

## **INTERLOCAL AGREEMENT**

This Interlocal Agreement is entered into by and between Texas State University ("Texas State") and the City of San Marcos, Texas (the "City") under the authority of the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Texas State and the City may hereinafter also be referred to as a "Party" or, collectively, as the "Parties."

### **I. Recitals**

**1.01.** Texas State and the City have a mutual interest in improving drainage conditions to mitigate adverse impacts from stormwater to property in the vicinity of Sessom Creek, buffering the neighborhood, and improving general safety near the Texas State University campus and in protecting Sessom Creek.

**1.02.** The City is undertaking a capital improvements project that will advance these mutual objectives (the "Project"). In order to successfully execute the Project, however, it will be necessary for the Parties to exchange certain real property interests.

**1.03.** Texas State and the City have identified property, rights-of-way and easements as shown in Exhibit A, attached hereto (the "Property") and incorporated herein, the exchange of which shall facilitate execution of the Project.

**1.04.** Texas State and the City have also identified certain irregularities in the common boundary between certain tracts of land owned by Texas State and the City, as shown in Exhibit A, that are best resolved in conjunction with the Project.

**1.05.** Texas State and the City have determined that, in consideration of the mutual benefits to the Parties under this Agreement, the property interests being exchanged pursuant to this Agreement are of comparable value and, therefore, may be exchanged without need for further consideration.

**1.06.** The purpose of this Agreement is to identify the property interests to be exchanged by the Parties in connection with the Project and to delineate the roles and contributions of the Parties regarding the surveying and replatting related to such exchange of property interests and the conveyances of such property interests.

**1.07.** The activities of the Parties under this Agreement are governmental as defined in §791.003 of the Texas Government Code.

**1.08.** For the reasons above, the Parties enter into this Agreement under the terms and conditions below.

### **II. Coordination and Cost Participation**

**2.01. Surveying Services.** Pursuant to applicable procurement laws and policies, the City will enter into a contract with Byrn & Associates, Inc. for surveying and replatting associated with the property interests being exchanged, as shown on Exhibit A. Each Party will pay one-half of the costs for the surveying services provided by Byrn & Associates, Inc. After approval by the Parties of the replat prepared by Byrn & Associates, Inc., Texas State agrees to reimburse the City for one-half of the actual costs for the replat within 30 days after receipt of an invoice from the City detailing such costs and pursuant to the requirements of the Prompt Payment Act codified at Chapter 2251 of the Texas Government Code.

**2.02. Mutual Approval of Surveys and Replat.** Texas State and the City will coordinate

to approve any surveys and replats prepared by the surveyors. Upon mutual approval of the surveys and proposed replats, the City will submit the proposed replat for approval by the City's Planning and Zoning Commission. If the application for approval is subject to a filing fee, the costs for such fee will be shared equally between the Parties and Texas State shall pay its share to the City before the application is filed. Each Party shall be entitled to keep copies of any surveys and replats prepared by the surveyors.

**2.03. No Building Buffer.** The replat shall provide for a 30-foot-wide buffer along the southern boundary of Tract A, as shown in Exhibit A providing that no buildings shall be constructed within such buffer area.

**2.04. Cooperation on Future Safety Solutions.** The City and University agree that eliminating the now-abandoned Loquat Street curb cut on Sessom and providing access to University-owned land in the area utilizing the existing red light at the intersection of Sessom and Comanche would enhance vehicular and pedestrian safety. The Parties will work together to evaluate potential solutions in accordance with the City's design criteria for the Sessom and Comanche intersection.

### **III. Exchange of Property Interests**

**3.01. Agreement to Convey City Interests.** After completion and mutual acceptance of the replat, the City agrees to convey its property interests, as shown in Exhibit A, to Texas State, subject to the terms and conditions of this Agreement and approval by the San Marcos City Council. If the City Council fails to approve all conveyances as contemplated by this Agreement, Texas State may terminate this Agreement.

