

**INTERLOCAL AGREEMENT BETWEEN**  
**HAYS COUNTY AND THE CITY OF SAN MARCOS**  
**RELATED TO THE OLD BASTROP HIGHWAY (CR 266) 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 Old Bastrop Highway (CR 266) from Centerpoint Road to Rattler Road; and

**WHEREAS**, a portion of Old Bastrop Highway (CR 266) lies within the city limits of San Marcos; and

**WHEREAS**, the rehabilitation of Old Bastrop Road (CR 266) will affect certain easement and interests of the City; and

**WHEREAS**, the City also desires to install a new 16-inch water main along Old Bastrop Highway (CR 266) from Centerpoint Road to Rattler Road, and it is beneficial to the City and the County to install the water main while the work on rehabilitating Old Bastrop Road (CR266) is being performed rather than after the road is paved and completed; and

**WHEREAS**, the County and the City desire to cooperate in the expeditious rehabilitation of Old Bastrop Highway (CR 266) from Centerpoint Road to Rattler Road, while accommodating the affected interests of the City, including the installation of the 16-inch water main(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 design and construction of the Project. The Project includes paving and drainage improvements from Centerpoint Road to Rattler Road, at the approximate location shown on Exhibit A, Project Location.

## **II. COUNTY OBLIGATIONS**

**2.01 Design Costs.** The County shall be responsible for contracting with the firm of Doucet & Associates ("Design Firm") regarding the engineering and design costs for the Project, except for the engineering and design costs associated with the City's 16-inch waterline. The City shall be responsible for all costs related to the design of a 16-inch waterline that will be bid for construction jointly with the construction of the Project. The Project Design Costs are estimated to be \$530,000.00.

**2.02 Acquisition of Utility Easements.** The County shall purchase one 30-foot utility easement ("replacement easement") to replace an existing 30-foot City of San Marcos-owned utility easement as shown on Exhibit C, Existing and Proposed Easement Locations, the cost of which shall be 100% the responsibility of the County. The proposed general location of the new 30-foot easement is shown on Exhibit C, Existing and Proposed Easement Locations. The County shall also purchase a 20-foot utility easement ("non-replacement easement") that does not replace an existing City of San Marcos utility easement, the proposed general location of which is shown on Exhibit C, Existing and Proposed Easement Locations, and for which the City of San Marcos shall reimburse the County for fifty-percent (50%) of all acquisition-related costs, including acquisition services, appraisal and other miscellaneous expenses, and the purchase cost of the non-replacement easement. Upon acquisition of the replacement easement, the County shall deed the easement to the City of San Marcos and, upon request of the County, the City will provide a release of the portion of the old easement being replaced. Upon acquisition of the non-replacement easement, the County shall assign the easement jointly to both the City of San Marcos and Bluebonnet Electric Cooperative. Estimated acquisition costs for the non-replacement easement are shown on Exhibit B, Estimated City of San Marcos Project Costs.

**2.03 Construction Costs.** The County shall be responsible for all costs associated with the construction of the Project, with the exception of the costs associated with the construction of the aforementioned City of San Marcos 16-inch waterline that will be bid for construction jointly with the construction of the Project. The estimated Project Construction Cost is \$4,598,276; the estimated waterline Construction Cost is \$1,550,000.00.

**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, with the exception of the design of a City of San Marcos 16-inch waterline that will be bid for construction jointly with the construction of the Project. The City shall be responsible for all costs associated with the design of the 16-inch City of San Marcos waterline. The City is contracting separately with a Design Firm and will be responsible for all Design Firm invoices for the design of the 16-inch City of San Marcos waterline. Design costs for any changes requested by the City during construction shall be negotiated with the County and be addressed in an Amendment to this Interlocal Agreement, as appropriate.

