

RESOLUTION NO. 2003 - 43R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE TERMS AND CONDITIONS OF A PROPERTY USE AGREEMENT BETWEEN THE CITY AND SOUTHWEST TEXAS STATE UNIVERSITY FOR THE CITY'S USE OF A PARKING AREA DOWNTOWN AND THE UNIVERSITY'S USE OF A PARKING AREA ALONG BOBCAT (CHARLES AUSTIN) DRIVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

## RECITALS:

1. The City owns property along Bobcat Drive (to be renamed Charles Austin Drive) that Southwest Texas State University (SWT) desires to use for parking purposes.
2. SWT leases property from the Southwest Texas State University Support Foundation located behind the Support Foundation's Fire Station Studio in downtown San Marcos. The City desires to use this property for parking purposes.
3. The City and SWT wish to enter into an agreement under which the City will permit SWT to use the Bobcat (Charles Austin) Drive property and SWT will permit the City to use the Fire Station Studio Parking Lot.
4. A portion of the Bobcat (Charles Austin) Drive property is dedicated City parkland, and because of this, the City Council, in accordance with Section 3.07(b)(1) of the City Charter, has conducted a public hearing on the proposed agreement for use of the Bobcat (Charles Austin) Drive property by SWT, and the City Council finds and determines that the agreement will further the use of the property for park purposes, because 1) the property will be improved for parking purposes by the City under the agreement, 2) SWT will control use of the property only at certain times, and the property will be open to public parking at other times, and 3) the City will construct, at the time the parking improvements are made, a pedestrian connection between the property and an existing gravel jogging trail.

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

PART 1. The terms and conditions of the Property Use Agreement attached to this Resolution between the City and SWT is approved.

PART 2. The City Manager, Dan O'Leary, is authorized to execute this Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect from and after its passage.

ADOPTED on **March 3, 2003.**

A handwritten signature in black ink, appearing to read "Robert B. Habingreither", with a long, sweeping horizontal line extending to the right.

Robert B. Habingreither  
Mayor

Attest:

A handwritten signature in black ink, appearing to read "Janis K. Womack", written in a cursive style.

Janis K. Womack  
City Clerk

### **Property Use Agreement**

This property use agreement, dated March 3, 2003, is between Southwest Texas State University (SWT) and the City of San Marcos (the City).

#### **1. Background**

- 1.01. The City owns property along Charles Austin Drive in San Marcos, Hays County, Texas that SWT desires to use for parking purposes. This property (called the Charles Austin Drive Property in this agreement) is more particularly described in Exhibit A, attached to this agreement and made a part of it for all purposes.
- 1.02. SWT leases property from the Southwest Texas State University Support Foundation, a Texas nonprofit corporation. This property (called the Fire Station Studio Parking Lot in this agreement) is located behind the Support Foundation's Fire Station Studio in San Marcos, Hays County, Texas. The property included in this agreement is more particularly described in Exhibit B, attached to this agreement and made a part of it for all purposes. The City desires to use this property for parking purposes.
- 1.03. This agreement sets forth the terms under which the City will permit SWT to use the Charles Austin Drive Property and SWT will permit the City to use the Fire Station Studio Parking Lot.

#### **2. Agreement and Term**

- 2.01. SWT agrees to allow the City the exclusive use of the portion of the Fire Station Studio Parking Lot described in Exhibit B and the City agrees to allow SWT the exclusive use of the Charles Austin Drive Property during SWT class days, and during SWT events, for a period of three years, beginning April 1, 2003 and ending March 31, 2006. For this purpose, "during SWT class days" means from 7:00 am to 5:00 pm on any day that SWT classes are scheduled, and "during SWT events" means during hours determined by SWT on a day on which a scheduled athletic activity is conducted at SWT's softball or baseball field adjoining Charles Austin Drive. The general public will be permitted by the parties to use the Charles Austin Drive property at all times other than during SWT class days, and during SWT events, for vehicle parking in connection with the use of the adjoining City property for park and recreational purposes.
- 2.02. The parties may, by written agreement, extend the term of this use agreement for such additional time as they later determine is appropriate. However, at the end of this agreement's term, each party will surrender the property it has received to the other in good order and condition, reasonable wear and tear excepted.
- 2.03. Either party may terminate this agreement for any reason by giving the other party at least 60 days' written notice.

#### **3. Property Use and Maintenance**

- 3.01. Each party will use the property that it receives under this agreement for vehicle parking. Neither party will use the property for any other purpose without the other party's prior written consent. Similarly, neither party will erect permanent improvements on the property it receives without the other party's prior written consent. If either party makes permanent improvements to the property it receives, such permanent improvements will become the real property owner's property when this agreement terminates.
- 3.02. Each party will pay for utilities associated with the property it receives under this agreement.

