

INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND THE CITY OF SAN MARCOS
RELATED TO CR 225 (LIME KILN ROAD) PROJECT

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF HAYS §

This Interlocal Agreement (the “**Agreement**”) is entered into as of this _____ day of _____, 2020, by and between Hays County, a political subdivision of the State of Texas (the “**County**”) and the City of San Marcos, a Texas home-rule municipality (the “**City**”) (collectively, the “**Parties**”). In this Agreement, the City and the County are sometimes individually referred to as “**a Party**” and collectively referred to as “**the Parties**”.

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, the County desires to rehabilitate CR 225 (Lime Kiln Road) at the San Marcos River and Sink Creek; and

WHEREAS, a portion of CR 225 (Lime Kiln Road) lies within the city limits of San Marcos; and

WHEREAS, the County and the City desire to cooperate in the expeditious rehabilitation of CR 225 (Lime Kiln Road) at the San Marcos River and Sink Creek (the “**Project**”);

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.
PURPOSE

1.01 General. The purpose of this Agreement is to provide for the City’s participation in the construction of the Project. The Project includes bridge and drainage improvements at the San Marcos River and Sink Creek, at the approximate location shown on Exhibit A.

II. COUNTY OBLIGATIONS

2.01 Design Costs. The County shall be responsible for contracting with the firm of K. Friese & Associates, Inc. (“Design Firm”) regarding the engineering and design costs for the Project and shall be responsible for all design costs related to the Project.

2.02 Construction Responsibility. The County shall be responsible for the construction of the Project, including the adjustment of six (6) City of San Marcos wastewater manholes within the right-of-way or otherwise affected by the Project, as shown on Exhibit A, and that will be bid for construction jointly with the construction of the Project.

2.03 Construction Costs. The County shall be responsible for all costs associated with the construction of the Project, unless otherwise specified herein (“Project Construction Costs”). The estimated Project Construction Cost is \$3,241,229.90. Project Construction Costs include all costs related to utility relocation, except that the City shall be solely responsible for the costs associated with the relocation of the City of San Marcos electric service poles and adjustment of wastewater manholes within the right-of-way or otherwise affected by the Project.

2.04 Construction Plans. The County and the City will mutually approve the plans and specifications related to the Project. Any changes or modifications to the plans will be submitted to the City for review and approval prior to commencing construction.

2.05 Inspection. The City may inspect all aspects of the Project during construction. Upon receipt of notification from the City that the City’s inspectors determine the construction by the County is not in accordance with the approved project plans, the County shall cease construction until the deficiency can be identified, and a corrective plan of construction implemented with the agreement of the City.

2.06 Permits. The County shall be responsible for obtaining permits, if any, required for the construction of the Project.

2.07 Insurance, Bonds and Warranties. The County shall require the contractor for the Project to name the City as an additional insured on any policies related to the Project. The County shall require the contractor to provide performance bonds and maintenance bonds in favor of the City for the Project in amounts satisfactory to the City. The County shall transfer all warranties for the Project to the City upon final completion and acceptance of the Project.

III. CITY OBLIGATIONS

3.01 Design Reimbursements. As stated above, the County shall contract with the Design Firm, and be responsible for the payment of all Design Firm invoices.

3.02 Construction Reimbursements. The City shall pay the County the sum of up to and no more than twenty-five thousand twenty dollars (\$25,020.00) (“City Participation Amount”) as its cost to participate in the construction of the Project related to the adjustment of six (6)

wastewater manholes within the right-of-way or otherwise affected by the Project. The full City Participation Amount shall be due within thirty (30) days after the Effective Date of this Agreement. Any unused funds paid by the City will be reimbursed to the City within 30 days after acceptance of the Project and termination of this Agreement.

3.03 Permission to Construct. The City agrees to allow the County to construct the Project within the City's boundaries. The City further agrees to accept maintenance of the Project within the City Limits after the City has accepted the Project.

3.04 Acquisitions and Relocations. The City agrees to be solely responsible for the relocation of the City electric service poles within the right-of-way or otherwise affected by the Project. This obligation is in addition to the City Obligations as stated above.

IV. DISPUTES

4.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

4.02 Equitable Relief. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agrees that after providing notice and an opportunity to cure in accordance with Section 4.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

4.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

V. GENERAL PROVISIONS

5.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

5.02 Term. This Agreement shall commence upon execution of this Agreement and shall end upon the acceptance of the project.

5.03 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

5.04 Default and Remedies. If City fails to pay for Services under this Agreement and continues such failure for thirty (30) days after the County provides written notice to cure, City shall be deemed to be in default under this Agreement. In the event that the County defaults under this Agreement, and such default is not cured, City may, in addition to any other remedy at law or in equity, immediately terminate this Agreement or seek specific performance of this Agreement.