**3.02. Agreement to Convey Texas State Interests.** After completion and mutual acceptance of the replat, Texas State agrees to convey its property interests, as shown in Exhibit A, to the City, subject to the terms and conditions of this Agreement and approval by the Board of Regents for The Texas State University System. If the Board of Regents fails to approve all conveyances as contemplated by this Agreement, the City may terminate this Agreement.

**3.03. Mutual Exchange.** The exchange and conveyance of property interests contemplated by this Agreement shall occur at a simultaneous closing on a date agreed to by the Parties. The forms of instrument used to convey each Party's respective property interests shall be subject to mutual approval of the legal counsel for each Party and such other authorized representative of each party. The validity of any conveyances by a Party is subject to the concurrent conveyances of the other Party as set out in this Agreement.

**3.04. City Utility Facilities.**

**a.** The City will not begin any work on its utilities before this Agreement becomes effective and a proposed schedule of work concerning City utilities is mutually approved in writing by the Parties.

**b.** All work related to City utilities shown in Exhibit B shall be completed by the City within two years from the date said proposed schedule of work is mutually approved in writing by the Parties.

**c.** Where indicated in Exhibit B, the City shall abandon its utility facilities, provided such abandonment need not occur until any substitute or replacement facilities, if

applicable, are in place and operational, but in no event later than two years from the date of the mutual approval of said schedule of work.

**3.05. Licenses and Easements.** Texas State agrees to grant to the City, or its contractors and consultants, such temporary licenses as are necessary and agreed between the Parties for the initial surveying for the replat of the Property.

**3.06. Recording Fees.** Each Party shall pay its own costs for recording their respective deeds or easements. The costs for recording any replat approved by the City's Planning and Zoning Commission shall be shared equally between the Parties. The City will record any such replat and Texas State shall pay its share of the recording cost to the City before the City records it.

**3.07. Title Company.** If a title company is to be used for any purposes under this Agreement, the representatives of the Parties shall mutually agree on the title company to be used. The parties will share equally in the costs of any escrow fees charged by the title company. Each Party will pay its own costs for any policies of title insurance for the property interests conveyed to that Party.

#### **IV. Termination**

**4.01.** If either Party fails to perform its obligations for any reason except the other Party's default or pursuant to a right to terminate expressly set forth in this Agreement, the other Party may terminate this Agreement. If the Party elects to terminate the Agreement, then neither Party will have any further rights or obligations, except for payment of any expenses owed to the other Party for services or work properly completed for the benefit of the terminating Party up until the date of the notice of termination.

#### **V. General Provisions**

**5.01. Assignment.** Neither Party may assign any of its duties or obligations under this Agreement without the written consent of the other.

**5.02. Choice of Law and Venue.** The Parties will construe this Agreement under the laws of the State of Texas and will perform all of their obligations in Hays County, Texas. The term "will" is mandatory in this Agreement.

**5.03. Binding Agreement.** This Agreement will be binding upon the Parties and their respective legal representatives, successors, and assigns.

**5.04 Severability.** If any the provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the holding will not affect any other provisions of this Agreement if the Agreement can be given effect without the invalid provision. The Parties will construe the Agreement as if the invalid or unenforceable provision had not been contained in this Agreement.

**5.05. Only Agreement.** This Agreement, once signed, will constitute the only agreement of the Parties regarding this subject and it supersedes any prior understandings or written instruments signed by representatives of either Party.

**5.06. Notice in Writing.** Any notice required or permitted to be given by one Party to the other will be in writing and the same will be deemed to have been served and given if delivered in person to the respective address specified below, or placed in the United States Mail to the respective address below, return receipt requested to the addresses below.

City:  
City Manager  
City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666

Texas State:  
Vice President for Finance and Support Services  
Texas State University  
601 University Drive  
San Marcos, Texas 78666

**5.07. Performance of Further Acts.** In addition to the acts expressly required to be performed by the City and Texas State under this Agreement, the Parties agree to perform or cause to be performed at the closing or after closing any and all such further acts as may be reasonably necessary to consummate this Agreement.

**5.08. Dispute Resolution.** To the extent applicable to this Agreement, the Parties will use the procedures in Chapter 2260, Subchapter B of the Texas Government Code to resolve any disputes arising under this Agreement.

