

ORDINANCE # 2023-13

AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS, PROVIDING FOR THE APPROVAL OF THE AGREEMENT BETWEEN THE STATE OF TEXAS AND THE VILLAGE OF SALADO TEXAS, FOR THE CONTINUED EXISTENCE, USE, OPERATION, AND MAINTENANCE OF HIGHWAY LIGHTING AND INCLUDES THE ADDITION OF A FM 2268 (MAIN ST) BRIDGE LIGHTING AT THE LOCATION(S) SHOWN ON EXHIBIT 1 ATTACHED HERETO AND MADE A PART HEREOF, IN THE VILLAGE OF SALADO, TEXAS; PROVIDING OF THE MAINTENANCE OF THE ADDED BRIDGE LIGHTING ON FM 2268 (MAIN ST) AT SALADO CREEK; AND PROVIDING FOR THE EXECUTION OF SAID AGREEMENT.

BE IT ORDAINED BY THE BOARD OF ALDERMAN OF THE VILLAGE OF SALADO, TEXAS:

SECTION 1. That the certain agreement date, October 5, 2023, between the State of Texas and the Village of Salado, Texas, for the continued existence, use, operation, and maintenance of certain bridge lighting at the location(s) shown on Exhibit 1, attached hereto and made a part hereof, in the Village of Salado, Texas, and the same is hereby approved, and the Village of Salado, Texas, is hereby authorized to execute said agreement on behalf of the Village of Salado, Texas, and to transmit to the State of Texas for appropriate action.

PASSED AND APPROVED this the 5th day of October 2023, at Salado,

Texas.

APPROVED:



MICHAEL COGGIN, MAYOR

ATTEST:



DEBBIE BEAN, VILLAGE SECRETARY



Form 2044 (Rev 8/21)
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MULTIPLE USE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and Village of Salado _____, hereinafter called Salado _____ party of the second part, is to become effective when fully executed by both parties.

WITNESSETH

WHEREAS, on the XX day of XXXX, 20 23, the governing body for the Salado entered into Resolution/Ordinance No #XXXXX hereinafter identified by reference, authorizing the Salado's participation in this agreement with the State; and

WHEREAS, the Salado has requested the State to permit the construction, maintenance and operation of a public lighting system on the highway right of way, (ROADWAY FM2268 (N. Main St) CONTROL SECTION NO. 2136). (General description of area including either the control number or GPS coordinates.)

shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the Salado will enter into agreements with the State for the purpose of determining the respective responsibilities of the Salado and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. DESIGN AND CONSTRUCTION

Salado will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps and other pedestrian elements to be constructed, either on site or off site, by the

Salado shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the Salado and found not to comply with ADA or TAS shall be corrected at the entire expense of the Salado

2. INSPECTION

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

3. PARKING REGULATIONS

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1 1/2 ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

5. RESPONSIBILITIES

Timely maintenance, repair and operation of the facility shall be entirely the responsibility of the Salado. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. These responsibilities expressly include the timely maintenance and repair of any portion of the facility necessary to comply with the Americans with Disabilities Act. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

If the State determines that Salado has failed to comply with these responsibilities, it will perform the necessary work and charge Salado the actual cost of the work.

6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

A. Retention Period. The Salado shall maintain all books, documents, papers, accounting records and other evidence pertaining to fees collected and costs (hereinafter called the Records). The Salado shall make the records available during the term of the Agreement and for four years from the date the Agreement is terminated, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

B. Audit Report. If fees are collected by the Salado for the use of the facility under this agreement, the Salado will provide the State an annual audit report detailing the fees collected for the use of the facility and the costs associated with constructing, maintaining, and operating the facility within the same period. If the report shows more fees collected than expenses for the construction, operation, or maintenance of the facility the Salado must provide a multiple year plan detailing how the additional revenue will be used for construction, operation, or maintenance of the facility.

C. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the _____ Salado 's records that are directly pertinent to this Agreement for the purpose of making audits and examinations.

7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate and

_____ Salado shall be responsible for the facility's timely removal at no cost to the State. If the State determines that _____ Salado has failed to timely remove the facility, it will perform the necessary work and charge _____ Salado the actual cost of the work.

8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

10. RESTORATION OF AREA

The _____ Salado shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The _____ Salado shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

12. INDEMNIFICATION

THE Salado WILL INDEMNIFY THE STATE AGAINST ANY AND ALL DAMAGES AND CLAIMS FOR DAMAGES, INCLUDING THOSE RESULTING FROM INJURY OR DEATH OF PERSONS OR FOR LOSS OF OR DAMAGE TO PROPERTY, ARISING OUT OF, INCIDENT TO OR IN ANY MANNER CONNECTED WITH THE CONSTRUCTION, OPERATION OR MAINTENANCE OF THE FACILITY, WHICH INDEMNIFICATION SHALL EXTEND TO AND INCLUDE ANY AND ALL COURT COSTS, ATTORNEY'S FEES AND EXPENSES RELATED TO OR CONNECTED WITH ANY CLAIMS OR SUITS FOR DAMAGES AND SHALL, IF REQUESTED IN WRITING BY THE STATE TO DO SO, ASSIST THE STATE OR RELIEVE THE STATE FROM DEFENDING ANY SUCH SUITS BROUGHT AGAINST IT. THE INDEMNIFICATION OF THE STATE SHALL EXTEND FOR A PERIOD OF TWO (2) YEARS BEYOND THE DATE OF TERMINATION OF THIS AGREEMENT.

