

**INTERLOCAL AGREEMENT
BETWEEN COMAL COUNTY AND CITY OF SAN MARCOS
FOR SUBDIVISION REGULATION WITHIN THE
EXTRATERRITORIAL JURISDICTION OF THE
CITY OF SAN MARCOS**

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is made and entered into by and between Comal County, Texas, a political subdivision of the State of Texas (hereinafter referred to as "COUNTY"), by and through its County Judge, Danny Scheel, and the City of San Marcos, a municipal corporation of the State of Texas (hereinafter referred to as "CITY"), by and through its Interim City Manager, Laurie Moyer.

WHEREAS, the CITY has duly identified its extraterritorial jurisdiction (hereinafter referred to as "ETJ" or the "CITY's ETJ") within the COUNTY; and

WHEREAS, the CITY has adopted and is enforcing subdivision regulations pursuant to Texas Local Government Code Chapter 212 and other statutes applicable to municipalities; and

WHEREAS, the COUNTY has adopted and is enforcing subdivision regulations pursuant to Texas Local Government Code sections 232.001-232.005 and other statutes applicable to counties; and

WHEREAS, the COUNTY and the CITY, pursuant to Texas Local Government Code Section 242.001, have both enforced their subdivision regulations in the CITY's ETJ and, in those situations where the CITY's regulation conflicted with the COUNTY's regulation, the more stringent provisions have prevailed; and

WHEREAS, the Texas Legislature has revised Texas Local Government Code Chapter 242 to limit subdivision regulation within the ETJ to one entity; and

WHEREAS, the COUNTY and the CITY are required to enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the ETJ of the CITY within the COUNTY; and

WHEREAS, the COUNTY and the CITY were required to enter into said written agreement on or before April 1, 2002; and

WHEREAS, the Texas Local Government Code Section 242.001(d)(4) allows the CITY and the COUNTY to establish a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the ETJ; and

WHEREAS, pursuant to Section 242.001(d)(4) of the Texas Local Government Code the CITY and the COUNTY entered into an Interlocal Agreement on May 9, 2002, establishing consolidated and consistent subdivision regulations for the CITY'S ETJ dictating that the CITY would enforce such regulations pursuant to such Interlocal Agreement; and

WHEREAS, to the extent that the CITY's execution of this Agreement and related agreements with other counties in other areas of the CITY's ETJ, or the CITY's adoption, administration or enforcement of ordinances, rules, regulations or plans in reasonable furtherance of this Agreement or the related agreements results in requirements or restrictions that are not identical throughout the CITY's entire ETJ, the

parties jointly acknowledge that the actions of the CITY are "reasonably taken to fulfill an obligation mandated by state law" within the meaning of TEX. GOV'T CODE Section 2007.003(b)(4), and are therefore not subject to TEX. GOV'T CODE Chapter 2007; and

WHEREAS, pursuant to Section 242.001(d)(4) of the Texas Local Government Code the CITY and the COUNTY desire to enter into this Amended Interlocal Agreement establishing consolidated and consistent subdivision regulations for the CITY'S ETJ dictating that the COUNTY will enforce the COUNTY'S regulations pursuant to this Amended Interlocal Agreement; and

WHEREAS, pursuant to Section 242.001(c) of the Texas Local Government Code, the CITY and COUNTY hereby certify that the foregoing Amended Interlocal Agreement complies with Texas Local Government Code Chapter 242 pertaining to regulation of the ETJ of San Marcos;

NOW, THEREFORE, the COUNTY and the CITY mutually agree as follows:

I.

TERM OF AGREEMENT

1. The COUNTY and the CITY mutually agree that the term of this Agreement shall be from the date it is formally and duly executed by both the COUNTY and the CITY until terminated by the parties. This Agreement may be amended by the mutual agreement of the parties in writing.
2. Notwithstanding the foregoing, this Agreement may be terminated by either party by giving ninety (90) days' written notice of intent to terminate this Agreement to the other party. Any notice of intent to terminate must be delivered by deposit in the United States mail, certified, return receipt

requested, to the other party at the addresses set out herein. Upon termination of this Agreement, neither party shall have any obligations to the other party under this Agreement, except with respect to payment for services already rendered under this Agreement, but not yet paid.

II.

COUNTY RESPONSIBILITIES

1. Pursuant to Section 242.001(d)(4) of the Texas Local Government Code, the COUNTY assigns and delegates to the CITY the COUNTY's authority to approve subdivision within the ETJ of the CITY. The COUNTY hereby agrees that it will not enforce its subdivision regulations within the CITY's ETJ.

III.