**5.09. Subject to Appropriation of Funds.** The obligations of the Parties are subject to the appropriation of funds during the fiscal year in which an obligation arises.

**5.10. Sovereign Immunity.** Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by either Party of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.

**5.11. Public Information Act.** It shall be the independent responsibility of the City and University to comply with the provisions of Chapter 552 of the Texas Government Code (the "Public Information Act"), as those provisions apply to the Parties' respective information. The City is not authorized to receive public information requests or take any action under the Public Information Act on behalf of University. Likewise, Texas State University is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of The City.

[SIGNATURES ON NEXT PAGE]



EXECUTED to be effective as of \_\_\_\_\_, 2022.

**CITY OF SAN MARCOS**

\_\_\_\_\_  
Stephanie Reyes, Interim City Manager

\_\_\_\_\_  
Date

**TEXAS STATE UNIVERSITY**

\_\_\_\_\_  
Dr. Kelly Dampousse, Ph.D.  
President

\_\_\_\_\_  
Date

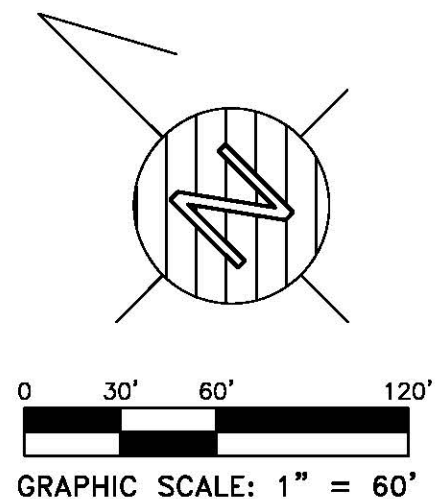
Approved as to legal form:

\_\_\_\_\_  
Nelly R. Herrera, JD  
Vice Chancellor and General Counsel

\_\_\_\_\_  
Date

## **EXHIBIT A**





NOTES:

- 1) BEARING BASIS: GPS POINTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) PROJECTED TO STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE 4203) AND NAD83. ELEVATIONS ARE NAVD83. CHECKED TO GPS MONUMENT - SW17, ELEVATION 767.76 FEET (767.79').
- 2) ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP FOR HAYS COUNTY AND INCORPORATED AREAS, MAP NUMBER 48200-0389F, REVISED SEPTEMBER 2, 2005, THE PROPERTY SHOWN HEREON DOES NOT LIE IN A DESIGNATED FLOOD HAZARD AREA.