DURING EACH YEAR WHILE THERE IS ANY LIABILITY BY REASON OF THE AGREEMENT CONTAINED IN THIS SUBSECTION OF THIS RESOLUTION, INCLUDING THE CALENDAR YEAR 2023, THE Village of Salado (CITY) SHALL COMPUTE AND ASCERTAIN THE RATE AND AMOUNT OF AD VALOREM TAX, BASED ON THE LATEST APPROVED TAX ROLLS OF SAID ENTITY, WITH FULL ALLOWANCES BEING MADE FOR TAX DELINQUENCIES AND COSTS OF TAX COLLECTION, WHICH WILL BE SUFFICIENT TO RAISE AND PRODUCE THE MONEY REQUIRED TO PAY ANY SUMS WHICH MAY BE OR BECOME DUE DURING ANY SUCH YEAR, IN NO INSTANCE TO BE LESS THAN TWO (2%) PER CENT OF SUCH OBLIGATION, TOGETHER WITH INTEREST THEREON, BECAUSE OF THE OBLIGATION HEREIN ASSUMED.

SAID RATE AND AMOUNT OF AD VALOREM TAX IS HEREBY ORDERED TO BE LEVIED AND IS HEREBY LEVIED AGAINST ALL TAXABLE PROPERTY IN SAID ENTITY FOR EACH YEAR WHILE ANY LIABILITY EXISTS BY REASON OF THE OBLIGATION UNDERTAKEN BY THIS SUBSECTION OF THIS RESOLUTION, AND SAID AD VALOREM TAX SHALL BE ASSESSED AND COLLECTED EACH SUCH YEAR UNTIL ALL OF THE OBLIGATIONS HEREIN INCURRED SHALL HAVE BEEN DISCHARGED AND ALL LIABILITY HEREUNDER DISCHARGED.

No party to this agreement intends to waive, relinquish, limit or condition its general governmental immunity from liability in any way.

Each party agrees and acknowledges that it is not an agent, servant, or employee of the other party and that under this provision each party is responsible only for its own acts and for those of its agents, servants, independent contractors or employees. Such responsibility includes, but is not

limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the _____ Salado _____. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State. Furthermore, the _____ Salado _____ shall become fully subrogated to the State's rights of recovery and shall be entitled to maintain any action over and against any third party who may be liable for damages. The State agrees to execute and deliver instruments and papers and to otherwise do that which is necessary to secure such rights.

13. INSURANCE

The _____ Salado _____, shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance, repair and operation of the facility. _____ Salado _____ shall include TxDOT as an additional insured by endorsement in _____ Salado _____'s commercial general liability insurance policy. Prior to beginning work on the State's right of way, the _____ Salado _____'s construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) or appropriate certificate of self-insurance and shall maintain the required coverage during the construction of the facility.

14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The _____ Salado _____ shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

17. CIVIL RIGHTS ASSURANCES

The Salado, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Salado shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

19. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

20. AUDIT

The State may conduct an audit or investigation of any aspect of this agreement. The Salado must provide the State with access to any information the State considers relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the Salado if that service is authorized by this agreement.

21. AUTHORITY OF STATE AUDITOR

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

22. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE (Mailing Address)	(Name of other party) (Mailing Address)
Texas Department of Transportation	Village of Salado
Maintenance Division	Attn: Don Ferguson
125 East 11th Street	301 N Stagecoach Road
Austin, Texas 78701-2483	Salado, TX 76751

23. TIMELY PAYMENT

When required by any provision of this agreement requires a payment to be made to the State, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from the other party's construction, maintenance, repair or operation of the facility.

24. WARRANTS

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

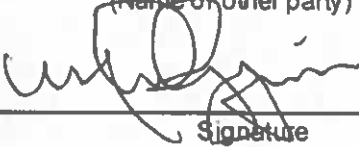
List of Attached Exhibits:

- Exhibit A - General Layout
- Exhibit B - Metes and Bounds Description
- Exhibit C - Approved Construction Plans
- Exhibit D - Certificate of Insurance (TxDOT Form 1560)
- Exhibit E - Attachment A (FHWA Additional Requirements)

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the
village of Salado on the 27th day of October, 2023, and the
State on the 27th day of October, 2023.

STATE OF TEXAS

Executed and approved for the Texas
Transportation Commission for the purpose and
effect of activating and/or carrying out the orders,
and established policies or work programs
heretofore approved and authorized by the Texas
Transportation Commission.