5.05 Payments from Current Revenues. Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

5.06 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.07 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter and only relates to those portions of the Project shown in the map attached hereto as Exhibit "A."

5.08 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

5.09 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Hays County, Texas.

5.10 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY: 630 East Hopkins
San Marcos TX, 78666
Attn: Shaun Condor
Telephone: (512) 393-8131
Facsimile: N/A
Email: scondor@sanmarcostx.gov

COUNTY: Hays County Dept. of Transportation
2171 Yarrington Road
San Marcos, Texas 78666
Attn: Jerry Borcharding, P.E.
Telephone: (512) 393-7385
Facsimile: (512) 393-7393

5.11 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

5.12 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

5.13 Effective Date. This Agreement is executed to be effective on the date the last Party signs this Agreement.

5.14 No Joint Venture. The Project is a sole project of the County and is not a joint venture or other partnership with the City.

(SIGNATURES ON FOLLOWING PAGE)

HAYS COUNTY

By: _____
Ruben Becerra, County Judge

Date: _____

ATTEST:

By: _____
County Clerk

THE STATE OF TEXAS §

§

COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2020, by Ruben Becerra of Hays County, Texas, on behalf of said County.

Notary Public, State of Texas

CITY OF SAN MARCOS, TEXAS

By: _____
Bert Lumbreras, City Manager

Date: _____

ATTEST:

By: _____
Tammy K. Cook, Interim City Clerk

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2020, by Bert Lumbreras, City Manager of the City of San Marcos, a Texas home-rule city, in such capacity, on behalf of said city.

Notary Public, State of Texas

EXHIBIT A
PROJECT LOCATION

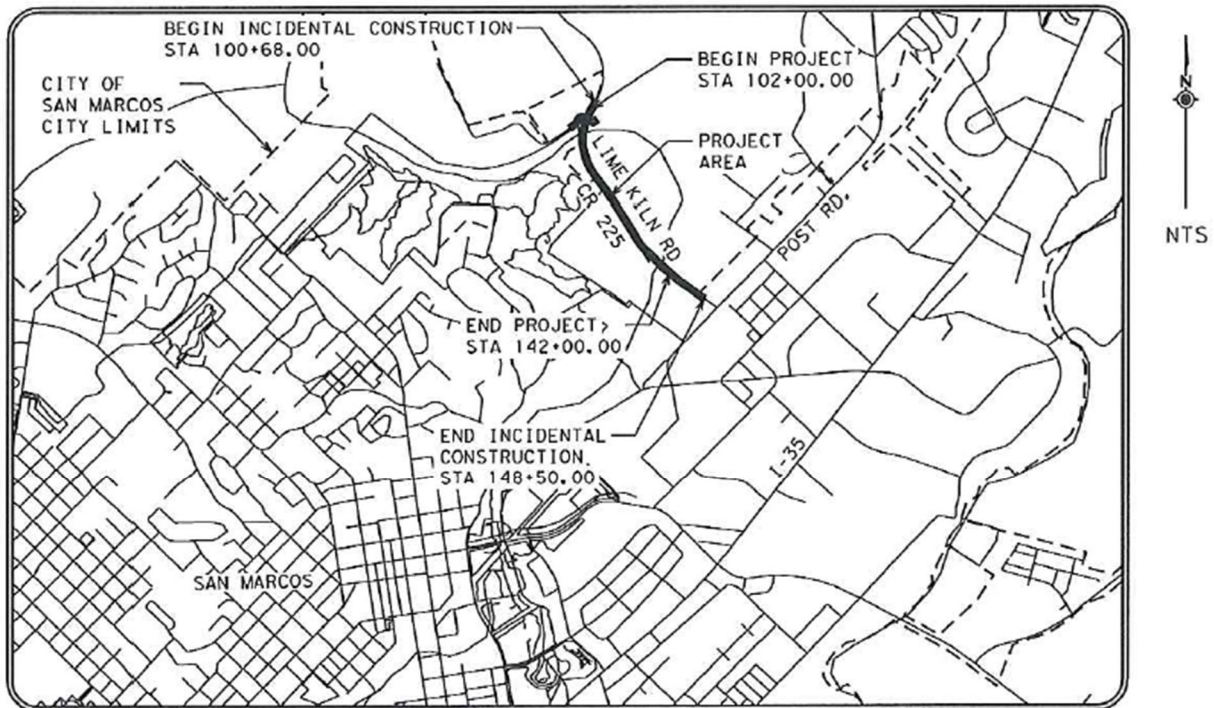


EXHIBIT B
CITY OF SAN MARCOS PROJECT COSTS

BID ITEM	TECH SPEC	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
116	1506SM	MNR MH HGHT ADJST /W NEW RING AND CVR, 32" DIA	6	EA	\$ 4,170.00	\$ 25,020.00