LINE TABLE		
LINE	LENGTH	BEARING
L1	241.80	N44°25'17"W
L2	319.68	N44°55'04"W
L3	184.10	N44°16'12"E
L4	112.26	S49°46'26"E
L5	109.67	N75°08'29"E
L6	28.98	N75°58'41"E
L7	196.99	S63°15'12"E
L8	187.15	S50°29'12"E
L9	410.68	S45°20'50"W
L10	160.00	N45°38'56"W
L11	200.02	N45°16'27"W
L12	159.74	N45°38'33"W
L13	200.00	S45°16'27"W
L14	159.72	N45°38'33"W
L15	186.10	N45°20'50"E
L16	161.41	S35°49'34"E
L17	158.57	S45°16'27"W
L18	87.21	N45°07'18"E
L19	93.02	N45°38'33"W
L20	57.32	S61°36'48"W
L21	5.29	N50°29'12"E
L22	18.28	S45°20'46"W
L23	80.63	S35°49'34"E
L24	85.21	S45°16'27"W
L25	205.00	N46°24'33"W
L26	85.21	N45°16'27"E
L27	205.00	S45°24'33"E
L28	101.40	S45°16'27"W
L29	7.36	N42°15'33"W
L30	216.11	N68°38'19"W
L31	182.66	N45°16'27"E
L32	205.00	S46°24'33"E
L33	245.00	N45°28'33"W
L34	161.02	N45°16'27"E
L35	224.22	S68°38'19"E
L36	40.04	S42°15'33"E
L37	246.26	S45°16'27"W
L38	200.00	N45°16'27"E
L39	459.75	S45°38'33"E
L40	204.74	S45°48'55"W
L41	418.78	N45°38'56"W
L42	246.26	N45°16'27"E
L43	54.30	S42°15'33"E
L44	146.22	S19°08'32"E
L45	34.82	S03°07'39"W
L46	151.62	S45°38'33"E
L47	214.64	N45°38'33"W
L48	168.17	S34°20'50"W
L49	124.57	N19°08'32"E
L50	64.36	N42°15'33"W
L51	104.30	N45°16'27"E
L52	144.84	S46°24'33"E
L53	88.66	S63°17'45"W
L54	83.79	S44°01'42"W
L55	143.79	N46°24'33"W
L56	167.15	N45°16'27"E
L57	169.90	S46°24'34"E
L58	459.64	S45°38'33"E
L59	141.9	S43°20'35"W
L60	186	S56°48'55"W
L61	459.75	N45°38'33"W
L62	200.00	S45°16'27"W
L63	40.01	N45°38'56"W
L64	200.00	N45°16'27"E
L65	159.74	N45°38'33"W
L66	16.00	N45°20'50"E
L67	159.72	S45°38'33"E
L68	158.57	N45°16'27"E
L69	161.41	N35°49'34"W
L70	40.48	N45°20'52"E
L71	161.35	S35°49'34"E
L72	80.73	S35°49'34"E
L73	289.06	N45°16'27"E
L74	40.02	S46°24'33"E
L75	85.21	S45°16'27"W
L76	205.00	S46°24'33"E
L77	85.21	N45°16'27"E
L78	182.66	S45°16'27"W
L79	40.49	S45°16'27"W
L80	7.36	S42°15'33"E
L81	101.40	N45°16'27"E
L82	205.00	N46°24'33"W
L83	187.15	N50°29'12"E
L84	196.99	N63°15'12"E
L85	28.98	S79°58'41"W
L86	109.67	S75°08'29"E
L87	111.04	S70°53'18"E
L88	40.10	N44°16'09"E
L89	100.76	S49°46'26"E
L90	101.78	N75°08'29"E
L91	40.22	N79°58'41"E
L92	210.32	S63°15'12"E
L93	193.57	S50°29'12"E
L94	30.16	S45°20'53"W

NOTES:

