

MEMORANDUM OF UNDERSTANDING
by and between
THE CITY OF STEPHENVILLE
and
TARLETON STATE UNIVERSITY

This Memorandum of Understanding (“MOU”) is entered into by and between the CITY OF STEPHENVILLE, hereinafter referred to as “CITY”, and TARLETON STATE UNIVERSITY, a member of The Texas A&M University System, an agency of the State of Texas, on behalf of its Division of Finance and Administration, hereinafter referred to as “TARLETON”.

WHEREAS, TARLETON is commencing a project to build ~300 parking spaces between Sloan and West Tarleton streets.

WHEREAS, the CITY has adopted standards for stormwater management.

WHEREAS, TARLETON submitted engineered plans to CITY dated June 21, 2019 that included stormwater detention and said plans were approved by CITY on June 22, 2019.

WHEREAS, a copy of the TARLETON-submitted and CITY-approved plans are attached to this MOU as Exhibit A.

WHEREAS, TARLETON has subsequently deemed it time prohibitive to apply stormwater management standards to the current project.

NOW THEREFORE, based on the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, have agreed as follows:

Article I. Overview and Purpose

1.1 TARLETON Responsibilities:

- Engage a civil engineer to evaluate the watershed for TARLETON’s Stephenville campus, with a contract to be in place no later than July 31, 2019.
- Based on recommendations from the civil engineer, present for CITY approval a project to mitigate stormwater runoff that would have been addressed in the current project.
- Once plans are mutually approved, commence a project costing no more than \$1 million to address watershed on the Tarleton campus.
- Reimburse CITY for cost of all related plan reviews within 30 days of receipt of invoice and approval of the mitigation project plans, not to exceed \$10,000 unless approved in advance by TARLETON.
- Install the approved stormwater detention system in the CITY-approved plans attached as Exhibit A if a stormwater mitigation project has not been identified and approved by CITY by the end of the term identified in Article II, Section 2.1. of this MOU.

1.2 CITY Responsibilities:

- Provide timely input to watershed study as appropriate.
- Review properly submitted plans for TARLETON'S stormwater mitigation project described above in timely manner.

Article II. Duration of the MOU:

2.1. Term. This MOU will become effective upon the date of its signing by the last party to sign below and shall have a term of two (2) calendar years from this effective date.

Article III. Modification

This MOU may be modified by prior mutual written consent of the parties. However, such modifications shall not retroactively alter the terms or conditions in force in such ways as to jeopardize the successful completion of existing activities.

Article IV. Independent Contractor

For the purposes of this MOU and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.

Article V. Notices

Any notice required or permitted under this MOU must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. TARLETON and CITY can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TARLETON: Tarleton State University
Box T-0120
Stephenville, Texas 76402
Attention: Finance & Administration
Phone: 254.968.9877
E-mail: lbeaty@tarleton.edu

CITY: City of Stephenville, Texas
298 West Washington
Stephenville, TX 76401
Attention: Public Works
Phone: (254) 918-1223
Fax: () N/A
E-mail: nwilliams@stephenvilletx.gov

Article VI. Other

Neither party is required to perform any term, condition, or covenant of this MOU, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

The validity of this MOU and all matters pertaining to this MOU, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TARLETON shall be in Erath County, Texas.

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TARLETON and CITY to attempt to resolve any claim for breach of contract made by CITY that cannot be resolved in the ordinary course of business. CITY shall submit written notice of a claim of breach of contract under this Chapter to the Vice President for Finance & Administration of TARLETON, who shall examine CITY's claim and any counterclaim and negotiate with CITY in an effort to resolve the claim.

CITY expressly acknowledges that TARLETON is an agency of the State of Texas and nothing in this MOU will be construed as a waiver or relinquishment by TARLETON of its right to claim such exemptions, privileges, and immunities as may be provided by law.

By executing and/or accepting this MOU, CITY and each person signing on behalf of CITY certifies, and each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TARLETON, Texas A&M or TAMUS, has direct or indirect financial interest in the approval of this MOU, or in the services to which this MOU relates, or in any of the profits, real or potential, thereof.

Pursuant to Chapter 2270, *Texas Government Code*, CITY certifies CITY (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this MOU. CITY acknowledges this MOU may be terminated if this certification is inaccurate.

Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, CITY certifies CITY is not engaged in business with Iran, Sudan, or a foreign terrorist organization. CITY acknowledges this MOU may be terminated if this certification is inaccurate.

If applicable, contracts awarded for this project will be subject to the American Iron and Steel (AIS) requirements of Section 608 of the Federal Water Pollution Control Act.

The undersigned parties bind themselves to the faithful performance of this MOU:

City of Stephenville, Texas

Signature

Name: Brady Pendleton

Title: Mayor Pro Tem

Date: 8/7/2019

Tarleton State University

Signature

Name: Lori L. Beaty, CPA, MBA

Title: Acting CFO/VPFA

Date: 8-13-19