Village of Salado
(Name of other party)
By: 
Signature

Michael Coggiv
Printed Name

By: _____
Director, Maintenance Division

Mayor
Title

Printed Name

Village of Salado
Agency

10/27/2023
Date

254-947-5060
Contact Office and Telephone No.

APPROVAL RECOMMENDED:

DocuSigned by:

889BD796DD564C9 District Engineer

Stanley Swiatek
Printed Name

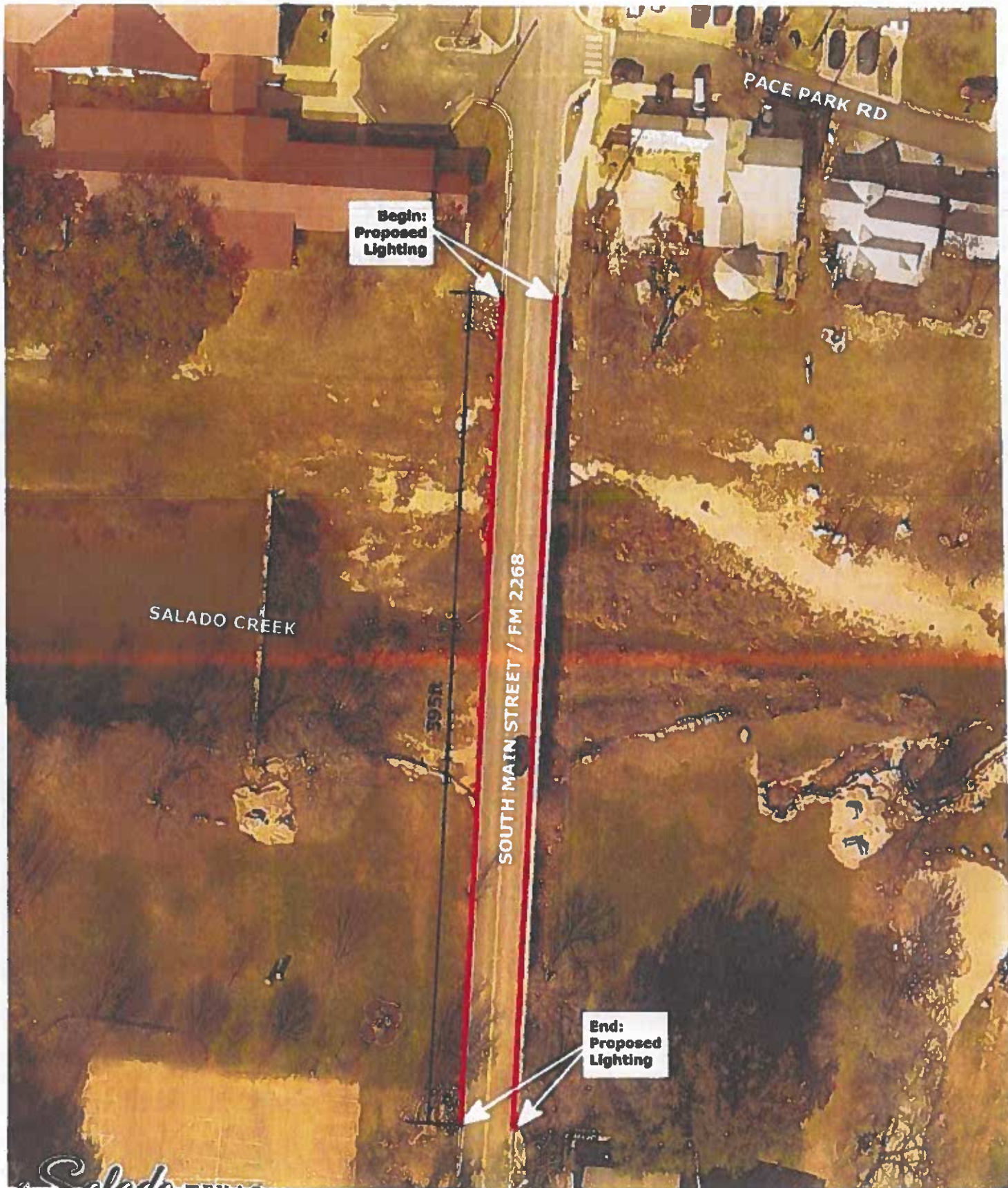
10/27/2023
Date

ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.105.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
2. Any change in the authorized use of real property interest shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. Real property interest shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the real property interest facility ceases to be used or is abandoned.

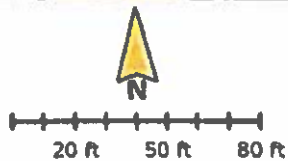
EXHIBIT E



Salado TEXAS
A CITY OF DISTINCTION

South Main Street / FM 2268
Exhibit 1: Lighting on Salado Creek Crossing

MRB group



Legend
— Proposed Lighting