CITY RESPONSIBILITIES

1. The CITY shall enforce its subdivision regulations, including review and approval processes and design and construction standards, within its ETJ.
2. The CITY will enforce, in the ETJ, the portion of the COUNTY subdivision regulations attached herein and incorporated as Attachment "A." If either party wishes to propose revisions in the future to the regulations described in Attachment "A," the party will notify the other party of the proposed change. The parties will cooperate in determining the need for the change, and will adopt in writing any change agreed to by official action of their respective governing bodies.
3. As an attachment to this Agreement, the CITY shall provide a current map

defining the legal boundaries of its corporate limits and areas of ETJ. The CITY shall notify in writing the COUNTY of any changes to the CITY's ETJ within ten (10) days of the effective date of the change, and the area covered by this agreement shall be deemed by the parties to be amended accordingly. A change in the area covered by this Agreement shall not, however, affect any rights accrued under Chapter 245 of the Texas Local Government Code prior to the effective date of the change.

IV.

GENERAL PROVISIONS

- 1. General Administration:** General administration of this Agreement shall be by the contact person and representative for the COUNTY--the Comal County Judge, or his/her representative (or respective successors in office). Administering this Agreement and the contact person and representative for the CITY shall be the Director of Planning and Development Services, or his/her representative.
- 2. Alteration, Amendment or Modification:** This Agreement may not be altered, amended, or modified except in writing signed by all parties to this Agreement. No official, agent, employee, or representative of either the COUNTY or the CITY has the authority to alter, amend, or modify the terms of this Agreement, except in accordance with express authority as may be respectively granted by either the Comal County Commissioners Court or the San Marcos City Council.

3. Notice: All notices sent pursuant to this Agreement shall be in writing and must be sent by registered or certified mail, postage prepaid, return receipt requested.

(a) Notices sent pursuant to this Agreement shall be sent to the Comal County Judge's Office at the following address:

- County Judge Danny Scheel (or his successors in office)
Comal County Judge's Office
199 Main Plaza
New Braunfels, Texas 78130

With copies to:

- County Engineer Thomas Hornseth, P.E. (or his successors in office)
195 David Jonas Drive
New Braunfels, Texas 78130
- Jennifer Tharp (or her successors in office)
Chief Civil Prosecutor
150 N. Seguin Street, Suite 307
New Braunfels, Texas 78130

(b) Notices sent pursuant to this Agreement may be delivered or sent to the San Marcos City Manager's office at the following address:

- City Manager
City of San Marcos
630 E. Hopkins Street
San Marcos, TX 78666

With copies to:

- Matthew Lewis, Assistant Director (or his successors in office)
630 E. Hopkins Street
San Marcos, TX 78666

(c) When notices sent pursuant to this Agreement are mailed by registered or certified mail, notice shall be deemed effective three (3) days after

deposit in a U.S. mail box or at a U.S. post office.

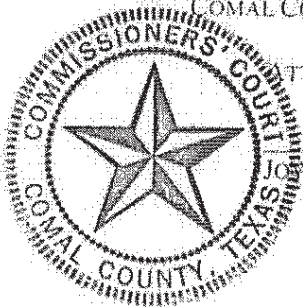
4. **Severability:** If any provision of this Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Agreement.
5. **Breach:** The failure of either party to comply with the terms and conditions of this Agreement shall constitute a breach of this Agreement. Either party shall be entitled to any and all rights and remedies allowed under Texas law for any breach of this Agreement by the other party.
6. **Non-Waiver:** The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in this Agreement is intended by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.
7. **Terms used in Document:** As used in this document, the terms "Amended Interlocal Agreement," "Agreement," and "Contract" are synonymous.
8. **Non-Defined Terms:** If not specifically defined in this Agreement, words and phrases used in this Agreement shall have their ordinary meaning as defined by common usage.
9. **Entire Agreement; Third Parties:** This Agreement constitutes the entire agreement between the COUNTY and the CITY. No other agreement, statement, or promise relating to the subject matter of this Agreement and which is not contained in this Agreement or incorporated by reference in this Agreement shall be valid or binding. This Agreement is not intended to confer

any rights on any third parties, and it shall not be construed as conferring any rights on any third parties.

EXECUTED THIS 12th day of August, 2010.

COMAL COUNTY

By: Danny Schiel
HONORABLE DANNY SCHEL
COMAL COUNTY JUDGE



ATTEST: Joy Streater
JOY STREATER, COMAL COUNTY CLERK

DATE: 8-12-2010

EXECUTED THIS 21st day of July, 2010.