- The survey of the properties shown herein was made with benefit of First American Title Insurance Company - Commitments For Title Insurance, QF No. 180819-BUD, issued by Independence Title Company, and according to platable items in Schedule B, Exceptions From Coverage, the following:
- Tract 1: 2.02 acres of land, more or less, being a part of all of Lots 36, 37, 38, 54, 57 and 58, FIRST AND SECOND DIVISION OF THE PARK ADDITION, A SUBDIVISION IN HAYS COUNTY, TEXAS, according to the map or plat thereof, recorded in Volume 54, Page 419, Deed Records, Hays County, Texas, and being the same land called Tract 5 in deed to Jerry D. Fields and Linda Gregg Fields recorded in Document No. 17021877, Official Public Records, Travis County, Texas, and sold 2.02 acre tract being more particularly described by metes and bounds in EXHIBIT "A" attached hereto and made a part hereof.
- Tract 2: 1.05 acres of land, more or less, being Lots 39 and 40, FIRST AND SECOND DIVISION OF THE PARK ADDITION TO THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS, according to the map or plat thereof, recorded in Volume 54, Page 419, Deed Records, Hays County, Texas, and being the same land called Tract 4 in deed to Jerry D. Fields and Linda Gregg Fields recorded in Document No. 17021877, Official Public Records, Travis County, Texas, and sold 1.05 acre tract being more particularly described by metes and bounds in EXHIBIT "B" attached hereto and made a part hereof.
- Tract 3: Lots 41, 42, 43, 44, 50, 51, 52, 53, 55 and 56, FIRST AND SECOND DIVISION OF THE PARK ADDITION TO THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS, according to the map or plat thereof, recorded in Volume 54, Page 419, Deed Records, Hays County, Texas, and being the same land called Tract 1 in deed to Jerry D. Fields and Linda Gregg Fields recorded in Document No. 17021877, Official Public Records, Travis County, Texas, and sold 2.02 acre tract being more particularly described by metes and bounds in EXHIBIT "C" attached hereto and made a part hereof.
- Tract 4: 1.82 acres of land, more or less, being Lots 59, 60, 61 and 62 and all of the 16 foot wide alley between Lots 60 and 61, FIRST AND SECOND DIVISION OF THE PARK ADDITION TO THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS, according to the map or plat thereof, recorded in Volume 54, Page 419, Deed Records, Hays County, Texas, and being the same land called Tract 2 in deed to Jerry D. Fields and Linda Gregg Fields recorded in Document No. 17021877, Official Public Records, Travis County, Texas, and sold 1.82 acre tract being more particularly described by metes and bounds in EXHIBIT "D" attached hereto and made a part hereof.
- Tract 5: 4.83 acres of land, more or less, out of the T. J. Chambers Survey, Abstract No. 2, Hays County, Texas, and being the same land called Tract 2 in deed to Jerry D. Fields and Linda Gregg Fields recorded in Document No. 17021877, Official Public Records, Travis County, Texas, and sold 2.02 acre tract being more particularly described by metes and bounds in EXHIBIT "E" attached hereto and made a part hereof.
- h) Right-of-way easement granted to L.C.R.A., as recorded in Volume 145, Page 422, Deed Records of Hays County, Texas. (Surveyor unable to determine location, as cited, but several overhead powerlines cross and are adjacent to the subject property, as shown)
- i) Right-of-way easement granted to L.C.R.A., as recorded in Volume 145, Page 423, Deed Records of Hays County, Texas. (Surveyor unable to determine location, as cited, but several overhead powerlines cross and are adjacent to the subject property, as shown)
- j) Right-of-way easement granted to the City of San Marcos, as recorded in Volume 168, Page 210, Hays County Deed Records. (Easement appears to lie off-site along Ripeway Road and does not affect subject property)
- k) Right-of-way easement to J.V. Meeks, as recorded in Volume 168, Page 510, Hays County Deed Records. (Roadway easement over part of Lot 63, as shown)
- l) Right-of-way easement to J.V. Meeks, as recorded in Volume 168, Page 511, Hays County Deed Records. (20' x 30' Roadway easement over part of Lot 62, as shown)
- m) Right-of-way easement granted to the City of San Marcos, as recorded in Volume 235, Page 551, Hays County Deed Records. (10' utility easement over a portion of Lot 63, as shown)
- n) Easement granted to the City of San Marcos, as recorded in Volume 235, Page 554, Hays County Deed Records. (10' utility easement over a portion of Schab called 4.51 acre tract, as shown)
- o) Easement granted to the City of San Marcos, as recorded in Volume 236, Page 306, Hays County Deed Records. (10' utility easement over a portion of Schab called 4.51 acre tract, as shown)
- p) Easement granted to the City of San Marcos, as recorded in Volume 4369, Page 321, Hays County Official Public Records. (20' wastewater easement over a portion of Schab called 4.51 acre tract, as shown)

LEGEND

- IRON PIPE FOUND
- IRON ROD FOUND
- IRON ROD SET
- PK FOUND
- FIRE HYDRANT
- WATER METER
- WATER VALVE
- POWER POLE
- WOOD FENCE
- CHAIN LINK FENCE
- WIRE FENCE
- OVERHEAD ELEC. LINE
- DOWN GUY
- P.U.E. PUBLIC UTILITY EASEMENT
- D.E. DRAINAGE ESMT.
- B.L. BUILDING LINE
- RECORD CALL
- CONCRETE MONUMENT
- CALCULATED POINT
- ELECTRIC METER
- GAS METER
- TELEPHONE PEDESTAL
- LIGHT POLE
- CLEANOUT
- P.O.B. POINT OF BEGINNING
- P.O.T. POINT OF TERMINATION
- SSMH SAN SEWER MANHOLE

BOUNDARY AND IMPROVEMENT SURVEY OF:

