

RESOLUTION NO. 2022-224R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN INTERLOCAL FUNDING AGREEMENT WITH HAYS COUNTY THAT PROVIDES FOR THE JOINT FUNDING OF IMPROVEMENTS TO THE FIVE-MILE DAM SOCCER COMPLEX, INCLUDING EXPANDING THE FIELD LIGHTING, THE LIGHTING IN PARKING AREAS, AND VARIOUS MINOR BUILDING IMPROVEMENTS, WITH A CONTRIBUTION FROM THE COUNTY OF \$400,000.00 AND MATCHING FUNDS FROM THE CITY OF \$392,000.00; AUTHORIZING THE CITY MANAGER, OR HER DESIGNEE, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.


BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Interlocal Funding Agreement with Hays County is hereby approved.

PART 2. The City Manager, or her designee, is hereby authorized to sign said agreement on behalf of the City.

PART 3. This resolution shall become effective immediately from and after its passage.

ADOPTED on October 3, 2022.


Jane Hughson
Mayor

Attest:


Elizabeth Trevino
City Clerk

8.2017

INTERLOCAL FUNDING AGREEMENT

This Funding Agreement (the “Agreement”) is made and entered into to be effective as of _____, 2022 between Hays County, a political subdivision of the State of Texas (the “County”), 712 South Stagecoach Trail, Suite 2057, San Marcos, Texas, 78666 and The City of San Marcos, a Texas Home Rule Municipality, (the “City”), 630 E. Hopkins, San Marcos, Texas 78666, in an effort to make improvements to Five Mile Dam Park. County and City may be referred to, collectively, as “the Parties” or “the Parties to this Agreement.”

RECITALS

WHEREAS, Hays County and the City of San Marcos came together in 2005 to work in collaboration on the development of County-owned Property now known as Five Mile Dam Park (“the Property”), a map of which is attached hereto as Exhibit “A”; and

WHEREAS, the City agreed to operate and maintain the Property once it had been satisfactorily completed including keeping the site free from accumulations of trash and rubbish and proved routine maintenance to the fields, irrigation system and lighting of the complex; and

WHEREAS, Hays County and the City of San Marcos recognize the need to make some improvements to the Property including expanding the field lighting and the lighting in parking areas, as well as minor building improvements; and

WHEREAS, the County wishes to contribute funding not to exceed the Four Hundred Thousand dollars (\$400,000.00 USD), funding collected from interest savings on the 2007 Parks and Open Space Bond, toward such improvements to the Project; and

WHEREAS, the City wishes to obtain, manage and oversee the contractors needed to complete the agreed upon improvements, and to contribute matching funds in the amount of Three Hundred and Ninety-Two Thousand dollars (\$392,000.00 USD);

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and obligations of the Parties in this Agreement, the County and City agree as follows:

**ARTICLE 1
PURPOSE**

The purpose of this Agreement is to set forth the terms and conditions under which the County will provide funding in an amount not to exceed the Four Hundred Thousand dollars (\$400,000.00 USD) for the following improvements to the Property: 1) Installation of lighting on Fields Seven and Eight, 2) Retrofitting of LED lighting on existing field lights (Fields Five and Six), and the following optional improvements, as availability of funding provides, 3) Installation of lighting in the western portion(s) of the parking area, 4) repair and/or removal of existing alternative energy improvements, and 5) expansion of storage outbuildings in support of operations (collectively, “the Improvements”).

ARTICLE 2
OBLIGATIONS AND FUNDING FROM THE CITY

2.1 The City agrees to utilize the funds that it receives under this Agreement along with funds contributed by the City in the amount of Three Hundred and Ninety-Two Thousand dollars (\$392,000.00 USD) to pay for expenses related to the Improvements at Five Mile Dam, and in compliance with all the terms and conditions specified in this Agreement.

2.2 The City shall pursue the steps necessary to achieve substantial completion of the work with commercially reasonable diligence.

ARTICLE 3
OBLIGATIONS OF THE COUNTY

3.1 The County shall pay to the City a sum not to exceed Four Hundred Thousand dollars (\$400,000.00 USD) in current funds, which unless otherwise agreed by the County, shall only be applied to the Improvements that are the subject of this Agreement, with priority given to the field lighting referenced in items 1) and 2) in Article 1, above.

3.2 The Parties agree that the County's contribution for the Improvements shall not exceed Four Hundred Thousand dollars (\$400,000.00 USD).

ARTICLE 4
TERM AND TIME OF PERFORMANCE

The effective date of this agreement shall be the date last executed by the Parties, below (the "Effective Date"). The term of the Agreement shall continue from the Effective Date until the completion of the work described above. The obligations of the Parties shall continue during the Term.

ARTICLE 5
SUCCESSORS AND ASSIGNS

The County and the City, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement. The County shall not assign any interest in this Agreement without the written consent of the City.

ARTICLE 6
NOTICE

Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to non-compliance issues required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt,

or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the County:

Hays County
Attn: County Judge
111 E. San Antonio, Suite 300
San Marcos, Texas 78666

If to the City:

City of San Marcos
Attn: City Manager's Office
630 E. Hopkins
San Marcos, Texas 78666

**ARTICLE 7
DISPUTE RESOLUTION**

7.1 Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

7.2 Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

7.3 Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

**ARTICLE 8
MISCELLANEOUS**

8.1 Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the City and supersedes all prior negotiations, representations or arguments either written or oral.

8.2 Lawful Authority. The execution and performance of this Agreement by the County and the City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the County and the City in accordance with its terms.

8.3 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

8.4 Indemnification. It is understood and agreed between the Parties that the County and the City, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE COUNTY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND, TO THE EXTENT PERMITTED BY LAW, THE CITY AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES**

8.5 Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. Recitals are incorporated into the Agreement for all purposes. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term “will” is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

8.6 Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

8.7 No Waiver. No waiver by the County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

8.8 Public Information Act. City and County are governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

8.9 Additional Documents. The City and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

8.10 Compliance with Laws. In performing this Agreement, the City will comply with all local, state and federal laws.


8.11 Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

8.12 Right to Audit. County shall, upon five (5) days' written notice to City, have a right to inspect all receipts, invoices, proofs of purchase, records of employee activity, records of expenditures, and other relevant data related to this Agreement. Unless otherwise requested by City, County's inspection shall be performed between the hours of 8 a.m. and 5 p.m., Monday through Friday. City shall ensure that any subcontract executed by City in furtherance of this Agreement includes an obligation by subcontractor to turn over, upon written request by City, all receipts, invoices, proofs of purchase, records of employee activity, and records of expenditures related to this Agreement. County shall have the same right under this Section to inspect subcontractor materials as it does City materials. This Section shall survive termination of this Agreement, and shall remain in effect for five (5) years from the commencement of this Agreement.

(ACKNOWLEDGMENTS ON THE FOLLOWING PAGE)

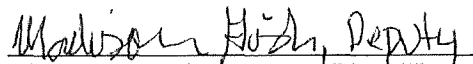
This Interlocal Funding Agreement is hereby EXECUTED on this ____ day of _____, 2022.

County of Hays:

By: 

Ruben Becerra
Hays County Judge

ATTEST:



Elaine H. Cardenas MBA PhD, Hays County Clerk



The City of San Marcos:

By: _____
Stephanie Reyes
Interim City Manager

ATTEST:

Tammy Cook, San Marcos City Clerk