CITY OF SAN MARCOS

By: Laurie Moyer
LAURIE MOYER, INTERIM CITY MANAGER

ATTEST: Sherry Mashburn
SHERRY MASHBURN, CITY CLERK

DATE: 7-21-10

ATTACHMENT "A"

Additional Requirements within the ETJ in Comal County

- 1) **Comal County Flood Damage Prevention.**
 - (a) Prior to any plat approval or recordation, the CITY shall obtain a written approval letter from the Comal County Floodplain Administrator indicating that the plat properly depicts the existing regulatory flood plain limits and that the developer has obtained the necessary permits for the associated land development, pursuant to the Comal County Flood Damage Prevention Order.
- 2) **Notification to the COUNTY by the CITY.**
 - (a) Not later than ten (10) working days after the CITY receives a completed final plat application, the CITY will send to the COUNTY two (2) copies of the proposed plat and a copy of the associated Plat Application Form.
 - (b) The CITY shall deliver two (2) copies (18" X 24") of all recorded subdivision plats within the CITY's ETJ to the COUNTY within ten (10) working days of the recording of the subdivision plat.
 - (c) Requests for variances from the COUNTY regulations in this Attachment "A" will require approval of the Commissioners Court.
- 3) **Dedication of Public Right-Of-Way in ETJ.**
 - (a) The CITY agrees to require developers at a minimum to dedicate public right-of-way pursuant to the Comal County Major Thoroughfare Plan, as currently revised or amended, subject to applicable constitutional and statutory limitations. The COUNTY shall

ATTACHMENT "A"

Additional Requirements within the ETJ in Comal County

furnish a copy of the Major Thoroughfare Plan to the CITY within ten (10) working days of adoption.

- (b) Subdivisions in which it appears to the CITY that a requirement for dedication of right-of-way and improvements required by either the CITY or COUNTY Thoroughfare Plan may exceed an applicable constitutional or statutory limitation, the CITY will notify the COUNTY, and the parties will cooperate to determine the extent of dedication or improvements to be required, or an alternative method of securing the needed transportation infrastructure.

4) **Completion of Public Improvements or Financial Assurance Requirement.**

- (a) The CITY shall require all public improvements needed to serve the subdivision, whether located off-site or on-site, to be finally completed in accordance with the approved construction plans before an approved Final Subdivision Plat is filed. The CITY may defer this obligation to construct improvements conditions on execution of a subdivision improvement agreement and the posting of sufficient surety to secure the obligations defined in the agreement.
- (b) If public improvements are deferred, the CITY shall require the developer to provide a Corporate Surety Bond, Irrevocable Letter of Credit, or a Cash Deposit, in an amount determined by the CITY, (amount to reflect the projected amount calculated to the expiration

ATTACHMENT "A"

Additional Requirements within the ETJ in Comal County

date of the surety), to ensure the proper completion of roads, drainage, and water distribution facilities, as applicable, within subdivisions involving said infrastructure.

- (c) The instrument shall be executed by a surety company authorized to do business in the State of Texas and shall be made payable to the County Judge or his successors in office, of Comal County, Texas.
- (d) The condition of the bond, letter of credit or cash deposit shall be that the owner or owners of the tract of land to be subdivided will construct the roads or streets, storm water drainage, and water distribution facilities of such subdivision within one year.
- (e) The time period for completion may be extended upon written agreement of the developer and COUNTY.
- (f) The full amount of the instrument shall remain in force until the road construction and other infrastructure is completed and roads and other infrastructure are approved and/or accepted by the COUNTY.
- (g) The CITY shall deliver said surety to the COUNTY within 10 working days of the recording of the subdivision plat.
- (h) Unless otherwise agreed upon by the CITY and COUNTY, all sidewalks, street lights, green spaces and similar improvements shall not be maintained by the COUNTY.

5) County Inspection of Roads in ETJ.

- (a) COUNTY inspectors shall have the right, at its discretion, to

ATTACHMENT "A"

Additional Requirements within the ETJ in Comal County

inspect the road construction, storm water drainage construction, and water and wastewater facility construction within the right-of-way and easements.

(b) The COUNTY may request that the CITY issue a stop-work notice if the applicable construction standards are not being met.

(c) Upon approval, the CITY shall provide the COUNTY a set of final construction plans, including lab results and road materials, and specifications for all public improvements located off-site or on-site that are required for the subdivision. The CITY shall also submit to the COUNTY, a letter from the CITY, certifying completion and compliance of all improvements.

6) Lots sizes within the ETJ in Comal County:

(a) Subdivisions requiring platting, where each lot within the proposed subdivision will be served by a Texas Commission on Environmental Quality (TCEQ) approved public water supply and will utilize individual on-site sewage facility methods for sewage disposal, shall provide for individual lots having surface areas of at least 1.0 acre.

(b) Subdivisions requiring platting, where each lot within the proposed subdivision will not be served by a TCEQ approved public water supply and will utilize individual on-site sewage facility methods for wastewater treatment, shall provide for individual lots having surface areas of at least 5.01 acres.

ATTACHMENT "A"

Additional Requirements within the ETJ in Comal County

7) Water Availability within the ETJ in Comal County:

- (a) A person seeking approval of a plat that creates one or more lots or is seeking approval of a revision plat that results in an increase in the total amount of lots located within the extraterritorial jurisdiction of the City of San Marcos and the County of Comal shall comply with the Comal County Water Availability Regulations, as currently revised or amended, subject to applicable constitutional and statutory limitations.**