LOTS 41, 42, 43, 44, 50, 51, 52, 53, 55, AND 56, SECOND DIVISION OF THE PARK ADDITION, A SUBDIVISION IN HAYS COUNTY, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 54, PAGE 419, DEED RECORDS OF HAYS COUNTY, TEXAS, SAVE & EXCEPT THAT PORTION OF SESSOM DRIVE CONVEYED TO THE CITY OF SAN MARCOS IN VOLUME 253, PAGE 582, DEED RECORDS OF HAYS COUNTY, TEXAS; AND PART OF LOTS 36, 37, AND 38, AND ALL OF LOTS 54, 57, AND 58, SECOND DIVISION OF THE PARK ADDITION, A SUBDIVISION IN HAYS COUNTY, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 54, PAGE 419, DEED RECORDS OF HAYS COUNTY, TEXAS, SAVE & EXCEPT THAT PORTION OF SESSOM DRIVE AWARDED TO THE CITY OF SAN MARCOS IN JUDGEMENT, CAUSE NO. 9527, COURT RECORDS OF HAYS COUNTY, TEXAS; AND 4.51 ACRES OF LAND, MORE OR LESS, OUT OF THE T. J. CHAMBERS SURVEY, HAYS COUNTY, TEXAS AND LOTS 59, 60, 61, 62, AND THE NORTHWEST 1/2 OF LOT 63, SECOND DIVISION OF THE PARK ADDITION, A SUBDIVISION IN HAYS COUNTY, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 54, PAGE 419, DEED RECORDS OF HAYS COUNTY, TEXAS, OF THE ESTATE OF MARY B. SCHEIB, BY INSTRUMENT #4230 IN PROBATE AND RECORDED 64, PAGE 848, PROBATE RECORDS OF HAYS COUNTY, CONTAINING A COMPOSITE OF AREA OF 12.616 ACRES OF LAND.

Exhibit "A"

Swap From TxST To COSM

Existing City ROW/Easement To Remain With City

TxST Property Boundry Total Fields Tract 620,574 SF This includes to SF of COSM Easements & ROW

30' Off Set From Easement

30' Off Set From Property Line

To Remain With Texas State 30' Buffer By Deed Restrictions To Be Added To Re-Plat

Swap From COSM to TxST

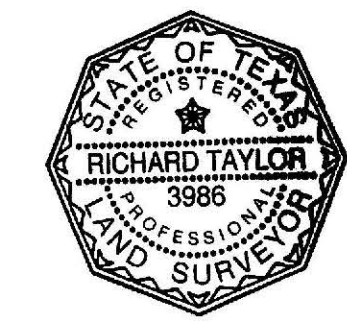
REVISIONS	
1	CONTIGUOUS
2	UPDATED & REV. MAM/RTT
3	REV. COMPOSITE AREA 10/25/18
NO.	REVISION
DATE	

ASH & ASSOCIATES  
surveying and mapping  
142 JACKSON LANE  
SAN MARCOS, TEXAS 78666  
(512) 392-1719  
FAX (512) 392-1928

DRAWING INFORMATION  
DESIGNED BY: ADP  
DRAWN BY: MAM/RTT  
PROJECT NO: 18-6895  
APPROVED BY: RTT  
FILE NAME: PARK ADDN  
DATE: 11/20/11  
PLOT SCALE: 1" = 60'

14.229 ACRES OF LAND  
PARK ADDITION - FIRST & SECOND DIVISION  
ROADWAYS & UNPLATTED PARCELS  
T.J. CHAMBERS SURVEY  
CITY OF SAN MARCOS  
HAYS COUNTY, TEXAS

CERTIFICATION  
The plot hereon is a true, correct and accurate representation of the property as determined by survey, made on the ground, November 30, 2011, subject to any and all easements, reservations or restrictions that may by of record, the lines and dimensions of said property being as indicated by the plat. Updated and revised June, 2018.  
Richard Taylor, RPLS  
Registered Professional Land Surveyor  
No. 3986  
State of Texas  
06/25/18  
Date



