I. Call To Order

II. Roll Call

III. Invocation

IV. Pledges Of Allegiance - United States And Texas

EXECUTIVE SESSION

NOTE: The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The City Council may also publicly discuss any item listed on the agenda for Executive Session.

1. Consider action, by motion, regarding the following Executive Session items:
   A.) Executive Session in accordance with Section 551.086, Public Power Utility Competitive Matters, to discuss a potential purchased power agreement for the electric utility
   B.) Executive Session in accordance with Section 551.071, Consultation With Attorney, to receive legal advice from the city attorney regarding disposition of Park property at Cape’s Camp previously dedicated to the city by plat of The Woodlands of San Marcos
   C.) Executive Session in accordance with Section 551.087, Economic Development, to receive a staff briefing and deliberate regarding a potential Chapter 380 Economic Development incentive agreement for the S.M.A.R.T Terminal Project.

V. 30 Minute Citizen Comment Period

CONSENT AGENDA

THE FOLLOWING ORDINANCES, RESOLUTIONS AND OTHER ITEMS MAY BE ACTED UPON BY ONE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THE ITEMS IS NECESSARY UNLESS DESIRED BY A COUNCIL MEMBER OR A CITIZEN, IN WHICH EVENT THE ITEM SHALL BE CONSIDERED IN ITS NORMAL SEQUENCE AFTER THE ITEMS NOT REQUIRING SEPARATE DISCUSSION HAVE BEEN ACTED UPON BY A SINGLE MOTION.

2. Consider approval, by motion, of the following meeting Minutes:
   A) December 4, 2018 - Regular Meeting Minutes
   B) December 12, 2018 - Regular Meeting Minutes
3. Consider approval of Ordinance 2018-56, on the second of two readings, amending Chapter 82, Article 4 of the City of San Marcos City Code by adding a new Division 3 regulating Vehicle Booting Activities On Private Parking Facilities; providing a savings clause; providing for the repeal of any conflicting provisions; providing for penalties; and providing an effective date.

4. Consider approval of Resolution 2019-01R, approving the purchase of a 2019 Chevrolet 3500HD Silverado pickup truck Command Vehicle for the Fire Department in the total purchase amount of $135,738 from Caldwell Country Chevrolet through the Texas Local Government Purchasing Cooperative BuyBoard Contract for Heavy Trucks (Contract #521-16); authorizing the City Manager to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

5. Consider approval of Resolution 2019-02R, approving the purchase of a Hydrovac Truck for the Public Services Department-Electric Utility Division (SMEU) in the total amount of $224,995.00 from Freightliner of Austin, Inc. through the Texas Local Government Purchasing Cooperative Buyboard Contract for Vehicles, Heavy Duty Trucks and Options (Contracts #521-16 and #513-16); authorizing the City Manager to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

6. Consider approval of Resolution 2019-03R, approving the purchase of a 2018 John Deere 310L Backhoe for the Public Services Department - Water / Wastewater Division in the total amount of $90,428.01 from RDO Equipment Company through the Texas Local Government Purchasing Cooperative Sourcewell for Heavy Construction Equipment with Related Accessories (Contract #NJPA 032515); authorizing the City Manager to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

7. Consider approval of Resolution 2019-04R, approving a list of qualified firms to provide Real Estate Appraisal Services to the City as needed for a period of six years; and declaring an effective date.

8. Consider approval of Resolution 2019-05R, approving a three-year contract with Granicus, Inc. for the Agenda Management Workflow System and Video Streaming Services in the amount of $111,537.48; ratifying the City Staff’s acceptance of the contract; and declaring an effective date.

9. Consider approval of Resolution 2019-06R, approving the procurement of Insta-Valve Equipment for the Public Services Department - Water/Wastewater Division from Hydra-Stop, LLC on a sole source basis in the amount of $80,110.00; authorizing the City Manager to execute the appropriate procurement documents on behalf of the City; and declaring an effective date.

10. Consider approval of Resolution 2019-07R, authorizing the award of a professional services agreement to KGA Architecture for the provision of architectural and engineering...
services in connection with renovations and additions to the Police Department building in the amount of $459,000.00; authorizing the City Manager or his designee to execute such agreement on behalf of the City; and declaring an effective date.

11. Consider approval of Resolution 2019-08R, approving the award of a contract between the City and EBR Enterprises of Cypress Texas for removal of invasive plant species within and along the banks of the San Marcos River in the sum of $38,949 for an initial one year term with up to three extensions of one year each; authorizing the City’s Purchasing Manager to execute the contract and contract extensions; and declaring an effective date.

12. Consider approval of Resolution 2019-09R, approving the award of a contract between the City and Atlas Environmental Services of San Marcos, Texas for removal of Aquatic Invasive Fish and Snail Species in the San Marcos River in the sum of $22,800 for an initial one year term with up to three extensions of one year each; authorizing the City’s Purchasing Manager to execute the contract and contract extensions; and declaring an effective date.

13. Consider approval of Resolution 2019-10R, approving the renewal of a contract with Dell Marketing LP for VMWare software in an amount of $41,200.96 resulting in a total contract price of $66,078.44; authorizing the City Manager to execute the agreement on behalf of the City; and declaring an effective date.

PUBLIC HEARINGS - 6:00 PM

14. Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2019-02, amending the official zoning map of the City by designating approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984 as “HI” Heavy Industrial District; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2019-02, on the first of two readings.

NON-CONSENT AGENDA

15. Consider approval of Ordinance 2019-01, on the first of two readings, annexing to the City approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984; approving a service plan for this area; including procedural provisions; and providing an effective date.

16. Consider approval of Ordinance 2018-52 (ZC-18-16), on the first of two readings, amending the Official Zoning Map of the City by rezoning a 1.206 acre, more or less, tract of land, being lots 17 through 22 of the Z Williamson Second Addition located at Earle Street and Baylor Avenue, from “SF-6” Single-Family Residential District to “ND-3” Neighborhood Density District-3; approving a regulating plan associated with such zoning map amendment; and including procedural provision.

17. Consider approval of Ordinance 2019-03, on the first of two readings, authorizing the issuance of the City of San Marcos, Texas Special Assessment Revenue Bonds, Series
2019 (Trace Public Improvement District); approving and authorizing an Indenture of Trust, a Bond Purchase Agreement, an Offering Memorandum, a Continuing Disclosure Agreement and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; and providing an effective date.

18. Consider approval of Resolution 2019-11R, approving an agreement regarding conveyance of right of redemption and waiver of agricultural valuation with Highpointe Trace, LLC and UMB Bank, N.A. in connection with the Trace Public Improvement District; authorizing the City Manager or his designee to execute such agreement on behalf of the City; and declaring an effective date.

19. Consider approval of Resolution 2019-12R, amending the Business Improvement and Growth (BIG) Grant Program guidelines to prohibit City employees and officials from benefiting from BIG Grant Program Funds and to clarify program eligibility and intent; and declaring an effective date.

20. Consider election of the Mayor Pro Tem and optional Deputy Mayor Pro Tem.

21. Consider the appointment of the Mayor or a City Council Member to fill vacancies on the following Boards or Committees:
   a. Conditional Use Permit (CUP) Committee - (1 - Member of the Council)
   b. Greater San Marcos Partnership Board of Directors - (1 - Member of the Council)
   c. Rental Registration Committee - (1 - Member of the Council)
   d. La Cima Committee - (1 - Member of the Council)

22. Consider appointments to the vacant positions on the San Marcos Innovation District Stakeholder Group, and provide direction to the City Manager.

VI. Question and Answer Session with Press and Public.

   This is an opportunity for the Press and Public to ask questions related to items on this agenda.

VII. Adjournment.

VIII. ADDENDUM

   Amendments:
   Item #2 was amended to remove the following:
   A) December 4, 2018 - Work Session Minutes
   B) December 12, 2018 - Work Session Minutes

   Item #21 was amended to add the La Cima Committee.

POSTED ON FRIDAY, JANUARY 11, 2019 @ 7:10AM

JAMIE LEE CASE, TRMC, CITY CLERK
Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov
AGENDA CAPTION:
Consider action, by motion, regarding the following Executive Session items:

A.) Executive Session in accordance with Section 551.086, Public Power Utility Competitive Matters, to discuss a potential purchased power agreement for the electric utility

B.) Executive Session in accordance with Section 551.071, Consultation With Attorney, to receive legal advice from the city attorney regarding disposition of Park property at Cape’s Camp previously dedicated to the city by plat of The Woodlands of San Marcos

C.) Executive Session in accordance with Section 551.087, Economic Development, to receive a staff briefing and deliberate regarding a potential Chapter 380 Economic Development incentive agreement for the S.M.A.R.T Terminal Project.
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
A) December 4, 2018 - Work Session Minutes
B) December 4, 2018 - Regular Meeting Minutes
C) December 12, 2018 - Work Session Minutes
D) December 12, 2018 - Regular Meeting Minutes
E) December 19, 2018 - Special Meeting and Canvass Minutes
F) December 20, 2018 - Special Meeting Minutes

Meeting date: 1/15/2019

Department: City Clerk

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: Approval of Previous Meeting Minutes

City Council Goal: [Please select goal from dropdown menu below]
Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from below]
☐ Economic Development Choose an item.
☐ Environment & Resource Protection Choose an item.
☐ Land Use Choose an item.
☐ Neighborhoods & Housing Choose an item.
☐ Parks, Public Spaces & Facilities Choose an item.
☐ Transportation Choose an item.
☒ Not Applicable
Background Information:
The following minutes are attached for review:
A) December 4, 2018 - Work Session Minutes
B) December 4, 2018 - Regular Meeting Minutes
C) December 12, 2018 - Work Session Minutes
D) December 12, 2018 - Regular Meeting Minutes
E) December 19, 2018 - Special Meeting and Canvass Minutes
F) December 20, 2018 - Special Meeting Minutes

Council Committee, Board/Commission Action: Click or tap here to enter text.

Alternatives:

Recommendation: Approve Minutes as attached
I. Call To Order

With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Hughson at 6:02 p.m. Tuesday, December 4, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Deputy Mayor Pro Tem Gregson was absent due to illness.

Present: 5 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Council Member Melissa Derrick, Mayor Jane Hughson and Council Member Ed Mihalkanin

Absent: 1 - Deputy Mayor Pro Tem Scott Gregson

III. Invocation

A moment of silence was observed in honor of fallen Officer Kenneth Copeland. Mayor Hughson read the following statement: "Today we observe a moment of silence in remembrance of Officer Kenneth M. Copeland. Officer Copeland joined the San Marcos Police Department on March 30, 1998. Prior to joining our team, he served as a corrections officer for the Texas Department of Corrections. He also served for 5 years with the Los Angeles County Sheriff’s Office. Ken joined the U.S. Coast Guard in 1999 and served in support of Operation Iraqi Freedom. Ken became the first San Marcos Police Officer to lose his life in the line of duty one year ago today. He was shot and killed while attempting to serve a domestic violence arrest warrant. We are forever indebted to Ken for his service and for his sacrifice."

IV. Pledges Of Allegiance - United States And Texas

Kaylee Caraway, 5th grade student at Preparatory San Marcos, led the assembly in the pledges of allegiance.

EXECUTIVE SESSION

1. Consider action, by motion, to provide direction to Staff regarding the following Executive Session in accordance with Section §551.087 of the Texas Government Code: Economic Development - to receive a staff briefing and deliberate regarding a potential
Chapter 380 economic development incentive agreement with Urban Mining.

Council met in Executive Session and direction was provided to bring back this item for consideration on the January 29, 2019 Regular City Council Meeting agenda.

V. 30 Minute Citizen Comment Period

John David Carson, addressed the Council in support of item #19 and #20 related to Parking Management Items. He then expressed his support of item #17 regarding adoption of the Transportation Master Plan (TMP). He encouraged the Council to adopt a Zero Vision plan within the first quarter of 2019. He spoke in opposition of the speed limit increase on Hunter Road from 30mph to 35mph. He stated that the 85th percentile speed limit study is not a valid way to study this. He said we could redesign the lanes to have a lower design speed and this can be done cost effectively with stripping and delineator posts.

Sara Lee Myers, addressed the Council regarding the a speed limit decrease from 30mph to 25mph within her neighborhood, Blanco Gardens. She expected this to be done already, but was informed this would need to go before Council. She is hoping to have this on the agenda in January. She also spoke on the possibility of getting a 4 way stop at the corner of Bliss and Conway.

