

## **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.

### **I. Recitals**

**1.01.** Texas State and the City have a mutual interest in improving the safety of motorists, bicyclists and pedestrians near the Texas State University campus.

**1.02.** Texas State and the City have identified mutually beneficial road, drainage, pedestrian and bicycle path improvements along Sessom Drive, including improvements to realign Peques and State Streets at their intersection with Sessom Drive as generally shown in Exhibit A, attached hereto (the "Improvements"), and wish to jointly participate in the design and construction of the Improvements.

**1.03.** Texas State and the City have identified irregularities in the common boundary between the lands held by Texas State and the City along Peques Street as well as Sessom Drive between FM82 and Comanche Street, and have mutually determined that a cross conveyance of lands to better define the common property line would be advantageous to both Texas State and the City. Texas State and the City have also identified the one block comprising Vista Street owned by the City as shown in Exhibit B (the "City Property") is entirely internal to the Texas State University campus and have mutually determined that Texas State should take ownership of and maintain the City Property.

**1.04.** Texas State and the City have determined that, in consideration of the mutual benefits to the parties under this Agreement, the Texas State Property and the City Property are of comparable value and, therefore, wish to exchange the Texas State Property for the City Property without need for further consideration.

**1.05.** The purpose of this Agreement is to delineate the roles and contributions of the parties with regard to the design, construction and financing of the Improvements. The activities of the parties under this Agreement are governmental as defined in §791.003 of the Texas Government Code.

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

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

**2.01.** Engineering Services. Each party will pay one-half of the costs for engineering services provided by Byrn & Associates related to surveying the right-of-way alignment that will determine the portions of Property to be conveyed to each Party. Each party will also pay one-half of the costs for engineering services provided by Halff Associates, Inc. to reconcile any conflicts between its initial engineering plans and the right-of-way survey prepared by Byrn & Associates. Texas State will also pay: a) half of the costs for the portion of engineering services provided by Halff Associates, Inc. related to the realignment of and related intersection improvements at Sessom Drive and Peques Street (the "Realignment"); b) all the costs of engineering services incurred for the design of sidewalk improvements between Peques Street and Ed J.L. Green Drive (the "Practice Field Sidewalk"); and c) the cost of engineering services incurred for the design of previously planned additional sidewalk improvements along Peques Street that may possibly be constructed in the future (the "Peques Sidewalk"), but will not be constructed under this Agreement.

**2.02. Improvements Specifications.** Texas State and the City will coordinate to approve any surveys prepared by the engineers and final design specifications and cost estimates for the Texas State portion of the Improvements. Each party shall be entitled to keep copies of any surveys, together with the final plans and any as-built drawings prepared by the engineers.

**2.03. Bids for Construction.** Texas State will review the design specifications and cost estimates for its portion of the Improvements and the City will review the design specifications and cost estimates for its portion of the Improvements. Following each party's approval of the final design specifications and cost estimates for the Improvements, the authorized representatives of the parties will coordinate and designate a date no later than April 30, 2016 for the solicitation of bids for construction of the Improvements in accordance with such plans. The City will solicit bids for construction of the Improvements following applicable municipal bidding procedures.

**a. Cost Sharing.** The Improvements include components for the Realignment and the Practice Field Sidewalk. Texas State agrees to pay one-half of the cost for the construction of the Realignment and all of the costs for the Practice Field Sidewalk. Before the City places an item on the City Council agenda for the award of a contract for the construction of the Improvements, Texas State shall deliver payment to the City in the amount of the costs allocated to Texas State under this section.

**i.** Payments will be made to the contractor under the terms of the contract for construction. Subject to the requirements and deadlines for payment to the contractor under the terms of the contract for construction, the City will notify Texas State in advance of each proposed payment and provide to Texas State copies of all contractor invoices paid. In conjunction with final payment under the contract for construction, the parties will reconcile the allocation of funds contributed by each party toward construction. If the final costs attributable to Texas State are less than the funds paid in advance by Texas State, the City will refund the difference to Texas State upon final payment and closeout under the construction contract.

**b. Excessive Bid Price.** If the lowest responsible bid price for construction of the Improvements exceeds the estimated costs agreed to by the parties under section 2.02 by more than 15 percent:

**i.** the parties may approve new specifications and solicit new bids based on such specifications;

**ii.** the City, with the agreement of Texas State to pay its share of any increased costs for the Realignment or the Practice Field Sidewalk, may award the contract at such higher bid price; or

**iii.** either party may terminate this Agreement by providing written notice of termination to the other and the City will reject all bids.

**c. Change Orders.** Pursuant to the contract for construction of the Improvements awarded by the City under this section, the City may approve change orders, subject to approval by Texas State of change orders associated with the Realignment, the Practice Field Sidewalk or other work where Texas State bears a direct cost under this Agreement. If a change order results in costs for the Realignment or the Practice Field Sidewalk greater than the initial contract amount, the City may submit an invoice to Texas State for its share of the increased costs under the change order. Texas

State shall pay such invoice with 30 days of receiving it.

**d. Notice to Proceed.** The City's award of a contract under this section will be subject to the exchange of the City Property for the Texas State Property as outlined in Article III below. The City shall not issue any notice to proceed under a contract for construction awarded under this section until the exchange of the City Property for the Texas State Property has occurred.

### **III. Exchange of Parcels**

**3.01. Agreement to Convey City Parcel.** The City agrees to convey the City Property to Texas State, subject to the terms and conditions of this Agreement and approval by the San Marcos City Council of an ordinance abandoning the City Property to Texas State.

**3.02. Agreement to Convey Texas State Parcel.** Texas State agrees to convey the Texas State Property 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 of a motion authorizing such conveyance.

**3.03. Mutual Exchange.** Upon approval by the parties of the survey prepared by Byrn & Associates and the legal descriptions for the Texas State Property and the City Property, and award of the construction contract for the Improvements under Article II, the parties will each execute one or more quitclaim deeds conveying to the other their respective property under sections 3.01 and 3.02. Texas State agrees to reimburse the City for the actual cost to remove existing electric utility facilities within Vista Street estimated to be \$1,200.00. The City Property shall be conveyed subject to the rights of any existing non-city utility providers and franchisees of the City.

**3.04. Licenses and Easements.** Texas State agrees to grant to the City such temporary licenses as are necessary and agreed between the parties for the initial construction the Improvements. Each party also agrees to grant to the other such easements as are reasonably necessary resulting from the exchange of property to the extent a party's existing facilities cannot be removed from the portion of land conveyed to the other, subject to the approval of the governing bodies for each party.

**3.05. Recording Fees.** Each party shall pay its own costs for recording their respective deeds or easements.

### **IV. Remedies Upon Default**

**4.01. Termination of Agreement.** 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.

### **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.

EXECUTED to be effective as of \_\_\_\_\_, 2015 (the “Effective Date”).

**CITY OF SAN MARCOS**

**TEXAS STATE UNIVERSITY-**

By: \_\_\_\_\_  
Jared Miller, City Manager

By: \_\_\_\_\_  
William A. Nance, Vice President  
for Finance and Support Services

EXHIBIT A

## EXHIBIT B