**3.02 Utility Easement Acquisition Reimbursements.** As stated above, the County shall purchase a 20-foot utility easement (“non-replacement easement”) that does not replace an existing City of San Marcos utility easement and for which the City of San Marcos shall reimburse the County for 50% of all acquisition-related costs, including acquisition services, appraisal and other miscellaneous expenses, and the purchase cost of the non-replacement easement. Upon acquisition of the non-replacement utility easement, the County shall assign the easement jointly to the City of San Marcos and Bluebonnet Electric Cooperative. Estimated acquisition costs for the non-replacement easement are shown on Exhibit B, Estimated City of San Marcos Project Costs.

**3.03 Construction Reimbursements.** As stated above, the County shall be responsible for all costs associated with the construction of the Project, with the exception of the construction of the aforementioned City of San Marcos 16-inch waterline that will be bid for construction jointly with the construction of the Project. The estimated Project Construction Cost is \$4,598,276. Estimated costs for the construction of the 16-inch waterline are shown on Exhibit B, Estimated City of San Marcos Project Costs. Construction costs for any changes requested by the City during construction shall be negotiated with the County and be addressed in an Amendment to this Interlocal Agreement, as appropriate.

### **3.04 Terms of Reimbursement.**

(a) The City will reimburse the County for the Utility Easement Acquisition Reimbursements as stated above within 30 days after the closing date for the non-replacement utility easement acquisition.

(b) The City will reimburse the County for any Design changes requested by the City during construction related changes to the design and construction 16-inch waterline within 30 days the County making payment to the Design Firm.

(c) The City shall pay the County the amount submitted by the successful low bidder of the Project in the amount equal to the construction costs of the 16-inch waterline. The full City Participation Amount for the construction of the 16-inch waterline shall be due within thirty (30) days after the opening of construction bids for the Project. If the City must amend this agreement as a result of the construction cost, the City will require sixty (60) days to obtain City Council approval on the Agreement amendment, unless the change in costs in the amendment is within the lawful authority of the City Manager to administratively approve. 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.

**3.05 Permission to Construct.** The City agrees to allow the County to construct the Project within the City's boundaries.

**3.06 City Participation Amount.** The Total Funding limits of this agreement are listed in Exhibit B. Funds listed in Exhibit B are an estimate and not exclusive to each item listed. If the Total Funding Amount exceeds the amount listed in Exhibit B, this Agreement must be amended by mutual written agreement to reflect such increase.

## **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.

**5.9 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) 393-8134  
Facsimile: N/A  
Email: [scondor@sanmarcostx.gov](mailto:scondor@sanmarcostx.gov)

**COUNTY:** Hays County Transportation Dept.  
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.

**5.15 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, County Judge 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