Carina Boston, addressed the Council regarding a letter from the Downtown Association related to downtown parking. She read the following letter: "The Board of the Downtown Association of San Marcos (DTA) continues to thank the City for actively taking steps toward managing the downtown public parking resources such that the availability of on street parking for downtown customers and guests is improved and additional options are introduced for downtown employees and residents. Our DTA Parking Subcommittee has been actively involved in this conversation with City staff and we appreciate Mr. Burke’s detailed presentation to our membership at this past Monday’s DTA meeting.

We have reviewed Agenda Items #19 and 20 for this coming Tuesday, December 4th Council Meeting related to establishing a “Parking Management Fund,” hiring a Parking Manager, and forming a “Parking Advisory Board.” We offer this letter in support for these actions subject to the following key recommendations:
1. Use names that reflect the broader objectives of mobility and transportation demand management in establishing the Fund and Advisory Board. For
example:
• Mobility and Parking Management Fund [MaP Fund]
• Mobility and Parking Advisory Board [MaP Board]

2. Do not transfer any funds out of the MaP Fund to the General Fund. It is critical that the City establish trust regarding its intentions in managing parking downtown. The DTA firmly believes any parking revenue generated should be spent on parking resources or other benefits for the districts where the revenue is generated. We oppose the proposed transfer of 30% of parking revenue to the General Fund where it may be allocated to other initiatives or areas.

3. Ensure the Advisory Board’s duties and responsibilities include mobility and transportation demand management objectives. While improving the efficiency, availability, and accessibility of public parking resources will be the Advisory Board’s first tasks, policy should come from a holistic perspective aimed at managing transportation demand within any future benefit districts. For Council’s convenience and consideration, we have enclosed some proposed redlines to Sec. 2.174 of the proposed Ordinance establishing the Advisory Board.

Again, we thank you for the open engagement and dialogue on parking and mobility issues within the Downtown. We will provide additional thoughts and guidance regarding the implementation of paid on street parking and benefit districts in a subsequent letter once those items are on a future agenda for Council action."

Rodrigo Amaya, addressed the Council regarding a meeting with the City Manager. He encouraged Council to talk to him since concerns have not fixed and within his job description it states "address citizens concerns". He stated his concerns regarding the salaries of the City Manager, Assistant City Managers, and Directors. He stated the City of San Antonio is in the process of capping the City Manager's salary at $250,000. He believes Council should look at doing this here in San Marcos. He also addressed an issue regarding his neighbor cutting some grass recently and that they had to clean it up and he felt that it was the City’s job not his.

Matt Akins, spoke in support of the new Transportation Master Plan and was excited about the newly proposed bike and pedestrian friendly roadways. We should encourage students to walk and bike more to reduce traffic. More roads
usually mean more driving, not the opposite. We need to create more walking and biking access for our citizens.

PRESENTATIONS

2. Receive the Annual Community Development Block Grant - Disaster Recovery (CDBG-DR) Risk Assessment Presentation from the internal auditor Deloitte and Touche, LLP.

Ryan Foughty, representative with Deloitte and Touche, LLP, provided a brief presentation regarding the Internal Audit Plan for the Next 12 Months. He also discussed the internal audit process for CDBG-DR procurement and expenditures. He looks forward to our continued partnership.

CONSENT AGENDA

A motion was made by Council Member Gonzales, seconded by Council Member Derrick, to approve the consent agenda items #3-13. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

3. Consider approval, by motion, of the following meeting Minutes:

A) November 14, 2018 - Special Meeting Minutes
B) November 20, 2018 - Regular Meeting Minutes

4. Consider approval of Resolution 2018-217R, authorizing the agreement with Starboard Consulting, LLC for Maximo Upgrade Services, our work order system for the Public Services Department, (RFP 218-291) in an amount estimated at $133,800; authorizing the City Manager to execute said agreement; and declaring an effective date.

5. Consider approval of Resolution 2018-218R, authorizing a contract with Techline, Inc. for the provision of inventory and warehouse management services for the Public Services Department for one year for an amount not-to-exceed $102,000.00, contingent upon the contractor’s provision of sufficient insurance in accordance with the agreement; authorizing the City Manager to execute said agreement; and declaring an effective date.

6. Consider approval of Resolution 2018-219R, authorizing the agreement with G4 Spatial Technologies for six GPS Units (DIR-TSO-3676) in an amount estimated at $114,447.92; authorizing the City Manager to execute said agreement; and declaring an effective date.

7. Consider approval of Resolution 2018-220R, authorizing an engineering agreement with HDR Engineering for the Castle Forest Channel Drainage Design Project in an amount estimated at $155,862; authorizing the City Manager to execute said agreement; and
declaring an effective date.

8. Consider approval of Resolution 2018-221R, authorizing an engineering contract with HDR Engineering for the evaluation and recommendations to correct existing drainage problems at five (5) specific locations including Crockett Elementary, Fire Station Number 1 Drain, Harper Driver and River Road, S. LBJ Drive at Willow Springs Bridge Repair and Water Quality Improvement #51 in an amount estimated at $111,925; authorizing the City Manager to execute said agreement; and declaring an effective date.

9. Consider approval of Resolution 2018-222R, authorizing an engineering services contract for the eastside of Aquarena Springs Drive Project with Brown and Gay Engineers, Inc. for an amount estimated at $178,985; authorizing the City Manager to execute said contract; and declaring an effective date.

10. Consider approval of Resolution 2018-223R, authorizing a construction contract with Cox Commercial Construction, LLC for the Travis Street Heritage Drainage outfall project in an amount estimated at $2,951,744.50; authorizing the City Manager to execute said agreement; and declaring an effective date.

11. Consider approval of Resolution 2018-224R, approving a supplemental agreement to the Interlocal Agreement with Caldwell County for subdivision regulation within the Extraterritorial Jurisdiction of the City to allow Caldwell County to exclusively review, process and approve development applications related to the construction of a new Bluebonnet Electric Cooperative Facility on Highway 142 near Church Street in Maxwell; and declaring an effective date.

12. Consider approval, by motion, of a Change Order with Lambda Construction, Ltd for the installation of a new perimeter ground loop and grounding the security fencing of the Ranch Road 12 Substation Transformer Project in the amount of $50,682.

13. Consider approval, by motion, of Change Order #8 for the N. LBJ and Oak Ridge Utility Improvements Project by replacing a water main between Ed JL Green and the University Drive intersection in the not to exceed amount of $391,000.00.

PUBLIC HEARINGS

14. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2018-51, approving an update to the Service and Assessment Plan for the Trace Public Improvement District; making a finding of special benefit to the property in the district; levying additional assessments against property within the district; establishing a lien on such property; approving an updated assessment roll for the district; providing for payment of the additional assessments in accordance with Chapter 372, Texas Local Government Code; providing for the method of assessment and the payment of the additional assessments; providing for penalties and interest on delinquent assessments; providing for a severability clause; providing an effective date; and providing for related matters; and consider approval or Ordinance 2018-51, on the first of two readings.
Steve Parker, Assistant City Manager provided a brief update regarding the updated Service and Assessment Plan for the Trace Public Improvement District.

John Schneider with P3 Works spoke regarding the Service Assessment Plan (SAP) that Council approved a couple of months ago. This is a simple amendment to this SAP.

Mayor Hughson opened the Public Hearing at 6:26 p.m.

There being no comments, the Mayor closed the Public Hearing at 6:26 p.m.

A motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Gonzales, to approve Ordinance 2018-51, on the first of two readings. The motion carried by the following vote:

For:  5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against:  0

Absent:  1 - Deputy Mayor Pro Tem Gregson

15. Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2018-52 (ZC-18-16), amending the Official Zoning Map of the City by rezoning a 1.206 acre, more or less, tract of land, being lots 17 through 22 of the Z Williamson Second Addition located at Earle Street and Baylor Avenue, from “SF-6” Single-Family Residential District to “ND-3” Neighborhood Density District-3; approving a regulating plan associated with such zoning map amendment; and including procedural provision; and consider approval of Ordinance 2018-52, on the first of two readings.

Amanda Hernandez, Manager of Development Services, provided a brief update on the zoning amendment request. She stated the Planning & Zoning Commission denied the request 7 to 1.

Mayor Hughson opened the Public Hearing at 6:33 p.m.

Those who spoke:

Yolanda Hernandez, spoke as the property owner right behind this project. She said the presentation shows detached houses, but this would be two detached units attached by one roof. She is concerned there could be discrepancies with neighbors and this could create problems within the Neighborhood. There is talk about neighborhood characteristic studies and she feels this project is not a good fit for this neighborhood. This is one of the oldest neighborhoods
in the City. She thanked Council for their service.

Rita Samaniego, stated she would rather have residential homes in this area. A duplex has been built across the street and there is no parking except on the street. Her concern is the safety of everyone that lives on that street, especially the children.

Lance Hubert, spoke as the property owner of the proposed project. He sent emails requesting postponement until a full Council is seated as it would require 6 council members to vote for approval.

Carina Boston, spoke as a member of the community that has family who owns property on Earle Street. She hopes they have a long time relationship with the neighbors. She spoke about possible flooding and erosion issues if this property were to be developed as proposed. She hopes the process is a little more considerate of long term effects when zoning requests are made.

John Bud, stated that he has lived on Earle Street for the last 18 years. He expressed his objection to this project. There is already an apartment and duplex in this neighborhood and the density will increase if this project is improved. He believes it is not conducive of quality of life for the members of this neighborhood. He stated others issues such as parking, the safety of children, and environmental issues as this is located over the Edwards Aquifer.

There being no further comments, the Mayor closed the Public Hearing at 6:44 p.m.

A motion was made by Council Member Mihalkanin, seconded by Mayor Pro Tem Prewitt, to postpone Ordinance 2018-52, on the first of two readings, until the January 15, 2019. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

16. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-225R, authorizing the submission of the 2017 Community Development Block Grant (“CDBG”) Program Consolidated Annual Performance Evaluation Report (CAPER) to the United States Department of Housing and Urban Development; and declaring an effective date; and consider approval of Resolution 2018-225R.
Aaron Harris, Community Initiatives Program Administrator, provided a few comments regarding the submission of the 2017 Community Development Block Grant (“CDBG”) Program Consolidated Annual Performance Evaluation Report (CAPER) to the United States Department of Housing and Urban Development.

Mayor Hughson opened the Public Hearing at 6:58 p.m.

There being no comments, the Mayor closed the Public Hearing at 6:58 p.m.

A motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Mihalkanin, to approve Resolution 2018-225R. The motion carried by the following vote:

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<th>5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin</th>
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<td>Against</td>
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<td>1 - Deputy Mayor Pro Tem Gregson</td>
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NON-CONSENT AGENDA

17. Consider approval of Ordinance 2018-19, on the first of two readings, adopting a new Transportation Master Plan and Thoroughfare Plan; including procedural provisions; and providing an effective date.

A motion was made by Council Member Derrick, seconded by Council Member Mihalkanin, to approve Ordinance 2018-19, on the first of two readings. The motion carried by the following vote:

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<th>5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin</th>
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<tbody>
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<td>0</td>
</tr>
<tr>
<td>Absent</td>
<td>1 - Deputy Mayor Pro Tem Gregson</td>
</tr>
</tbody>
</table>

18. Consider approval of Ordinance 2018-53, on the first of two readings, increasing the speed limit from 30 miles per hour to 35 miles per hour along the section of Hunter Road between Wonder World Drive (RM 12) and West San Antonio Street; authorizing the installation of signs and traffic control devices reflecting such new speed limit; directing that the traffic register maintained under Section 82.067 of the San Marcos City Code be amended to reflect such new speed limit; and, including procedural provisions.

A motion was made by Council Member Mihalkanin, seconded by Council Member Gonzales, to approve Ordinance 2018-53, on the first of two readings. The motion carried by the following vote:
19. Consider approval of Ordinance 2018-54, on the first of two readings, amending the City’s 2018-2019 Fiscal Year budget to create the Parking Management Fund, allow expenditures in the sum of $134,411 from the Parking Management Fund to provide for operating expenditures for the Parking Management Program, and add one full-time employment position titled Parking Manager in the Parking Management Fund; amending the City’s staffing table to reflect the addition of one full-time employee; and providing an effective date.

MAIN MOTION: a motion was made by Council Member Derrick, seconded by Council Member Mihalkanin, to approve Ordinance 2018-54, on the first of two readings.

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Mihalkanin, to amend the expenditures from the Parking Management Fund by decreasing it from $134,411 to $87,258. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Ordinance 2018-54, on the first of two readings, as amended. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

20. Consider approval of Ordinance 2018-55, on the first of two readings, amending Chapter 2, Article 3, Boards, Committees and Commissions, of the San Marcos City Code by replacing Division 6 to establish a Parking Advisory Board; including procedural provisions and providing an effective date.

