIGNED this the _____ day of _____, 2005.

CITY OF BRYAN

CITY OF COLLEGE STATION

BY: _____
Ernie Wentrcek, Mayor

BY: _____
Ron Silvia, Mayor

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED:

Mary K. Moore, City Manager

Michael J. Cosentino, City Attorney

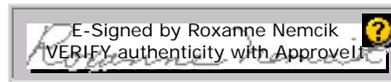
Hugh R. Walker, Deputy City Manager

ATTEST:

Connie Hooks, City Secretary

APPROVED:

Glenn Brown, Acting City Manager



City Attorney

Jeff Kersten, Finance and Strategic
Planning Director