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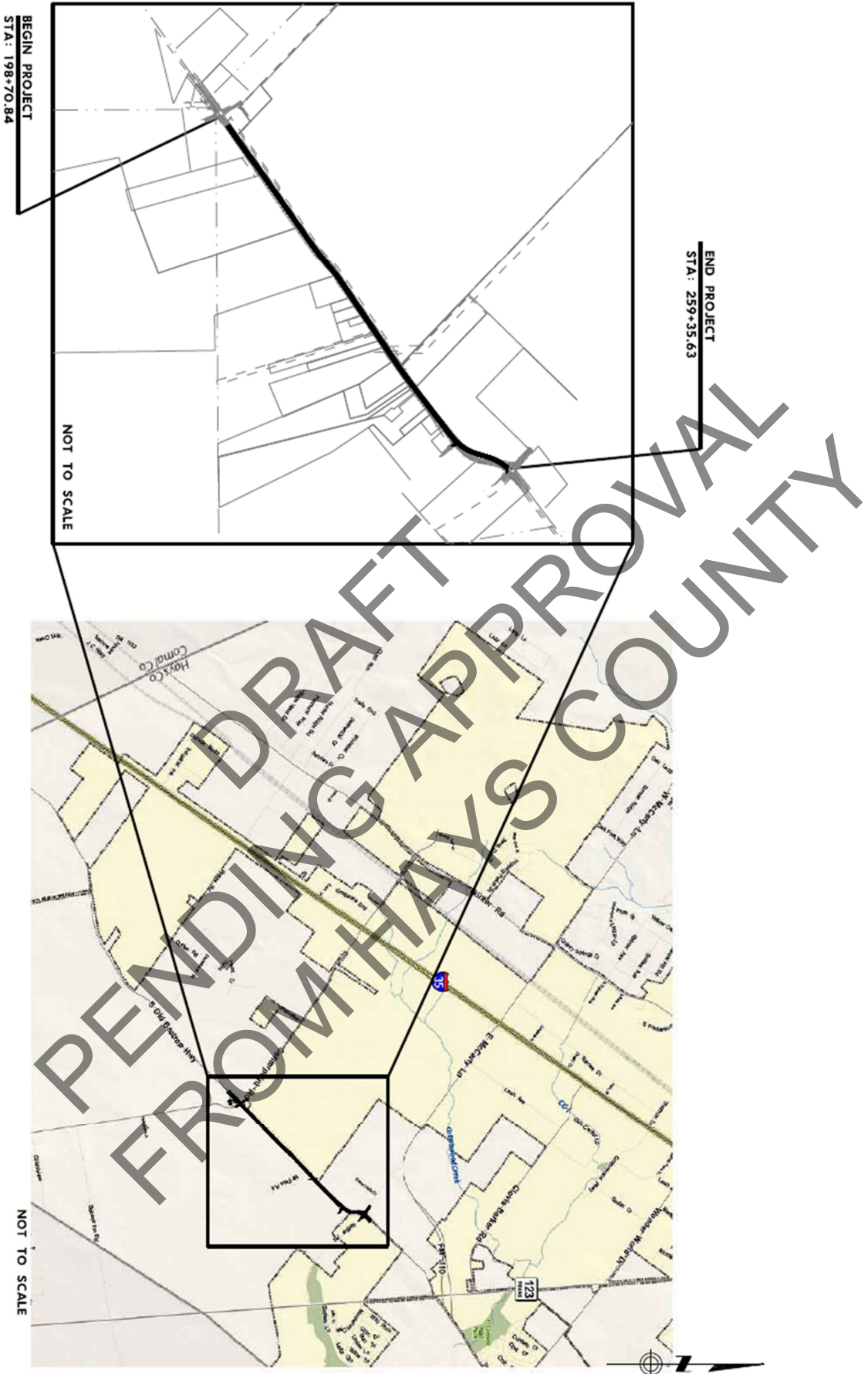
COUNTY OF HAYS