MAIN MOTION: a motion was made by Council Member Mihalkanin, seconded by Mayor Pro Tem Prewitt to approve Ordinance 2018-55, on the first of two readings.
MOTION TO AMEND: a motion was made by Council Member Mihalkanin, seconded by Mayor Pro Tem Prewitt, to amend the composition of the Parking Advisory Board by adding two at large members. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Mayor Pro Tem Prewitt, to amend the composition of the Parking Advisory Board by adding two Council Members as non voting members. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MOTION to AMEND: a motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Derrick, to amend Ordinance 2018-55 by adding the following language to Sec 2.174 Duties and Responsibilities as provided by the Downtown Association.

(a) The Board will serve an advisory function, providing recommendations to the city manager and city council regarding creation and operation of the parking and transportation demand management program including, but not limited to, the establishment, modification or termination of parking benefit districts; on-street parking regulations including areas, hours of operation, time limits, rates, citations and penalties; off-street parking regulations including areas, hours of operation, time limits, rates, citations and penalties; parking permit areas and rates; codes and ordinances governing the planning, design, construction, operation and maintenance of parking facilities; and codes and ordinances governing transportation demand management policies, programs, or infrastructure investments within any established parking benefit districts.

(b) The Board will develop written guidelines regarding the process for allocation of city parking benefit district funds, and in accordance with the codes and ordinances governing city parking benefit districts shall provide oversight for the expenditure of city parking benefit district funds for the promotion of: economic development; transit supporting facilities; active and
shared-use transportation; community vitality; and quality of life.

The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Ordinance 2018-55, on the first of two readings, as amended. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

21. Consider approval of Resolution 2018-226R, approving the form and authorizing the distribution of a Preliminary Limited Offering Memorandum for "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2018 (Trace Public Improvement District)"

A motion was made by Council Member Mihalkanin, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-226R. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

VI. Question and Answer Session with Press and Public.

None.

VII. Adjournment.

Mayor Hughson adjourned the Regular Meeting of the San Marcos City Council Tuesday, November 20, 2018 at 8:36 p.m.

Jamie Lee Case, TRMC, City Clerk                        Jane Hughson, Mayor
I. Call To Order

With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Hughson at 6:02 p.m. Wednesday, December 12, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 5 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Council Member Melissa Derrick, Mayor Jane Hughson and Council Member Ed Mihalkanin

Absent: 1 - Deputy Mayor Pro Tem Scott Gregson

III. Invocation

A moment of silence was observed.

IV. Pledges Of Allegiance - United States And Texas

Council Member Mihalkanin led the assembly in the pledges of allegiance.

EXECUTIVE SESSION

1. Consider action, by motion, regarding the following Executive Session items:
   1. Executive Session in accordance with Section §551.071 of the Texas Government Code: Consultation with Attorney, - to receive legal advice regarding pending litigation, The Mayan At San Marcos, LLC, vs. City of San Marcos, Cause No. 18-0958-CV-A, in the 25th Judicial District Court of Guadalupe County, Texas, filed on April 18, 2018 in an attempt to invalidate Ordinance No. 2008-16 that annexed a 563.199 tract of land commonly known as the Hillert Tract into the city limits of San Marcos, Texas;
   2. Executive Session in accordance with Section §551.072 of the Texas Government Code: Real Property Deliberations Regarding, to discuss the acquisition of land for cemetery purposes
   3. Executive Session in accordance with Section §551.087 of the Texas Government Code: Economic Development - to receive a Staff briefing and deliberate regarding potential economic development incentives for projects Desert Wind and Big Hat.

Mayor Hughson stated that council received legal advice on item #1 and discussion was held and direction was provided on items #2 and #3 in Executive Session.
V. 30 Minute Citizen Comment Period

Sharri Boyett, addressed the Council in support of the no kill resolution that will be presented this evening. This is a giant step towards our goal of becoming a safe and humane community for our people and pets. People dont want pets to die, they will rally behind the shelter that is proactive and humane. We applaud the staff and look forward to increased hours and programs. Expediting this process is important. There are proven best practices to approve this goal and people are ready to help. We just need the commitment from Council. Please expedite as the time is now, it is time to stop the killing.

Lisa Marie Coppoletta, addressed the Council regarding the discussion last night at the Planning & Zoning Commission in regards to the rezoning of 900+ acres of land. She stated Council had a closed session and approved an Economic Development agreement that went against the code. This area went from low density to high industrial and this is in the flood way and there is no buffer for neighbors to be protected. The public has a right to know that Council approved a 600,000 square foot building on this property with 80% impervious cover. She wants Council to listen to the video from the Planning and Zoning Commission.

Trampas Sibert, addressed Council regarding conflicts of interest in regards to the San Marcos Police Department. He feels he has been targeted and retaliated against for years. He provided a recording and wants Council to listen to this.

Keith Spell, addressed the Council regarding his employment as a wrecker driver for Trampus Sibert and the issues he has had since that time. He claims the police did noting when his home and vehicle were vandalized. He asked that Council listen to the tape that Mr. Sibert discussed in his comments. He would like a fair shake and there should be the same consequences for everyone.

CONSENT AGENDA

A motion was made by Council Member Gonzales, seconded by Council Member Mihalkanin, to approve the consent agenda, with the exception of items # 3, 13, 14, and 15 which were pulled and considered separately. The motion carried by the following vote:

For: Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

2. Consider approval, by motion, of the following meeting Minutes:
   A. October 30, 2018 - Special Meeting
   B. October 30, 2018 - Transportation Master Plan Workshop Meeting Minutes
   C. November 7, 2018 - Work Session Meeting Minutes

3. Consider approval of Ordinance 2018-19, on the second of two readings, adopting a new Transportation Master Plan and Thoroughfare Plan; including procedural provisions; and providing an effective date.

A motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to approve Ordinance 2018-19, on the second of two readings, adopting the version that includes the amendments. The motion carried by the following vote:

   For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

   Against: 0

   Absent: 1 - Deputy Mayor Pro Tem Gregson

4. Consider approval of Ordinance 2018-53, on the second of two readings, increasing the speed limit from 30 miles per hour to 35 miles per hour along the section of Hunter Road between Wonder World Drive (RM 12) and West San Antonio Street; authorizing the installation of signs and traffic control devices reflecting such new speed limit; directing that the traffic register maintained under Section 82.067 of the San Marcos City Code be amended to reflect such new speed limit; and, including procedural provisions.

5. Consider approval of Ordinance 2018-54, on the second of two readings, amending the City's 2018-2019 Fiscal Year budget to create the Parking Management Fund, allow expenditures in the sum of $87,258 from the Parking Management Fund to provide for operating expenditures for the Parking Management Program, and add one full-time employment position titled Parking Manager in the Parking Management Fund; amending the City's staffing table to reflect the addition of one full-time employee; and providing an effective date.

6. Consider approval of Ordinance 2018-55, on the second of two readings, amending Chapter 2, Article 3, Boards, Committees and Commissions, of the San Marcos City Code by replacing Division 6 to establish a Parking Advisory Board; including procedural provisions and providing an effective date.

7. Consider approval of Resolution 2018-227R, adopting Guiding Principles for the City’s 2019 State Legislative Program Activities; and declaring an effective date.

8. Consider approval of Resolution 2018-237R, adopting Guiding Principles for the City’s
2019 Federal Legislative Action Program, and declaring an effective date.

9. Consider approval of Resolution 2018-228R, approving the award of a contract for Meter Installation & Field Service Upgrades (IFB 218-364) to the Oletimeter Corporation for an amount estimated at $597,935.64; authorizing the City Manager to execute said agreement; and declaring an effective date.

10. Consider approval of Resolution 2018-229R, authorizing an agreement between the City of San Marcos and Dewberry Engineers Inc. for a three-year subscription for Nearmap ArcGIS Aerial Imagery Software in an amount estimated at $53,985.63; authorizing the City Manager to execute said agreement; and declaring an effective date.

11. Consider approval of Resolution 2018-230R, authorizing a change in service between the City of San Marcos and Visit San Antonio which will extend the current marketing and promotional services contract for one year at an amount estimated at $35,000.00 and bringing the total value of the contract to $70,000.00; authorizing the City Manager to execute said agreement; and declaring an effective date.

12. Consider approval of Resolution 2018-231R, approving a 20 year lease with the Village of San Marcos for a Women, Infants and Children (“WIC”) Program office at 215 Reimer Avenue; authorizing the City Manager to execute said lease; and declaring an effective date.

13. Consider approval of Resolution 2018-232R, approving an Interlocal Agreement between the City of San Marcos and Hays County to provide Hays County with animal shelter services for a payment of $259,596 to cover expenses through the end of the fiscal year to be paid by Hays County upon execution of the Agreement; authorizing the City Manager to execute the agreement; and declaring an effective date.

MAIN MOTION: a motion was made by Council Member Derrick, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-232R.

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Derrick, to amend Resolution 2018-232R, by amending Section 1, Subpart B(1) of the Interlocal Agreement with Hays County by designating Hays County Commissioner, Precinct 1, as the County's representative in all matters related to this Agreement. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Resolution 2018-232R, as amended. The motion carried by the following vote:
14. Consider approval of Resolution 2018-233R, approving an Interlocal Agreement between the City of San Marcos and the City of Kyle to provide the City of Kyle with animal shelter services for a payment of $141,881 to cover expenses through the current fiscal year to be paid by the City of Kyle upon execution of this Agreement; authorizing the City Manager or his designee to execute the Agreement; and declaring an effective date.

MAIN MOTION: MAIN MOTION: a motion was made by Council Member Derrick, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-233R.

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Gonzales, to amend Resolution 2018-233R, by amending section 2, sentence 2 of the Interlocal Agreement with the City of Kyle by removing the word City and replacing it with San Marcos. The sentence now reads "The Parties acknowledge that San Marcos is currently reviewing and studying its animal services efforts and the Parties anticipate negotiating a new long-term agreement over the next year. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Gonzales, to amend Section 1, Subpart B(1) of the Interlocal Agreement with the City of Kyle, by designating the Police Chief as Kyle's representative in all matters related to this Agreement. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Resolution 2018-233R, as amended. The motion carried by the following vote:

15. Consider approval of Resolution 2018-234R, approving an Interlocal Agreement between
the City of San Marcos and the City of Buda to provide the City of Buda with animal
shelter services for a payment of $37,463 to cover expenses through the end of the
current fiscal year to be paid by the City of Buda upon execution of this Agreement;
authorizing the City Manager to execute the agreement; and declaring an effective date.

MAIN MOTION: a motion was made by Mayor Pro Tem Prewitt, seconded by
Council Member Mihalkanin, to approve Resolution 2018-234R.

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by
Council Member Gonzales, to amend Resolution 2018-234R, by amending
Section 1, Subpart B(1) designating the Police of Chief as Buda's
representative in all matters related to this Agreement and amending section 2,
sentence 2 of the Interlocal Agreement with the City of Buda by removing the
word City and replacing it with San Marcos. The sentence now reads "The
Parties acknowledge that San Marcos is currently reviewing and studying its
animal services efforts and the Parties anticipate negotiating a new long-term
agreement over the next year. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor
Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Resolution 234R, as amended. The motion
carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor
Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

PUBLIC HEARINGS

16. Hold the second of two Public Hearings to receive comments for or against Ordinance
2018-51, on the second of two readings, approving an update to the Service and
Assessment Plan for the Trace Public Improvement District; making a finding of special
benefit to the property in the district; levying additional assessments against property
within the district; establishing a lien on such property; approving an updated assessment
roll for the district; providing for payment of the additional assessments in accordance
with Chapter 372, Texas Local Government Code; providing for the method of
assessment and the payment of the additional assessments; providing for penalties and
interest on delinquent assessments; providing for a severability clause; and consider
approval of Ordinance 2018-51, on the second of two readings, providing an effective
date; and providing for related matters.

Steve Parker, Assistant City Manager provided a brief update regarding th
Service and Assessment Plan for the Trace Public Improvement District.

Mayor Hughson opened the Public Hearing at 6:39 p.m. There being no comments, the Mayor closed the Public Hearing at 6:39 p.m.

A motion was made by Council Member Mihalkanin, seconded by Mayor Pro Tem Prewitt, to approve Ordinance 2018-51, on the second of two readings. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

17. Receive a Staff Presentation and hold the first of two Public Hearings to receive comments for or against the Annexation (AN-08-05) of approximately 934.34 acres, more or less, comprised of six separate tracts of land along State Highway 80 and FM 1984, out of the William Pettus Survey, Abstract No. 21.