DRAWING  
PARK ADDN  
SHEET: 1  
OF 1



# Exhibit B

## Existing Utilities

B.1: Existing Electric

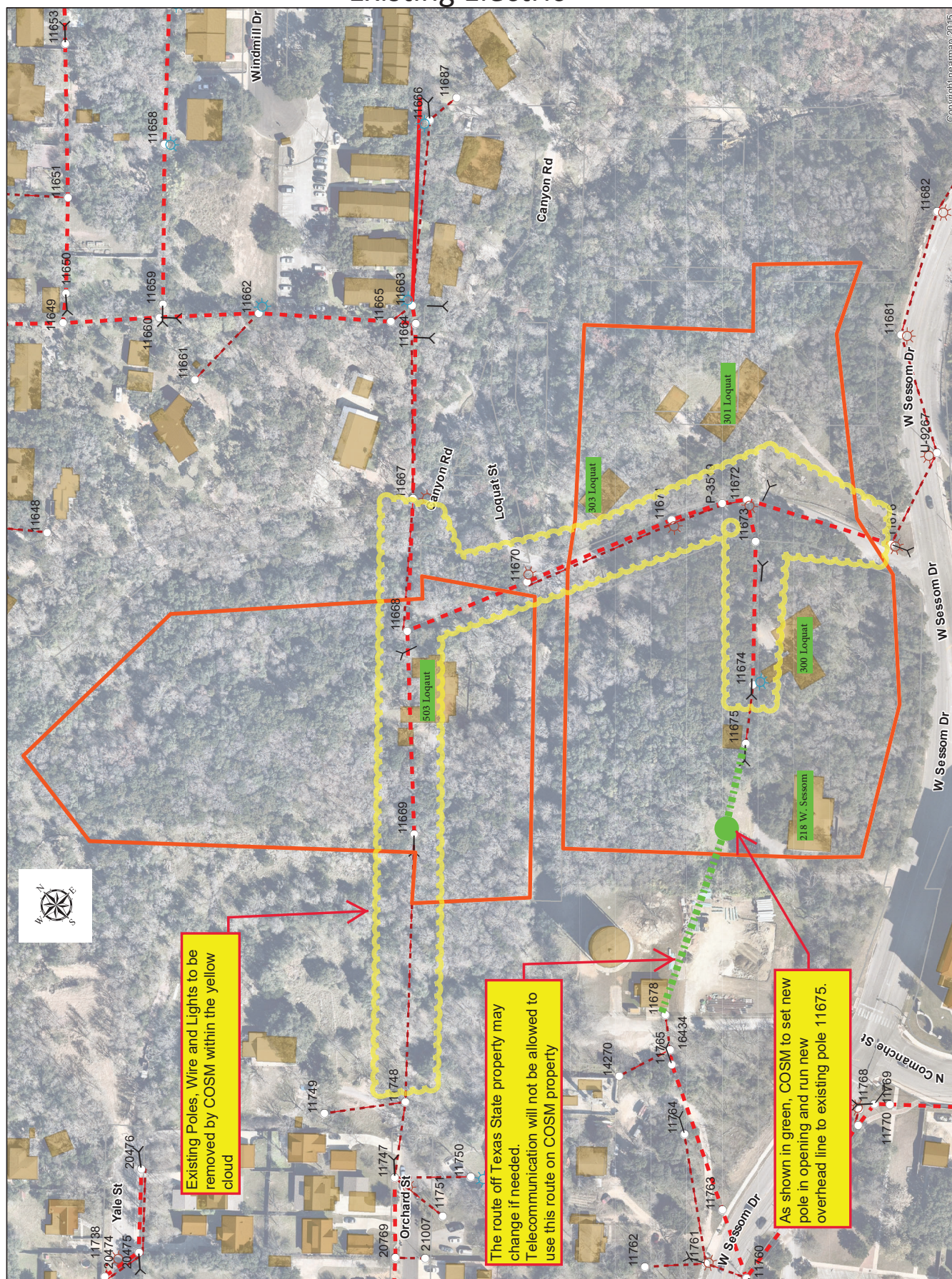
B.2: Existing Water

B.3: Existing Wastewater



## Exhibit B.1

### Existing Electric





## Existing Water





## Exhibit B.3

### Existing Wastewater