**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



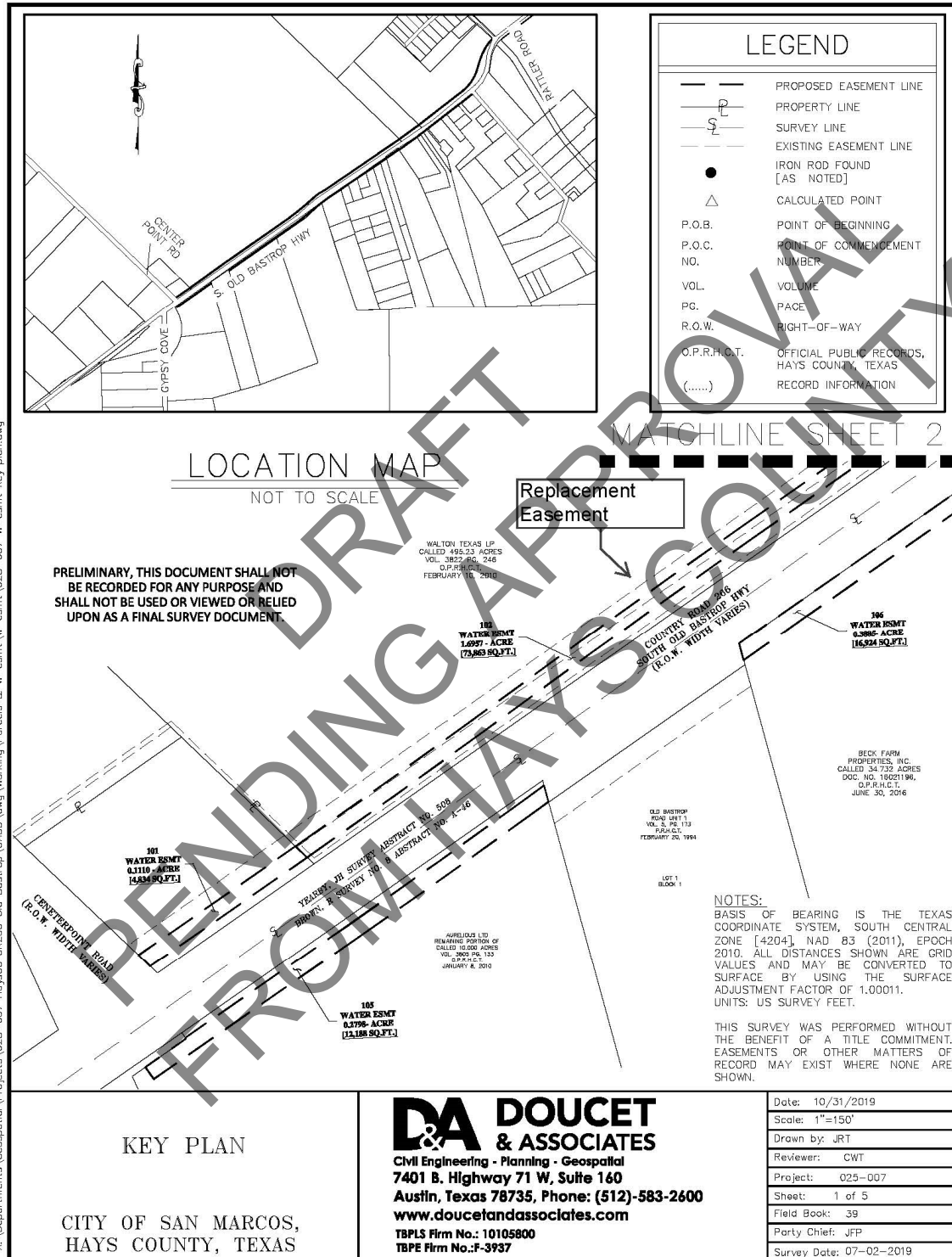
EXHIBIT A  
PROJECT LOCATION

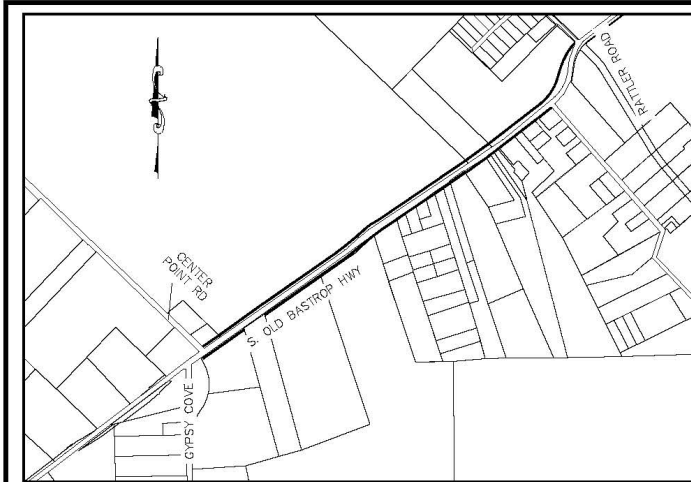


EXHBIT B  
ESTIMATED CITY OF SAN MARCOS PROJECT COSTS

Cost Item	
Construction Cost (16" joint bid waterline)	\$1,437,310.34
Non-Replacement Easement Costs (Estimated Values):	
50% Appraisal and Misc. Expenses	\$1,900.00
50% Acquisition Services	\$4,100.00
50% Purchase Cost (to be determined by appraisal)	\$106,689.66
APPROXIMATE TOTAL FOR CITY PARTICIPATION (Not To Exceed)	\$1,550,000.00

# EXHIBIT C EXISTING AND PROPOSED EASEMENT LOCATIONS





PRELIMINARY, THIS DOCUMENT SHALL NOT  
BE RECORDED FOR ANY PURPOSE AND  
SHALL NOT BE USED OR VIEWED OR RELIED  
UPON AS A FINAL SURVEY DOCUMENT.