Shannon Mattingly, Director of Development Services, provided a presentation regarding the annexation of land along side State Highway 80 and FM 1984. She provided a map of other properties that are located near this proposed annexation.

Laurie Moyer, Director of Engineering and CIP, provided the floodplain map of this property. She stated that stormwater management requires the rate of runoff after construction must be equal to or less than runoff prior to construction.

Mayor Hughson opened the Public Hearing at 6:54 p.m.

Those who spoke:

Mary Beth Harper, addressed council regarding the annexation being requested. She lives between San Marcos and Martindale. She thinks San Marcos is reaching into Martindale and she doesn't like it. She mentioned the map that staff illustrated was incorrect and that Martindale's Extraterritorial Jurisdiction (ETJ) is bigger than shown. She spoke of the floodway running through projects, increased traffic and stated we need to check the ETJ.

Dianne Wassenich, spoke on behalf of the San Marcos River Foundation. She indicated that last night the Planning & Zoning Commission (P&Z) did not receive as much information as Council is receiving this evening. We have
rules and we need to protect downstream unlike ever before. 2-D modeling is not required in this area, but work needs to be done. She mentioned P&Z turned it down because they just didn't receive all the information.

Ed Theriot, spoke as the Caldwell County Precinct 3 Commissioner. He stated that Commissioner’s Court recently passed a 381 Economic Development Agreement with Katerra which will bring needed investment and many jobs. There is preliminary discussions with three other companies that are looking at the Smart Terminal for their development. They are currently pursuing grants for rail infrastructure. They are supportive of San Marcos and getting this zoned and annexed.

Mike Schroedder, developer of the Smart Terminal, discussed the history of this project and the economic stimulus of this property. He explained the rail line expansion and the support of Burlington Northern Santa Fe (BNSF) and Union Pacific Railways. He stated the building will be comparable to the Amazon building and they will have a cafeteria and daycare on site. He stated that we want to be successful but also respectful of the environment as well.

Adriana Cruz, Greater San Marcos President, she stated this is called SMART for San Marcos Air Rail Truck and will be part of the future FM110. She expressed her support of this annexation and the development of this area. Caldwell County, the City and GSMP are working on Grants. This project will attract higher end industrial companies, this will be the first of its kind in Central Texas.

There being no further comment, the Mayor closed at 7:06 p.m.

No action will be taken this evening, but the Mayor opened up discussion to allow Council to ask questions of Staff regarding this property.

Council provided consensus for Ms. Moyer to look into getting 2D modeling done on this property. She will discuss it with Halff and Associates. Council would also like FM 110 illustrated on this property map.

NON-CONSENT AGENDA

18. Consider approval of Ordinance 2018-56, on the first of two readings, amending Ch. 82, Article 4 of the City of San Marcos City Code by adding a new Division 3 regulating Vehicle Booting Activities On Private Parking Facilities; providing a savings clause; providing for the repeal of any conflicting provisions; providing for penalties; and providing an effective date.
MAIN MOTION: a motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to approve Ordinance 2018-56, on the first of two readings.

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Mayor Pro Tem Prewitt, to amend Section 82.191, Subsection (e) by including cash as a form of payment, so the section now reads "A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with cash, an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept." The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

MAIN MOTION: to approve Ordinance 2018-56, on the first of two readings, as amended. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
Absent: 1 - Deputy Mayor Pro Tem Gregson

19. Consider approval of Resolution 2018-235R, directing the City Manager to develop an implementation plan to achieve and sustain 90% or higher live outcome rates for dogs and cats at the San Marcos Regional Animal Shelter and return to City Council to present the proposed implementation plan; and declaring an effective date.

MAIN MOTION: a motion was made by Council Member Derrick, seconded by Council Member Gonzales, to approve Resolution 2018-235R.

MOTION TO AMEND: a motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Derrick, to amend Resolution 2018-235R by changing the caption language "directing the City Manager to develop an implementation plan to achieve and sustain 90% or higher live outcome rates for dogs and cats at the San Marcos Regional Animal Shelter by June 28, 2024, or before, and return to City Council no later than June 28, 2019 to present the proposed implementation plan". The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
Against: 0
MAIN MOTION: to approve Resolution 2018-235R, as amended. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

20. Consider approval of Resolution 2018-236R, amending Resolution No. 2018-131R pertaining to the establishment of the San Marcos Innovation District by, among other possible amendments, modifying the boundaries of the District and the modifying the qualifications for appointment to the District Stakeholder Advisory Group; and declaring an effective date.

MAIN MOTION: a motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to approve Resolution 2018-236R.

MOTION TO AMEND: a motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Mihalkanin, to amend Resolution 2018-236R by including a representative from the Callaboose Museum to serve on the San Marcos Innovation District. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Mihalkanin, to amend Resolution 2018-236R by including a citizen-at-large to serve on the San Marcos Innovation District. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

MOTION TO AMEND: a motion was made by Mayor Hughson, seconded by Council Member Derrick, to amend Resolution 2018-236R by removing the residential portion of the map that is included. Staff will update accordingly. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin
MAIN MOTION: to approve Resolution 2018-236R, as amended. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

VI. Question and Answer Session with Press and Public.

Roland Saucedo, spoke on item 20 on the agenda. He is under the impression that is up to the stakeholders and committee would determine the boundaries. Mayor Hughson stated boundaries can change and believe it will be up to future stakeholders to change boundaries. However for the time Council wants the homes out of the process so there are no worries from homeowners.

VII. Adjournment.

Mayor Hughson adjourned the Regular Meeting of the San Marcos City Council Wednesday, December 12, 2018 at 8:28 p.m.

Jamie Lee Case, TRMC, City Clerk                               Jane Hughson, Mayor
I. Call To Order

With a quorum present, the special meeting of the San Marcos City Council was called to order by Mayor Hughson at 6:00 p.m. Wednesday, December 20, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 5 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Council Member Melissa Derrick, Mayor Jane Hughson and Council Member Ed Mihalkanin

Absent: 1 - Deputy Mayor Pro Tem Scott Gregson

1. Consider approval of Resolution 2018-238R supporting the submission of an application for Low Income Housing Tax Credits to the Texas Department of Housing and Community Affairs for the proposed Villas Del San Xavier Senior Community located at 2621 South Interstate Highway 35; approving findings related to such application; imposing conditions for such support; providing authorizations for execution or submission of documents related to the such application; and declaring an effective date.

   A motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Mihalkanin, to approve Resolution 2018-238R. The motion carried by the following vote:

   For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

   Against: 0

   Absent: 1 - Deputy Mayor Pro Tem Gregson

PUBLIC HEARINGS

2. Receive a Staff Presentation and hold the second of two Public Hearings to receive comments for or against the Annexation (AN-08-05) of approximately 934.34 acres, more or less, comprised of six separate tracts of land along State Highway 80 and FM 1984, out of the William Pettus Survey, Abstract No. 21.

   Shannon Mattingly, Director of Development Services, provided a brief update on the annexation and indicated this is six separate tracts of land. Mrs. Mattingly informed Council that engineering will have 2-D flood modeling complete
for the January 15th City Council meeting.

Mayor Hughson opened the Public Hearing at 6:12 p.m.

Those who spoke:

Mary Beth Harper, expressed her appreciation for updating the Extraterritorial Jurisdiction (ETJ) map, but there is still information that is missing. She explained SM stands for San Marcos, A stands for air and there are building height restrictions, R is for rail and that she is concerned about the increased traffic that will arise from this since there is already a lot of traffic due to the trains. T is for trucks and she is concerned about traffic as well with the increased trucks that will be routed through. She is against this annexation and development.

Lisa Marie Coppoletta, complimented the dais for listening to the concerns of Mary Beth Harper and the citizens. She would like to have seen the formation of a subcommittee and to see a development agreement. This subcommittee would provide an extra layer much like the Lindsey Hill and HEB on Hunter Road projects. She would like to confirm the developer can not change things and she wants to know what the risks are to the City. She expressed her concerns with the lack of buffer zones, water retention ponds, and barriers of vegetation. She feels this development will ruin the life of those in Caldwell County. She suggested pulling this item.

Sara Lee Underwood Meyers, lives in Blanco Garden and doesn't know anything about this property. She urged the Council to pull this item so she can be better informed.

Mike Schroeder, developer of this property, stated this project will be an economic engine in this community. He stated Katerra is high quality and will offer many jobs for San Marcos. This development will give back real estate that can be taxed. He also explained they are in the flight path of the airport so height limitations will be met and there is nothing much more suited to Industrial zoning as this type of property. BNSF and Union Pacific will be in San Marcos, and this is huge as Austin doesn't have a single rail opportunity.

Allen Simon, expressed his support of this project and stated a project like this will create numerous jobs. In regards to traffic concerns, short rail will reduce truck traffic and wear and tear on roads.
Ed Theriot, Caldwell County Precinct 3 Commissioner expressed his support for the Katerra Project. They are in the process of seeking grants for the purpose of improving infrastructure and many transportation improvements will be made with TXDoT. They are supportive of San Marcos' annexing this property as it will be better regulated with the Code regulations.

Sabrina Chapa, stated she is anti-development because there is lack of affordable housing for students in San Marcos.

There being no further comment, the Mayor closed the Public Hearing at 6:26 p.m.

No action will be taken this evening. This item will be brought back for first reading on Tuesday, January 15, 2019.

NON-CONSENT AGENDA

3. Consider approval of Ordinance 2018-57, on first and final reading, canvassing returns and declaring results of the Runoff Election, held on December 11, 2018, for the purpose of electing City Council Member, Place Five, and to fill a vacancy for the two year remainder of the unexpired term of City Council Member, Place 4; declaring an emergency creating the need to adopt this Ordinance with only one reading; and providing an effective date.

A motion was made by Council Member Derrick, seconded by Mayor Pro Tem Prewitt, to approve Ordinance 2018-57, on first and final reading. The motion carried by the following vote:

For: 5 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson and Council Member Mihalkanin

Against: 0

Absent: 1 - Deputy Mayor Pro Tem Gregson

4. Issue Certificate of Election to City Council Member, Place 5, and City Council Member, Place 4; and administer Oath of Office.

Mayor Hughson issued the Certificate of Election to Council Member Joca Marquez. Maria Rocha administered the Oath of Office to Council Member Marquez.

Mayor Hughson then issued the Certificate of Election to Council Member Rockeymoore. Thomas Rockeymoore administered the Oath of Office to Council Member Rockeymoore.

III. Adjournment.
Mayor Hughson adjourned the Special Meeting of the San Marcos City Council at 6:55 p.m.

Jamie Lee Case, TRMC, City Clerk

Jane Hughson, Mayor
I. Call To Order

With a quorum present, the special meeting of the San Marcos City Council was called to order by Mayor Hughson at 5:15 p.m. Thursday, December 20, 2018 in the City Hall Conference Room, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 6 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Council Member Melissa Derrick, Mayor Jane Hughson, Council Member Joca Marquez and Council Member Mark Rockeymoore

Absent: 1 - Council Member Ed Mihalkanin

1. Consider approval of Resolution 2018-239R approving a contract with Jerry D. Fields and Linda G. Fields for the city to purchase approximately 4.21 acres of land comprised of six lots at 1401 through 1419 Old Ranch Road 12, and located adjacent to the San Marcos Cemetery, for a price of $2,250,000, plus closing costs; authorizing the City Manager or his designee to execute said contract and related closing documents on behalf of the city; and declaring an effective date.

Bert Lumbreras, City Manager provided an update and short presentation on the purchase that would expand our Cemetery.

The remaining space in the cemetery allows for an additional 800 plots, the City currently averages about 80 plot sales per year, and the remaining life is approximately 10 more years. City staff has explored expansion options and in order to expand within city limits, it must occur adjacent to an existing cemetery. If not, expansion can only occur in the Extraterritorial Jurisdiction (ETJ).

Plot fee for residents is $1550 and $1900 for non-residents. The purchase of this property would give the City Cemetery approximately 1,575 to 2,275 additional plots and we could extend the life of the Cemetery life by an additional 25-30 years. The estimated revenue is $2.9M to $3.7M.
The purchase will be funded by the Cemetery Perpetual Fund in the amount of $1,071,000 and the FY2019 Capital Improvements Project Fund in the amount of $1,200,000. These budget adjustments will come back at next Council Meeting.

The next steps will involve the creation of a Master Plan that will involve the layout for additional property.