- 3.03. Each party may, at its own expense, pave and improve paved surfaces on the property each receives under this agreement. Each party will keep the property it receives free of refuse and obstructions.
- 3.04. Neither party may assign any of its interests under this agreement without the other party's prior written consent.
- 3.05. On or before October 31, 2003, the City will make approximately \$140,000 worth of improvements to the Charles Austin Drive Property. SWT and the City will cooperate to schedule the construction of improvements and to determine the nature of the improvements.

#### 4. Parking Meters and Regulations

- 4.01. The property described in Exhibit B has parking meters currently installed. The City may remove these meters and reinstall others. The City will not dispose of the removed meters without SWT's written consent. Unless SWT instructs otherwise, the City will deliver the removed meters to SWT.
- 4.02. The City may, but is not required to, continue to use the existing parking meters on the property described in Exhibit B. The City may enact ordinances establishing regulations and setting fines for overtime parking or other violations of regulations for use of the parking spaces within the property described in Exhibit B. The City is entitled to all revenues associated with the operation of the property described in Exhibit B, including parking meter fees and fine revenues.
- 4.03. Similarly, SWT may establish rules for parking on the Charles Austin Drive Property during the term of this agreement and may collect parking charges and other revenues associated with the Charles Austin Drive Property. SWT agrees to erect and maintain signs along the Charles Austin Drive property designating SWT class hours, and to place temporary signs along the property to indicate SWT events.

#### 5. Notices

- 5.01. All notices required to be given to the City shall be given by certified mail, return receipt requested, or by confirmed facsimile, to:

City Manager  
City of San Marcos  
630 E. Hopkins Street  
San Marcos, TX 78666  
Fax: 512-396-4656

- 5.02. All notices required to be given to SWT shall be given by certified mail, return receipt requested, or by confirmed facsimile, to:

Vice President for Finance and Support Services  
Southwest Texas State University  
601 University Drive  
San Marcos, TX 78666  
Fax: 512-245-2033

- 5.03. Each party will notify the other of any change in its address or facsimile number.

## 6. General Provisions

- 6.01. The parties will construe this agreement under the laws of the State of Texas and will perform all their obligations in Hays County, Texas.
- 6.02. This is the only agreement of the parties respecting this subject, and it supersedes any prior written or oral agreements between the parties regarding this subject. The parties may not amend this agreement except in writing, dated after the date of this agreement and signed by each party's representative.
- 6.03. If any of this agreement's provisions is held to be illegal, invalid, or unenforceable, that holding will not affect any other provision of this agreement. The parties will construe the agreement as if the illegal, invalid, or unenforceable provision had never been contained in this agreement.

Southwest Texas State University

City of San Marcos

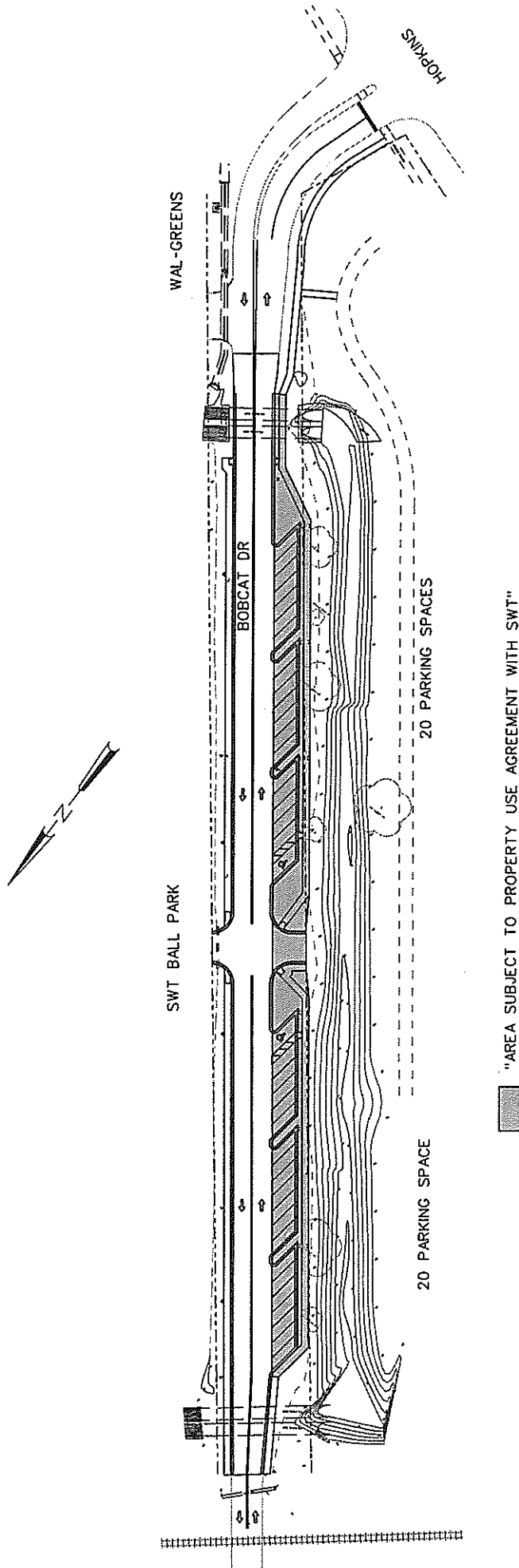
WAF

By:

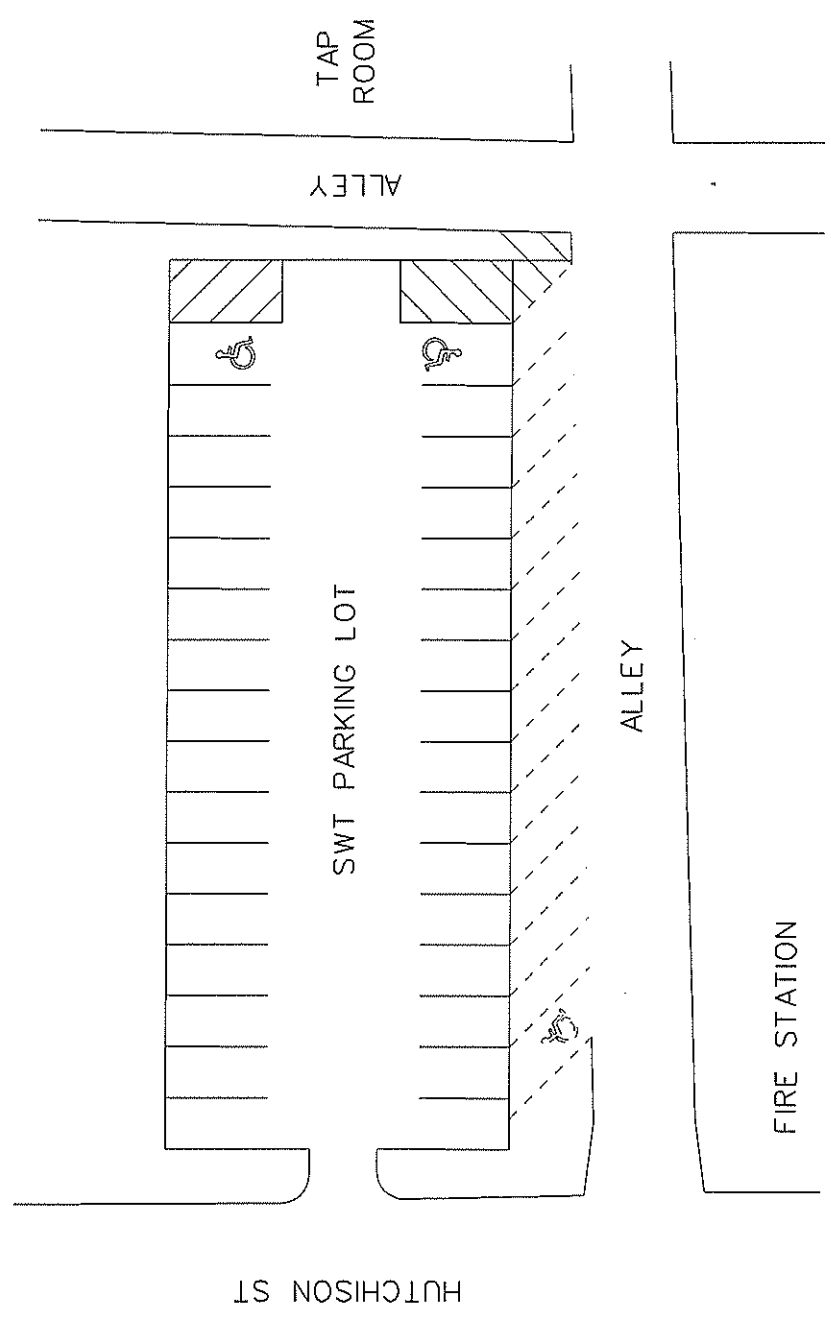
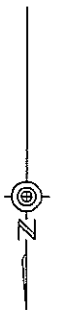
William A. Nance  
William A. Nance  
Vice President for Finance and  
Support Services

By:

D. O'Leary  
Dan O'Leary  
City Manager



# EXHIBIT "A"



# EXHIBIT "B"

NOTE: DIAGONAL SPACES TO BE RETAIN BY SWT.