## LOCATION MAP

NOT TO SCALE

MATCHLINE SHEET 3

Replacement  
Easement

100  
WATER RIGHT  
1.6957-ACRE  
[73,863 SQ.FT.]

107  
WATER RIGHT  
0.3664-ACRE  
[15,988 SQ.FT.]

WALTON, TEXAS, L.P.  
CALLED 495.23 ACRES  
VOL. 3822 PG. 248  
O.P.R.H.C.T.  
FEBRUARY 10, 2010

RANCHO TEXAS 40  
INVESTMENTS, L.P.  
CALLED 180.017 ACRES  
VOL. 3354, PG. 622  
O.P.R.H.C.T.  
MAY 27, 2015

106  
WATER RIGHT  
0.3685-ACRE  
[16,924 SQ.FT.]

BECK FARM  
PROPERTIES, INC.  
CALLED 34.732 ACRES  
DOC. NO. 18201196,  
O.P.R.H.C.T.  
JUNE 30, 2016

NOTES:  
BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM, SOUTH  
CENTRAL ZONE [4204], NAD 83 (2011), EPOCH 2010. ALL  
DISTANCES SHOWN ARE GRID VALUES AND MAY BE CONVERTED  
TO SURFACE BY USING THE SURFACE ADJUSTMENT FACTOR OF  
1.00011.  
UNITS: US SURVEY FEET.

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE  
COMMITMENT. EASEMENTS OR OTHER MATTERS OF RECORD MAY  
EXIST WHERE NONE ARE SHOWN.

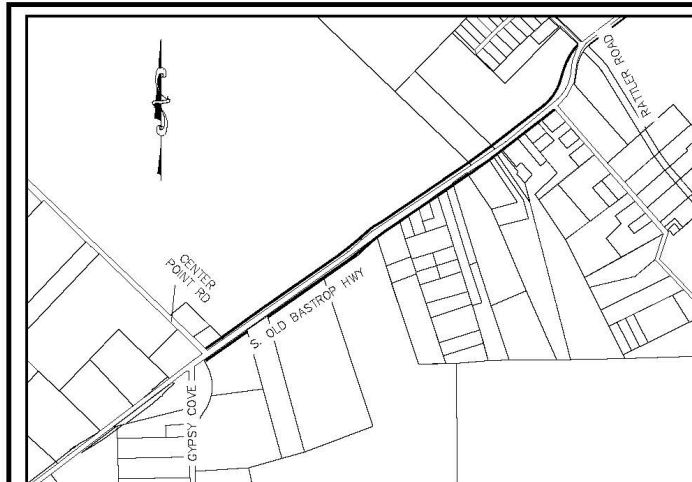
MATCHLINE SHEET 1

## KEY PLAN

CITY OF SAN MARCOS,  
HAYS COUNTY, TEXAS

**DA DOUCET  
& ASSOCIATES**  
Civil Engineering - Planning - Geospatial  
7401 B. Highway 71 W, Suite 160  
Austin, Texas 78735, Phone: (512)-583-2600  
[www.doucetandassociates.com](http://www.doucetandassociates.com)  
TBPLS Firm No.: 10105800  
TBPE Firm No.: F-3937

Date:	10/31/2019
Scale:	1"=150'
Drawn by:	JRT
Reviewer:	CWT
Project:	025-007
Sheet:	2 of 5
Field Book:	39
Party Chief:	JFP
Survey Date:	07-02-2019



**NOTES:**  
 BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM,  
 SOUTH CENTRAL ZONE [4204], NAD 83 (2011), EPOCH 2010.  
 ALL DISTANCES SHOWN ARE GRID VALUES AND MAY BE  
 CONVERTED TO SURFACE BY USING THE SURFACE  
 ADJUSTMENT FACTOR OF 1.00011.  
 UNITS: US SURVEY FEET.