There will be public improvements needed to convert this property from residential to cemetery and this is approximated at $600,000 and includes the following:
- 4 houses, 1 foundation and several out buildings will need to be razed
- All water, electric, gas and sewer will be capped at street and old lines will be removed
- All invasive trees and plants will be removed
- Remaining land will be graded and landscaped accordingly for erosion and beautification
- New internal roadways
- New water lines for irrigation
- Electrical and security lighting
- 490 ft. of wrought iron fence and 800 ft. of chain-link fence

Public Infrastructure will be phased in as needed and existing residential leases are proposed to stay in place.

Master Plan will be brought back at a later date, but an update will be given in late Spring 2019.

A motion was made by Mayor Hughson, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-239R. The motion carried by the following vote:

For: 6 - Mayor Pro Tem Prewitt, Council Member Gonzales, Council Member Derrick, Mayor Hughson, Council Member Marquez and Council Member Rockeymoore

Against: 0

Absent: 1 - Council Member Mihalkanin

III. Adjournment.

Jamie Lee Case, TRMC, City Clerk

Jane Hughson, Mayor
AGENDA CAPTION:
Consider approval of Ordinance 2018-56, on the second of two readings, amending Chapter 82, Article 4 of the City of San Marcos City Code by adding a new Division 3 regulating Vehicle Booting Activities On Private Parking Facilities; providing a savings clause; providing for the repeal of any conflicting provisions; providing for penalties; and providing an effective date.

Meeting date: January 15, 2019

Department: Police, Chief Chase Stapp

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: Council received a presentation on this topic during a recent work session and provided direction to bring back an ordinance. The Council approved the item on first reading on December 12, 2018.

City Council Strategic Initiative: [Please select from the dropdown menu below]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☒ Economic Development - Sports Tourism, Eco-Tourism, Retail Tourism & 13,000 year heritage
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
Background Information:
On Tuesday, September 18, 2018, the City Council received a presentation from Chief of Police Stapp about the potential need for an ordinance to regulate the private use of vehicle immobilization devices within the city limits. Council provided direction to bring back an ordinance to address both fee caps associated with these devices and needed rules and regulations to prevent abuse. This ordinance addresses the concerns shared by Council during that work session.

- This ordinance required vehicle booting companies to register with the city.
- Booting of vehicles on private parking lots will be allowed only if the parking lot owner posts signs in accordance with state law notifying vehicle owners that an unauthorized vehicle may be booted.
- Booting companies may charge a fee of no more than $50 for boot removal and must provide certain information to the vehicle owner to enable prompt removal of the boot and disclosing the rights of a vehicle owner to a hearing or to file a complaint.
- Vehicle owners have a right to request a hearing in JP Court regarding the propriety of a boot installation. Complaints may also be lodged with the police chief.
- Violations of the ordinance are punishable by a fine not to exceed $500.

Council Committee, Board/Commission Action:
N/A

Alternatives:
The alternative to passing this ordinance is to leave the issue unaddressed by local control. This would allow private entities to set rates for the removal of vehicle immobilization devices without guidance and without limit.

Recommendation:
The staff recommendation is to pass this ordinance thereby providing effective guidelines for the use of vehicle
immobilization devices within San Marcos.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 82, ARTICLE 4 OF THE SAN MARCOS CITY CODE BY ADDING A NEW DIVISION 3 REGULATING VEHICLE BOOTING ACTIVITIES ON PRIVATE PARKING FACILITIES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City Council hereby finds and determines that the adoption of regulations governing the booting of vehicles in private parking facilities by booting companies and boot operators is in the interest of the public health, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 82, Traffic and Vehicles, Article 4, Stopping, Standing, Parking, of the San Marcos City Code is amended by adding a new Division 3, Regulation of Vehicle Booting Activities, as set forth below. Added text is indicated by underlining.

DIVISION 3. REGULATION OF VEHICLE BOOTING ACTIVITIES

Sec. 82.190. Definitions.

In this division:

*Boot* means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

*Booting company* means a person that controls, installs, or directs the installation and removal of one or more boots.

*Boot operator* means an individual who installs or removes a boot on or from a vehicle.

*Parking facility* means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

1. a restricted space on a portion of an otherwise unrestricted parking facility; and

2. a commercial parking lot, a parking garage, and a parking area
serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

a. a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

b. the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

_Parking facility authorized agent_ means an employee or agent of a parking facility owner with the authority to:

(1) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(2) accept service on behalf of the parking facility owner of a notice of hearing requested under Subchapter J, Chapter 2308 of the Texas Occupations Code (Rights of Owners and Operators of Stored or Booted Vehicles), regarding whether probable cause existed to immobilize the vehicle.

_Parking facility owner_ means:

(3) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(4) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or

(5) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

_Peace officer_ means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

_Police chief_ means the chief of the San Marcos Police Department, and includes representatives, agents, and department employees designated by the police chief.
Unauthorized vehicle means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

Vehicle means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

Vehicle owner means a person:

1. named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;
2. in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;
3. who holds the vehicle through a lease agreement;
4. who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
5. who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

Sec. 82.191. Booting of unauthorized vehicle.

(a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if the parking facility owner has posted the signs in the parking facility required by Subchapter G, Chapter 2308, Texas Occupations Code (Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas).

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

1. that the vehicle has been booted and damage may occur if the vehicle is moved;
2. the date and time the boot was installed;
3. the name, address, and telephone number of the booting company;
4. a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;
(5) the amount of the fee for removal of the boot and any associated parking fees;

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (Rights of Owners and Operators of Stored or Booted Vehicles), regarding whether probable cause existed to immobilize the vehicle.; and

(7) notice of the right to file a complaint with the police chief for violation of this division by a booting company or a boot operator.

(c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:

(1) the name of the person who removed the boot;

(2) the date and time the boot was removed;

(3) the name of the person to whom the vehicle was released;

(4) the amount of fees paid for removal of the boot and any associated parking fees; and

(5) the right of the vehicle owner or operator to a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (Rights of Owners and Operators of Stored or Booted Vehicles), regarding whether probable cause existed to immobilize the vehicle.

(d) The booting company shall maintain a copy of the receipt at its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) A booting company shall accept payment by cash, an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

Sec. 82.192. Boot Removal.

(a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.
(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) A booting company responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Sec. 82.193. Maximum fee for boot removal.

The maximum fee that may be charged for removal of a boot is $50.00 or such other amount as otherwise approved by the city council from time to time.

Sec. 82.194. Booting company registration.

(a) A booting company may not authorize the installation of a boot on a parked vehicle in a parking facility without first having registered with the police chief under this section.

(b) To register, a person must complete a form provided by the police chief for that purpose.

(c) The person completing the form shall indicate the name, address, telephone number and email address of the owner and any authorized officers or agents of the owner having authority with regard to booting of vehicles, all parking facilities for which the booting company may perform vehicle booting activities for a parking facility owner, and the names and cellular telephone numbers of all boot operators who will be carrying out such activities.

(d) The registration form must be completed and signed by any person who will own, control, or operate or the booting company, or such person’s duly authorized agent.

(e) A booting company on whose behalf a registration form has been completed shall promptly update the form with any changes regarding ownership, business location, contact information, contracted parking facilities or boot operators acting on behalf of the booting company.

(f) The registration form must include all information required by the form provided by the police chief to be deemed complete.

(g) The registrant must submit a registration fee in the amount of $25.00 or such other amount as may be set by the city council from time to time. The fee is non-refundable.
Sec. 82.195. Violation; penalties.

(a) A person is prohibited from booting, or causing to be booted, a vehicle in a parking facility except as provided in this division.

(b) A person commits an offense if the person:

(1) performs an act prohibited by this division;

(2) fails to perform an act required by this division; or

(3) violates a rule adopted under this division.

(c) A violation of this division is a Class C misdemeanor punishable by a fine not to exceed $500.00 as provided in section 1.015(b) of the San Marcos City Code.

(d) Proof of a culpable mental state is not required for the prosecution of a violation of this division.

Sec. 82.196. Exemptions.

This division does not apply to the booting of a vehicle by:

(1) a governmental entity; or

(2) a person exercising a statutory or contractual lien right with regard to the vehicle.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on December 12, 2018.

PASSED, APPROVED AND ADOPTED on second reading on January 15, 2019.
Jane Hughson
Mayor

Attest:                Approved:

Jamie Lee Case        Michael J. Cosentino
City Clerk            City Attorney
AGENDA CAPTION:
Consider approval of Resolution 2019-01R, approving the purchase of a 2019 Chevrolet 3500HD Silverado pickup truck Command Vehicle for the Fire Department in the total purchase amount of $135,738 from Caldwell Country Chevrolet through the Texas Local Government Purchasing Cooperative BuyBoard Contract for Heavy Trucks (Contract #521-16); authorizing the City Manager to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Fire Department - Les Stephens, Fire Chief (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $135,738.00
Account Number: Project V670 50036466.70200
Funds Available: $150,000
Account Name: 2018 Bond Funds

Fiscal Note:
Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

Background Information:
The City of San Marcos is authorized by the Local Government Code, Chapter 271, to participate in cooperative purchasing programs. The BuyBoard Cooperative (“BuyBoard”) has awarded contract #521-16 for Vehicles, Heavy Duty Trucks, Trailers, Refuse & Other Bodies to vendor Caldwell Country, located in Caldwell, Texas.

Through this BuyBoard contract, we are purchasing a 2019 Chevrolet 3500HD Silverado Command Vehicle from Caldwell Country for the Fire Department in the total amount of $135,738.00.

The new Fire Command vehicle will replace the 2011 Chevrolet Suburban currently being used by the shift Battalion Chief. The 2011 Suburban will be kept in reserve status. The Fire Command vehicle is the primary response vehicle for the Shift Commander, the on-duty Battalion Chief. The Chevrolet 3500HD pick-up will have a custom Knapheide work bed outfitted with emergency lights, a large Command Light, several mobile radios and computers, a custom Command Console on a slide-out tray, and general firefighting tools and equipment. This vehicle will provide the Battalion Chief with a platform to track and communicate effectively with all crews on the scene of an incident.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Recommend approval of award to purchase the Fire Department Command vehicle from Caldwell Country in the amount of $135,738.00 through the BuyBoard Cooperative.
RESOLUTION 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF A 2019 CHEVROLET 3500HD SILVERADO PICKUP TRUCK COMMAND VEHICLE FOR THE FIRE DEPARTMENT IN THE TOTAL PURCHASE AMOUNT OF $135,738 FROM CALDWELL COUNTRY CHEVROLET THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE BUYBOARD CONTRACT FOR HEAVY TRUCKS (CONTRACT #521-16); AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE PURCHASE DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The purchase of a 2019 Chevrolet 3500HD Pickup Command Vehicle for the Fire Department from Caldwell Country Chevrolet in the total purchase amount of $135,738.00 through the Texas Local Government Purchasing Cooperative Buyboard contract for Heavy Trucks (Contract #521-16) is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate purchase documents on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
**QUOTE# 001-METRO FIRE**

**CONTRACT PRICING WORKSHEET**

<table>
<thead>
<tr>
<th>End User: CITY OF SAN MARCOS FIRE</th>
<th>Contractor: CALDWELL COUNTRY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Name: CHIEF JOHN KOENIG (METRO FIRE - CRAIG RUSSELL)</td>
<td>CALDWELL COUNTRY</td>
</tr>
<tr>
<td>Email: <a href="mailto:JKOEING@SANMARCOSTX.GOV">JKOEING@SANMARCOSTX.GOV</a></td>
<td>Prepared By: Averyt Knapp</td>
</tr>
<tr>
<td>Phone #: 512-805-2675</td>
<td>Email: <a href="mailto:aknapp@caldwellcountry.com">aknapp@caldwellcountry.com</a></td>
</tr>
<tr>
<td>Fax #: 979-567-6116</td>
<td></td>
</tr>
<tr>
<td>Location City &amp; State: SAN MARCOS</td>
<td>Address: P. O. Box 27, Caldwell, TX 77836</td>
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<tr>
<td>Date Prepared: SEPTEMBER 12, 2019</td>
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<td>Contract Number: BUY BOARD #521-16</td>
<td>Tax ID # 14-1856872</td>
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<td>Product Description: 2019 CHEVROLET 3500HD SILVERADO 4X4 CREW CAB 56CA CK35943</td>
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| A Base Price & Options: | $67,982 |

**B Fleet Quote Option:**

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<th>Cost</th>
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<th>Description</th>
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<td>4X4-CREW CAB, 11,600#GVWR-SINGLE REAR WHEEL, 6.6L-DURAMAX DIESEL, 6-SPD ALLISON 1000 HD-AUTOMATIC, DUAL 150 AMP AND 220 AMP ALTERNATORS, HIGH IDLE SWITCH, 3.73 LOCKING REAR AXLE DIFFERENTIAL, 18” CHROMED ALUMINUM WHEELS, LT265/70R18E ALL TERRAIN TIRES, 40-20-40 JET BLACK CLOTH, FULL RUBBER FLOOR, UNDERSEAT STORAGE COMPOSITE STORAGE BIN, AIR CONDITION, AMFM-STereo MYLINK W/8’ SCREEN, BLUETOOTH, TILT, CRUISE, POWER WINDOWS, POWER TRAILER TOW MIRRORS, KEYLESS ENTRY W/REMOTE VEHICLE START, DEEP TINT GLASS, 6” CHROME RECTANGULAR ASSIST STEPS, Z71 PACKAGE W/HILL DESCENT CONTROL, SKID PLATE SHIELD, FRONT HALOGEN FOG LAMPS, ENGINE BLOCK HEATER, EXHAUST BRAKE, POWER OUTLET 110-VOLT AC, KNAPEHIDE TRUCK</td>
<td>INCL</td>
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### Equipment - Buda

**#RH00002567 W/BED PAINTED TO MATCH METRO FIRE ($16,276 INCLUDED)**

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<td>INCL</td>
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<td>5YR/100,000 MILES POWERTRAIN @ N/C</td>
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<td>Metro Fire outfit per FD specifications listed on V-2 Quote Detail V-2 126907</td>
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<td>$ 67,356.00</td>
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**Subtotal B** | $ 67,356.00

### C Unpublished Options

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**Subtotal C**

### D Other Price Adjustments (Installation, Delivery, Etc...)

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**Subtotal D** | INCL

### E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D)

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**Subtotal E** | $ 135,338.00

### F Non-Equipment Charges (Trade-In, Warranty, Etc...)

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### G Color of Vehicle: RED HOT G7C

### H Total Purchase Price (E+F)

**Estimated Delivery Date:** Q1-Q2 2019
Bill to: SAN MARCOS FIRE DEPARTMENT  
630 E HOPKINS  
SAN MARCOS, TX  78666  

Ship to: SAN MARCOS FIRE DEPARTMENT  
100 CARLSON CIRCLE  
SAN MARCOS, TX  78666  

Attn: JOHN KOENIG

** Loc Oc **

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<td>JOHN KOENIG</td>
<td>HOUSE ACCOUNT</td>
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</tbody>
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** Entered By **
FRED GARNER  

** FOB **
DESTINATION  

** Ship Via **
METRO  

** Terms **
NET 30 DAYS  

** LOC OC **

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<td>CV</td>
<td>1 1 0 EA MET-BT-FD CHASSIS BRUSH TRUCK CHASSIS CUSTOMER SUPPLIED</td>
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| 02       | CV  | 1 1 0 EA MET-BT-BUMPER RPLMT RANCH HAND BLACK STEEL FRONT BUMPER REPLACEMENT INSTALLED  
|          |     | ** **** KIT COMPONENTS ****  
|          |     | 1 1 0 EA MET-BT-BUMPER RPLMT PARTS RANCH HAND BLACK STEEL  
| 02       | CV  | 1 1 0 EA MET-BT-HD ELECTRICAL HEAVY DUTY ELECTRICAL SYSTEM  
|          |     | ** **** KIT COMPONENTS ****  
|          |     | 1 1 0 EA MET-BT-ELECTRICAL WIRING AND ELECTRICAL  
|          |     | 1 1 0 EA PJP-404-1231-032 SOLENOID, TROMBETTA  
|          |     | 1 1 0 ea RAM-X200CB185 CIRCUIT BREAKER 200AMP  
|          |     | 1 1 0 ea RAM-XHHX FUSE HOLDER INCLUDES COVER  
|          |     | 1 1 0 ea RAM-XF52-247 POLLAK 10 GANG TERMINAL  
|          |     | 1 1 0 ea RAM-XF52-412 12 GANG FUSE BLOCK POLLACK  
| 02       | CV  | 1 1 0 EA MET-BT-LED WARNING LIGHT EMERGENCY WARNING LIGHT PKG ALL ASSOCIATED WIRING/LABOR  
|          |     | ** **** KIT COMPONENTS ****  
|          |     | 1 1 0 EA MET-BT-OPT LED WARNING  
|          |     | 1 1 0 EA MET-BT-WARNING LIGHT WIRING EMERGENCY LIGHTING WIRING  
|          |     | 2 2 0 EA WHE-SA315P 100W SPEAKER, PLASTIC  
|          |     | 2 2 0 EA WHE-SAK1 UNIVERSAL MOUNTING BRACKET  
|          |     | 1 1 0 EA WHE-CGSRNTA3 CENCOM SAPPHIRE  
|          |     | 4 4 0 EA WHE-M4FC CHROME FLANGE  
|          |     | 4 4 0 EA WHE-M6RC M6 SERIES LINEAR SUPER-LED  
|          |     | 1 1 0 EA WHE-M6BC M6 SERIES LINEAR SUPER-LED  
|          |     | 6 6 0 EA WHE-M6FC CHROME PLATED FLANGE  
|          |     | 8 8 0 EA WHE-WIONSMA AMBER WIDE ANGLE SURFACE MOUNT  
|          |     | 2 2 0 EA WHE-WIONSMB BLUE WIDE ANGLE SURFACE MOUNT  
|          |     | 2 2 0 EA WHE-WIONSMR RED WIDE ANGLE SURFACE MOUNT  

** Continued on next page....**
**QUOTED DETAIL**

**Quote Number:** 126907-0  
**Printed Date:** 11/09/2018  
**Ordered Date:** 07/05/2018  
**Page:** 2

**Bill to:** SAN MARCOS FIRE DEPARTMENT
630 E HOPKINS
SAN MARCOS, TX  78666

**Ship to:** SAN MARCOS FIRE DEPARTMENT
100 CARLSON CIRCLE
SAN MARCOS, TX  78666

**Attn:** JOHN KOENIG

**Cust Code** | **Ordered By** | **Salesman** | **Job/Rel#** | **Customer PO**
---|---|---|---|---
SAN015 | JOHN KOENIG | FRED GARNER | HOUSE ACCOUNT |

**Entered By** | **FOB** | **Ship Via** | **Terms**
---|---|---|---
JOHN KOENIG | DESTINATION | METRO | NET 30 DAYS

**LOC** | **QC** | **Quantity** | **U/M** | **Item #** | **Description**
---|---|---|---|---|---
02 | CV | 1 1 0 | EA | WHE-WIONSMCR | RED WIDE ANGLE SURFACE MOUNT
02 | CV | 1 1 0 | EA | WHE-WIONSMCR | RED WIDE ANGLE SURFACE MOUNT
02 | CV | 1 1 0 | EA | MET-BT-KUSSMAUL | KUSSMAUL AUTO CHARGE SYSTEM AUTO CHARGE KIT INCLUDES INSTALLATION

**KIT COMPONENTS**
1 | 1 0 | EA | KUS-091-187-12-S-KIT | AUTO CHARGE 1200 SUPER KIT
1 | 1 0 | EA | KUS-091-96-12 | LOAD MANAGER 1H
1 | 1 0 | EA | MET-BT-KUSSMAUL WIRING | KUSSMAUL AUTO CHARGE WIRING

**KIT COMPONENTS**
1 | 1 0 | EA | MET-BT-CENTER CONSOLE | CENTER CONSOLE WITH MAP BOX CUP HOLDERS INCLUDED

**KIT COMPONENTS**
1 | 1 0 | EA | MET-BT-CONSOLE WIRING | ALL WIRING, FUSES, CONNECTORS

**KIT COMPONENTS**
02 | CV | 1 1 0 | EA | CDW-180437 | MDT BASE MOUNTING COMPONENT MFG PN: DS-56
02 | CV | 1 1 0 | EA | CDW-3084767 | MDT LOCKING SLIDE ARM MOUNTING COMPONENT MFG PN: 7160-0500
02 | CV | 2 2 0 | EA | MET-BT-RADIO INSTALL | CUSTOMER SUPPLIED RADIO INSTALLATION

**KIT COMPONENTS**
2 | 2 0 | EA | BEA-HLN9073 | HANG UP CLIP FOR MIC
2 | 2 0 | EA | MET-BT-RADIO INSTALL PARTS | MISCELLANEOUS PARTS SUPPLIES

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Continued on next page....
## QUOTE DETAIL

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<tr>
<td>Ordered Date</td>
<td>07/05/2018</td>
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</table>

### Customer Information

**Bill to:** SAN MARCOS FIRE DEPARTMENT  
630 E HOPKINS  
SAN MARCOS, TX  78666

**Ship to:** SAN MARCOS FIRE DEPARTMENT  
100 CARLSON CIRCLE  
SAN MARCOS, TX  78666

**Attn:** JOHN KOENIG

### Quote Details

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<td>JOHN KOENIG</td>
<td>HOUSE ACCOUNT</td>
<td></td>
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</tr>
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</table>

#### Entered By  | FOB  | Ship Via  | Terms  |
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<tbody>
<tr>
<td>FRED GARNER</td>
<td>DESTINATION</td>
<td>METRO</td>
<td>NET 30 DAYS</td>
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### LOC | Item Code | Quantity | U/M | Item # | Description
---|---|---|---|---|---
| 02 CV | 1 | 1 0 | EA | MET-BT-TAILBOARD | TAILBOARD ASSEMBLY

#### **** KIT COMPONENTS ****

| 1 | 1 0 | EA | CAS-LP0004-A | LICENSE PLATE HOLDER W/ LIGHT |
| 1 | 1 0 | EA | MET-BT-GR TAILBOARD | CHEVRON STRIPPING TAILBOARD |
| 1 | 1 0 | EA | MET-BT-OPT TAILBOARD |

| 2 | 2 0 | EA | WHE-M6BTT | M6 SERIES LINEAR SUPER-LED |
| 2 | 2 0 | EA | WHE-M6BUW | M6 SERIES LINEAR SUPER-LED |
| 6 | 6 0 | EA | WHE-M6FC | CHROME PLATED FLANGE |
| 1 | 1 0 | EA | WHE-WBUA97 | BACK UP ALARM |

| 02 CV | 1 | 1 0 | EA | MET-BT-REAR SCENE | SCENE LIGHTS INSTALLED ON REAR OPTIONAL RIGID OR AKRON SCENE LIGHTS MOUNTED ON TANK WITH MOUNTING TABS |

#### **** KIT COMPONENTS ****

| 2 | 2 0 | EA | MET-BT-PM MOUNTING BLOCK | MOUNTING BLOCK FOR ACCESSORIES |
| 1 | 1 0 | EA | MET-BT-REAR SCENE PARTS | PARTS AND MATERIALS ASSOCIATED |
| 1 | 1 0 | EA | RIG-51251 | DUALLY D2, SET OF TWO LIGHTS |

| 02 CV | 1 | 1 0 | EA | MET-BT-LETTERING | LETTERING AND STRIPING DIAMOND GRADE STRIPING LETTERING TO THE FD SPEC.S STRIPING FD SPEC.S |

| 02 CV | 1 | 1 0 | EA | MET-BT-BACK UP CAMERA | BACK UP CAMERA INSTALLED PRO VISION BACK UP CAMERA INSTALLED |

#### **** KIT COMPONENTS ****

| 1 | 1 0 | EA | MET-BT-BACK UP CAMERA PARTS | PARTS AND MATERIALS ASSOCIATED |
| 1 | 1 0 | EA | PRO-TV-650 | PRO SERIES |

| 02 CV | 1 | 1 0 | EA | MET-BT-CAB GROUND LIGHTING | UNDERBODY LIGHTING FOR THE CAB |

#### **** KIT COMPONENTS ****

| 1 | 1 0 | EA | MET-BT-CAB GRND LTG PARTS |

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<th>Job/Rel#</th>
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<td>JOHN KOENIG</td>
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**** KIT COMPONENTS ****

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AGENDA CAPTION:
Consider approval of Resolution 2019-02R, approving the purchase of a Hydrovac Truck for the Public Services Department-Electric Utility Division (SMEU) in the total amount of $224,995.00 from Freightliner of Austin, Inc. through the Texas Local Government Purchasing Cooperative Buyboard Contract for Vehicles, Heavy Duty Trucks and Options (Contracts #521-16 and #513-16); authorizing the City Manager to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Electric Utility - T. Taggart, Executive Director (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $224,995.00
Account Number: 21006319.60125
Funds Available: FY19 capital outlay request approved at $240,000
Account Name: Operating-Equipment

Fiscal Note:
Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

Background Information:
Public Services - Electric Utility (SMEU) is performing more and more underground excavations that require an alternative to mechanical digging tools (backhoes), particularly in areas with existing water, electric, and gas utilities. Currently, SMEU uses a trailer mounted unit but can only complete 1 hole before dumping. This larger, new unit will allow SMEU to complete multiple holes before dumping save both time and manpower.