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A  
 TITLE COMMITMENT. EASEMENTS OR OTHER MATTERS OF  
 RECORD MAY EXIST WHERE NONE ARE SHOWN.

**MATCHLINE SHEET 4**

## LOCATION MAP

NOT TO SCALE

PRELIMINARY, THIS DOCUMENT SHALL NOT  
 BE RECORDED FOR ANY PURPOSE AND  
 SHALL NOT BE USED OR VIEWED OR RELIED  
 UPON AS A FINAL SURVEY DOCUMENT.

Replacement  
 Easement

WALTON TEXAS LP  
 CALLED 495.23 ACRES  
 VOL. 3822 PG. 246  
 O.P.R.H.C.T.  
 FEBRUARY 10, 2010

100  
 WATER ESMT  
 0.1853 ACRES  
 [7,871 SQ.FT.]

ALONZO JOHN AND WIFE  
 BEATRICE NATAL  
 CALLED 2.98 ACRES  
 VOL. 519 PG. 317  
 O.P.R.H.C.T.  
 JANUARY 22, 1986

103  
 WATER ESMT  
 1.4089 ACRES  
 [73,463 SQ.FT.]

109  
 WATER ESMT  
 0.0582 ACRES  
 [8,083 SQ.FT.]

BARBARA B. CARLSON  
 CALLED 0.073 ACRES  
 DOC. NO. 18021889  
 O.P.R.H.C.T.  
 JULY 9, 2010

MARIA & SANTIAGO  
 CALLED 1.68 ACRES  
 VOL. 586 PG. 93  
 O.P.R.H.C.T.  
 MARCH 7, 1996

110  
 WATER ESMT  
 0.2699 ACRES  
 [3,904 SQ.FT.]

111  
 WATER ESMT  
 0.8489 ACRES  
 [12,398 SQ.FT.]

JDE AND WIFE  
 ISABEL RIVAS  
 CALLED 0.40 ACRES  
 VOL. 481 PG. 487  
 O.P.R.H.C.T.  
 NOVEMBER 9, 1983

JDE AND WIFE  
 ISABEL RIVAS  
 CALLED 2.233 ACRES  
 VOL. 1819 PG. 733  
 O.P.R.H.C.T.  
 APRIL 13, 1998

112  
 WATER ESMT  
 0.0707 ACRES  
 [1,023 SQ.FT.]

CONCEPCION &  
 JOSE LUIS ORTEGA,  
 SR.  
 CALLED 3.98  
 ACRES  
 VOL. 1480 PG. 173  
 O.P.R.H.C.T.  
 DECEMBER 2, 1998

113  
 WATER ESMT  
 0.8777 ACRES  
 [12,613 SQ.FT.]

114  
 WATER ESMT  
 0.8876 ACRES  
 [12,779 SQ.FT.]

ALBERT SOTO AND  
 WIFE MCENTA  
 CALLED 2.250 ACRES  
 VOL. 705 PG. 836  
 O.P.R.H.C.T.  
 NOVEMBER 3, 1987

**MATCHLINE SHEET 2**

## KEY PLAN

CITY OF SAN MARCOS,  
 HAYS COUNTY, TEXAS

**DA DOUCET & ASSOCIATES**  
 Civil Engineering - Planning - Geospatial  
 7401 B. Highway 71 W, Suite 160  
 Austin, Texas 78735, Phone: (512)-583-2600  
 www.doucetandassociates.com  
 TBPLS Firm No.: 10105800  
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Date:	10/31/2019
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Project:	025-007
Sheet:	3 of 5
Field Book:	39
Party Chief:	JFP
Survey Date:	07-02-2019



X:\Departments\Geospatial\Projects\025-007 HaysCo CR266 Old Bastrop\CADD\Working\Parcels & W-esmt\W-esmt\025-007 W-esmt key plan.dwg