SMEU is requesting approval to purchase a Hydrovac Truck with a freightliner chassis from Freightliner of Austin, Austin, TX in the amount of $88,998 and a VacHunter HD Hydro body from Texas Underground, Inc., Pearland, TX in the amount of $135,997.00 for a combined total of $224,995.00.

This procurement is made pursuant to the City’s authority by Local Government Code, Chapter 271, to participate in cooperative purchasing programs. This procurement is being made through “BuyBoard” Cooperative Purchasing Program contracts #521-16 and #513-16.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
A rental unit is an alternative but is cost prohibitive given the monthly rates relative to purchase, and considering the number of months SMEU needs the equipment.

Recommendation:
Recommend approval of award of contract through the “BuyBoard” for the purchase of a Hydrovac Truck for the Electric Utility Department to Freightliner of Austin in the amount of $224,995.00.
RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF A HYDROVAC TRUCK FOR THE PUBLIC SERVICES DEPARTMENT-ELECTRIC UTILITY DIVISION (SMEU) IN THE TOTAL AMOUNT OF $224,995.00 FROM FREIGHTLINER OF AUSTIN, INC. THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE BUYBOARD CONTRACT FOR VEHICLES, HEAVY DUTY TRUCKS AND OPTIONS (CONTRACTS #521-16 AND #513-16); AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE PURCHASING DOCUMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The purchase of a Hydrovac Truck for the Public Services Department–Electric Utility Division from Freightliner of Austin, Inc. through the Texas Local Government Purchasing Cooperative BuyBoard Contract for Vehicles, Heavy Duty Trucks and Options (Contracts #521-16 and #513-16) in the amount of $224,995.00 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate purchasing documents on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 15th day of January 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
## FREIGHTLINER OF AUSTIN

1701 Smith Rd. (Hwy. 183 So.)
Austin, Texas 78721
Bus: 512-389-0000
FAX: 512-389-2663
Wats: 1-800-395-2005

### PURCHASING NAME

CITY OF SAN MARCOS

ADDRESS
630 EAST HOPKINS ST

<table>
<thead>
<tr>
<th>CITY</th>
<th>STATE</th>
<th>ZIP CODE</th>
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<tbody>
<tr>
<td>SAN MARCOS</td>
<td>TX</td>
<td>78666</td>
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I/We Hereby Purchase From You, Under the Terms and Conditions Specified, the Following:

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<tr>
<th>YEAR</th>
<th>MAKE</th>
<th>MODEL/BODY</th>
<th>VIN</th>
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<tbody>
<tr>
<td>2020</td>
<td>FREIGHTLINER</td>
<td>108SD</td>
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**MILEAGE:**

**CONTRACT # 521-16**

**CHASSIS SELLING PRICE**

$88,998.00

**VACUUM, 6 IN. DIA., PUMP 4000 PSI @ 10 GPM SINGLE ENGINE 7 YD. DEBRIS TANK BUY BOARD FEE**

$400.00

### Disclaimer of Warranties

Any warranties on the products sold hereby are those made by the factory. The Seller, Freightliner of Austin, hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and Freightliner of Austin, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle.

### CUSTOMER SIGNATURE

KEVIN KRIEG

### SALESMAN SIGNATURE

Purchasing Name

### CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY.

"The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

<table>
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<th>TRADE-IN</th>
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<tbody>
<tr>
<td></td>
<td>Make</td>
<td>Model/BODY</td>
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**MILEAGE:**

**TOTAL $224,995.00**

- **Trade Allowance** $-
- **Trading Difference** $-
- **Sales Tax** $-

**GOOD UNTIL:**

**Vehicle Inventory Tax** $-

**QUOTED BY:**

**License Fee** $-

**ADDRESS:**

**Federal Excise Tax** $-

**DATING:**

**State Insp.:**

**TOTAL SALE PRICE** $224,995.00

**DATED:**

**LIEN AMOUNT $**

**PHOTOGRAPH:**

**License:**

**PAYOFF ON TRADE**

**ADDRESS:**

**Title:**

**EXT. SERVICE AGREEMENT**

**DRAFT FOR $**

**TRANSFER:**

**LESS DEPOSIT**

**DRAFT THRU:**

**TOTAL BALANCE DUE $224,995.00**

Full disclosure required by federal regulation "Z". The Consumer Protection Act and The Texas Consumer Credit Code, will be made prior to consummation of a credit sale. This written order comprises the entire agreement pertaining to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized. It is expressly agreed that the purchaser acquires no right, title or interest in or to the property which he agrees to purchase hereunder until such property is delivered to him/her and either the full price is paid in cash or satisfactory deferred payment agreement is executed by the parties hereto, the terms of which shall thereafter be controlling, and a clear title is furnished to dealer for the used cars or trucks involved, if any. THIS IS NOT A CONDITIONAL SALES CONTRACT, BUT IS A BUYER’S ORDER. All new vehicles carry the standard factory warranty. It is understood there is no guarantee on the above described new or used vehicle.
other than appears on this Buyer's Order. Mileage, if used vehicle model is not guaranteed and a verbal agreement by the Salesman will not be considered binding on the Seller. It is agreed that neither Freightliner of Austin nor the manufacturer will be
## Specification Proposal

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<td>EXPECTED REAR DRIVE AXLE(S) LOAD : 26000.0 lbs</td>
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<tr>
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<td>SIDE OF HOOD AIR INTAKE WITH FIREWALL MOUNTED DONALDSON AIR CLEANER</td>
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<tr>
<td>DR 12V 160 AMP 28-SI QUADRAmount PAD ALTERNATOR WITH REMOTE BATTERY VOLT SENSE</td>
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<td>(2) DTNA GENUINE, FLOODED STARTING, MIN 2250CCA, 390RC, THREADED STUD BATTERIES</td>
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<td>NO CAB AUXILIARY POWER WIRING</td>
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<tr>
<td>POSITIVE LOAD DISCONNECT WITH CAB MOUNTED CONTROL SWITCH MOUNTED OUTBOARD DRIVER SEAT</td>
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<tr>
<td>CUMMINS TURBOCHARGED 18.7 CFM AIR COMPRESSOR WITH INTERNAL SAFETY VALVE</td>
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<tr>
<td>ELECTRONIC ENGINE INTEGRAL SHUTDOWN PROTECTION SYSTEM</td>
<td></td>
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<tr>
<td>CUMMINS EXHAUST BRAKE INTEGRAL WITH VARIABLE GEOMETRY TURBO WITH ON/OFF DASH SWITCH</td>
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</tr>
<tr>
<td>RH OUTBOARD UNDER STEP MOUNTED HORIZONTAL AFTERTREATMENT SYSTEM ASSEMBLY WITH RH B-PILLAR MOUNTED VERTICAL TAILPIPE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ENGINE AFTERTREATMENT DEVICE, AUTOMATIC OVER THE ROAD REGENERATION AND DASH MOUNTED REGENERATION REQUEST SWITCH</td>
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<tr>
<td>09 FOOT 06 INCH (114 INCH+0/-5.9 INCH) EXHAUST SYSTEM HEIGHT</td>
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<tr>
<td>RH CURVED VERTICAL TAILPIPE B-PILLAR MOUNTED ROUTED FROM STEP</td>
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<tr>
<td>6 GALLON DIESEL EXHAUST FLUID TANK</td>
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<td>-10</td>
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<td>100 PERCENT DIESEL EXHAUST FLUID FILL</td>
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<td>STANDARD DIESEL EXHAUST FLUID PUMP MOUNTING</td>
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<tr>
<td>LH MEDIUM DUTY STANDARD DIESEL EXHAUST FLUID TANK LOCATION</td>
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<td>STANDARD DIESEL EXHAUST FLUID TANK CAP</td>
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<tr>
<td>ALUMINUM AFTERTREATMENT DEVICE/MUFFLER/TAILPIPE SHIELD(S)</td>
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<tr>
<td>HORTON DRIVEMASTER ADVANTAGE ON/OFF FAN DRIVE</td>
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<tr>
<td>AUTOMATIC FAN CONTROL WITH DASH SWITCH AND INDICATOR LIGHT, NON ENGINE MOUNTED</td>
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<tr>
<td>CUMMINS SPIN ON FUEL FILTER COMBINATION FULL FLOW/BYPASS OIL FILTER</td>
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<tr>
<td>1115 SQUARE INCH ALUMINUM RADIATOR</td>
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<tr>
<td>Description</td>
<td>Weight Front</td>
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</tr>
<tr>
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<tr>
<td>ANTIFREEZE TO -34F, OAT (NITRITE AND SILICATE FREE) EXTENDED LIFE COOLANT</td>
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<tr>
<td>GATES BLUE STRIPE COOLANT HOSES OR EQUIVALENT</td>
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<tr>
<td>CONSTANT TENSION HOSE CLAMPS FOR COOLANT HOSES</td>
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<tr>
<td>RADIATOR DRAIN VALVE</td>
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</tr>
<tr>
<td>1310 ADAPTER FLANGE FOR FRONT PTO PROVISION</td>
<td>10</td>
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<tr>
<td>* ALUMINUM FLYWHEEL HOUSING</td>
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<tr>
<td>ELECTRIC GRID AIR INTAKE WARMER</td>
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<tr>
<td>DELCO 12V 38MT HD STARTER WITH INTEGRATED MAGNETIC SWITCH</td>
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<td><strong>Transmission</strong></td>
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<tr>
<td>ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH PTO PROVISION</td>
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<tr>
<td><strong>Transmission Equipment</strong></td>
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<tr>
<td>ALLISON VOCATIONAL PACKAGE 216 - AVAILABLE ON 3000/4000 PRODUCT FAMILIES</td>
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<tr>
<td>WITH VOCATIONAL MODEL RDS</td>
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<tr>
<td>ALLISON VOCATIONAL RATING FOR ON/OFF HIGHWAY APPLICATIONS AVAILABLE WITH ALL PRODUCT FAMILIES</td>
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<tr>
<td>PRIMARY MODE GEAR, LOWEST GEAR 1, START GEAR 1, HIGHEST GEAR 6, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY</td>
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<tr>
<td>SECONDARY MODE GEAR, LOWEST GEAR 1, START GEAR 1, HIGHEST GEAR 6, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY</td>
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<tr>
<td>PRIMARY SHIFT SCHEDULE RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE</td>
<td></td>
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<tr>
<td>SECONDARY SHIFT SCHEDULE RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE</td>
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<tr>
<td>PRIMARY SHIFT SPEED RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE</td>
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<td>SECONDARY SHIFT SPEED RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE</td>
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<td>LOAD BASED SHIFT SCHEDULE AND VEHICLE ACCELERATION CONTROL RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED VOCATIONAL USAGE</td>
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<tr>
<td>NEUTRAL AT STOP - DISABLED, FUELSENSE - DISABLED</td>
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</tr>
<tr>
<td>Description</td>
<td>Weight Front</td>
<td>Weight Rear</td>
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<tr>
<td>----------------------------------------------------------------------------</td>
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<tr>
<td>DRIVER SWITCH INPUT - DEFAULT - NO SWITCHES</td>
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<tr>
<td>PUMP MODE INPUT ENABLED 3RD/4TH LOCKUP WIRED ON TCM INPUT AJ/BQ - ALLISON 5TH GEN TRANSMISSIONS</td>
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<tr>
<td>MAXIMUM ENGINE SPEED FOR PTO ENGAGEMENT 2100 RPM</td>
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<tr>
<td>MAXIMUM ENGINE SPEED FOR PTO OPERATION 2100 RPM</td>
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<tr>
<td>VEHICLE INTERFACE WIRING CONNECTOR WITHOUT BLUNT CUTS, AT BACK OF CAB</td>
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<tr>
<td>ELECTRONIC TRANSMISSION CUSTOMER ACCESS CONNECTOR MOUNTED END OF FRAME</td>
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<tr>
<td>*(2) CUSTOMER INSTALLED CHELSEA 277 SERIES PTO'S</td>
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</tr>
<tr>
<td>N</td>
<td></td>
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<tr>
<td>PTO MOUNTING, LH AND RH SIDES OF MAIN TRANSMISSION</td>
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<tr>
<td>MAGNETIC PLUGS, ENGINE DRAIN, TRANSMISSION DRAIN, AXLE(S) FILL AND DRAIN</td>
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<tr>
<td>PUSH BUTTON ELECTRONIC SHIFT CONTROL, DASH MOUNTED</td>
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<tr>
<td>TRANSMISSION PROGNOSTICS - ENABLED 2013</td>
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<tr>
<td>WATER TO OIL TRANSMISSION COOLER, IN RADIATOR END TANK</td>
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<tr>
<td>TRANSMISSION OIL CHECK AND FILL WITH ELECTRONIC OIL LEVEL CHECK</td>
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<tr>
<td>SYNTHETIC TRANSMISSION FLUID (TES-295 COMPLIANT)</td>
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**Front Axle and Equipment**

<table>
<thead>
<tr>
<th>Description</th>
<th>Weight</th>
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</thead>
<tbody>
<tr>
<td>DETROIT DA-F-16.0-5 16,000# FL1 71.0 KPI/3.74 DROP SINGLE FRONT AXLE</td>
<td>190</td>
</tr>
<tr>
<td>MERITOR 16.5X6 Q+ CAST SPIDER CAM FRONT BRAKES, DOUBLE ANCHOR, FABRICATED SHOES</td>
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<tr>
<td>NON-ASBESTOS FRONT BRAKE LINING CONMET CAST IRON FRONT BRAKE DRUMS FRONT OIL SEALS</td>
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<tr>
<td>VENTED FRONT HUB CAPS WITH WINDOW, CENTER AND SIDE PLUGS - OIL</td>
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<tr>
<td>STANDARD SPINDLE NUTS FOR ALL AXLES MERITOR AUTOMATIC FRONT SLACK ADJUSTERS</td>
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<tr>
<td>STANDARD KING PIN BUSHINGS</td>
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Application Version 10.1.105
Data Version PRL-18D.022
rick sanchez 108sd pipe hunter
<table>
<thead>
<tr>
<th>Description</th>
<th>Weight Front</th>
<th>Weight Rear</th>
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<tbody>
<tr>
<td>TRW THP-60 POWER STEERING WITH RCH45 AUXILIARY GEAR</td>
<td>130</td>
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<tr>
<td>POWER STEERING PUMP</td>
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<tr>
<td>4 QUART POWER STEERING RESERVOIR</td>
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<tr>
<td>OIL/AIR POWER STEERING COOLER</td>
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<tr>
<td>SYNTHETIC 75W-90 FRONT AXLE LUBE</td>
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<tr>
<td><strong>Front Suspension</strong></td>
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<tr>
<td>16,000# FLAT LEAF FRONT SUSPENSION</td>
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<tr>
<td>GRAPHITE BRONZE BUSHINGS WITH SEALS - FRONT SUSPENSION</td>
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<tr>
<td>FRONT SHOCK ABSORBERS</td>
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<tr>
<td><strong>Rear Axle and Equipment</strong></td>
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<tr>
<td>RS-26-185 26,000# T-SERIES SINGLE REAR AXLE</td>
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<td>6.14 REAR AXLE RATIO</td>
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<tr>
<td>IRON REAR AXLE CARRIER WITH STANDARD AXLE HOUSING</td>
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<tr>
<td>MXL 17N MERITOR EXTENDED LUBE MAIN DRIVELINE WITH FULL ROUND YOKES</td>
<td>20</td>
<td>20</td>
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<tr>
<td>MERITOR 16.5X7 P CAM REAR BRAKES, DOUBLE ANCHOR, CAST SHOES</td>
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<tr>
<td>NON-ASBESTOS REAR BRAKE LINING</td>
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<tr>
<td>BRAKE CAMS AND CHAMBERS ON REAR SIDE OF DRIVE AXLE(S)</td>
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<tr>
<td>WEBB HEAVY WEIGHT CAST IRON REAR BRAKE DRUMS</td>
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<td>REAR OIL SEALS</td>
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<tr>
<td>WABCO TRISTOP D LONGSTROKE 1-DRIVE AXLE SPRING PARKING CHAMBERS</td>
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<td>HALDEX AUTOMATIC REAR SLACK ADJUSTERS</td>
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<tr>
<td>SYNTHETIC 75W-90 REAR AXLE LUBE</td>
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<tr>
<td>STANDARD REAR AXLE BREATHER(S)</td>
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<tr>
<td><strong>Rear Suspension</strong></td>
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<tr>
<td>26,000# FLAT LEAF SPRING REAR SUSPENSION WITH HELPER AND RADIUS ROD</td>
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<tr>
<td>SPRING SUSPENSION - NO AXLE SPACERS</td>
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<tr>
<td>STANDARD AXLE SEATS IN AXLE CLAMP GROUP</td>
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<td>FORE/AFT CONTROL ROD</td>
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<tr>
<td><strong>Brake System</strong></td>
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<tr>
<td>WABCO 4S/4M ABS</td>
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<tr>
<td>Description</td>
<td>Weight Front</td>
<td>Weight Rear</td>
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<tr>
<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>REINFORCED NYLON, FABRIC BRAID AND WIRE BRAID CHASSIS AIR LINES</td>
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<tr>
<td>FIBER BRAID PARKING BRAKE HOSE</td>
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<td>STANDARD BRAKE SYSTEM VALVES</td>
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<tr>
<td>STANDARD AIR SYSTEM PRESSURE PROTECTION SYSTEM</td>
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<tr>
<td>STD U.S. FRONT BRAKE VALVE</td>
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<tr>
<td>RELAY VALVE WITH 5-8 PSI CRACK PRESSURE, NO REAR PROPORTIONING VALVE</td>
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<tr>
<td>BW AD-9 BRAKE LINE AIR DRYER WITH HEATER</td>
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<tr>
<td>AIR DRYER FRAME MOUNTED</td>
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<tr>
<td>STEEL AIR BRAKE RESERVOIRS</td>
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<tr>
<td>CLEAR FRAME RAILS FROM BACK OF CAB TO FRONT REAR SUSPENSION BRACKET, BOTH RAILS OUTBOARD</td>
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<tr>
<td>PULL CABLES ON ALL AIR RESERVOIR(S)</td>
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</tbody>
</table>

**Trailer Connections**

- UPGRADED CHASSIS MULTIPLEXING UNIT

**Wheelbase & Frame**

- 4550MM (179 INCH) WHEELBASE
- 7/16X3-9/16X11-1/8 INCH STEEL FRAME (11.11MMX282.6MM/0.437X11.13 INCH) 120KSI
- 1/4 INCH (6.35MM) C-CHANNEL INNER FRAME REINFORCEMENT
- 1600MM (63 INCH) REAR FRAME OVERHANG
- FRAME OVERHANG RANGE: 61 INCH TO 70 INCH
- CALC'D BACK OF CAB TO REAR SUSP C/L (CA) : 113.45 in
- CALCULATED EFFECTIVE BACK OF CAB TO REAR SUSPENSION C/L (CA) : 110.45 in
- CALC'D FRAME LENGTH - OVERALL : 281.46 in
- CALC'D SPACE AVAILABLE FOR DECKPLATE : 113.45 in
- CALCULATED FRAME SPACE LH SIDE : 93.54 in
- CALCULATED FRAME SPACE RH SIDE : 129.4 in
- SQUARE END OF FRAME
- FRONT CLOSING CROSSMEMBER
- STANDARD WEIGHT ENGINE CROSSMEMBER
- STANDARD MIDSHP #1 CROSSMEMBER(S)
- STANDARD REARMOST CROSSMEMBER
- STANDARD SUSPENSION CROSSMEMBER
<table>
<thead>
<tr>
<th>Description</th>
<th>Weight Front</th>
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<tbody>
<tr>
<td><strong>Chassis Equipment</strong></td>
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<tr>
<td>14 INCH PAINTED STEEL BUMPER</td>
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<tr>
<td>FRONT TOW HOOKS - FRAME MOUNTED</td>
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<tr>
<td>BUMPER MOUNTING FOR SINGLE LICENSE PLATE</td>
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<tr>
<td>GRADE 8 THREADED HEX HEADED FRAME FASTENERS</td>
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<tr>
<td><strong>Fuel Tanks</strong></td>
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<tr>
<td>50 GALLON/189 LITER SHORT RECTANGULAR ALUMINUM FUEL TANK - LH</td>
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<td>RECTANGULAR FUEL TANK(S)</td>
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<tr>
<td>PLAIN ALUMINUM/PAINTED STEEL FUEL/HYDRAULIC TANK(S) WITH PAINTED BANDS</td>
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<td>FUEL TANK(S) FORWARD</td>
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<td>PLAIN STEP FINISH</td>
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<td>FUEL TANK CAP(S)</td>
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<td>DAVCO 245 FUEL/WATER SEPARATOR WITH WATER IN FUEL SENSOR</td>
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<tr>
<td>EQUIFLO INBOARD FUEL SYSTEM</td>
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<tr>
<td>NO NATURAL GAS VEHICLE FUEL TANK VENT LINE/STACK</td>
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<tr>
<td>HIGH TEMPERATURE REINFORCED NYLON FUEL LINE</td>
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<tr>
<td><strong>Tires</strong></td>
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<tr>
<td>CONTINENTAL CITY SERVICE HA3 315/80R22.5 20 PLY RADIAL FRONT TIRES</td>
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<td>MICHELIN X WORKS Z 315/80R22.5 20 PLY RADIAL REAR TIRES</td>
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<tr>
<td><strong>Hubs</strong></td>
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<tr>
<td>CONMET PRESET PLUS PREMIUM IRON FRONT HUBS</td>
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<td>CONMET PRESET PLUS PREMIUM IRON REAR HUBS</td>
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<tr>
<td><strong>Wheels</strong></td>
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<tr>
<td>ACCURIDE 29039 22.5X9.00 10-HUB PILOT 5.25 INSET 5-HAND STEEL DISC FRONT WHEELS</td>
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<tr>
<td>ACCURIDE 29300 22.5X9.00 10-HUB PILOT 5-HAND STEEL DISC REAR WHEELS</td>
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<td><strong>Cab Exterior</strong></td>
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<tr>
<td>108 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB</td>
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<tr>
<td>Description</td>
<td>Weight Front</td>
<td>Weight Rear</td>
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<tr>
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<tr>
<td>AIR CAB MOUNTING</td>
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<tr>
<td>NONREMOVABLE BUGSCREEN MOUNTED BEHIND GRILLE</td>
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<tr>
<td>FRONT FENDERS SET-BACK AXLE</td>
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<tr>
<td>LH AND RH GRAB HANDLES</td>
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<tr>
<td>BRIGHT FINISH RADIATOR SHELL/HOOD BEZEL</td>
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<tr>
<td>STATIONARY BLACK GRILLE WITH BRIGHT ACCENTS</td>
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<tr>
<td>CHROME HOOD MOUNTED AIR INTAKE GRILLE</td>
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<tr>
<td>FIBERGLASS HOOD</td>
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<tr>
<td>SINGLE 14 INCH ROUND HADLEY AIR HORN UNDER LH DECK</td>
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<td>SINGLE ELECTRIC HORN</td>
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<tr>
<td>SINGLE HORN SHIELD</td>
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<tr>
<td>DOOR LOCKS AND IGNITION SWITCH KEYED THE SAME WITH (4) KEYS</td>
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<tr>
<td>REAR LICENSE PLATE MOUNT END OF FRAME</td>
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<tr>
<td>HALOGEN COMPOSITE HEADLAMPS WITH BRIGHT BEZELS</td>
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<tr>
<td>LED AERODYNAMIC MARKER LIGHTS</td>
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<tr>
<td>INTEGRAL STOP/TAIL/BACKUP LIGHTS</td>
<td></td>
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<tr>
<td>STANDARD FRONT TURN SIGNAL LAMPS</td>
<td></td>
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</tr>
<tr>
<td>DUAL WEST COAST BRIGHT FINISH HEATED MIRRORS WITH LH AND RH REMOTE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOOR MOUNTED MIRRORS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>102 INCH EQUIPMENT WIDTH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LH AND RH 8 INCH BRIGHT FINISH CONVEX MIRRORS MOUNTED UNDER PRIMARY MIRRORS</td>
<td></td>
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</tr>
<tr>
<td>STANDARD SIDE/REAR REFLECTORS</td>
<td></td>
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</tr>
<tr>
<td>COMPOSITE EXTERIOR SUN VISOR</td>
<td>10</td>
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</tr>
<tr>
<td>63X14 INCH TINTED REAR WINDOW</td>
<td></td>
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</tr>
<tr>
<td>TINTED DOOR GLASS LH AND RH WITH TINTED OPERATING WING WINDOWS</td>
<td></td>
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</tr>
<tr>
<td>RH AND LH ELECTRIC POWERED WINDOWS, PASSENGER SWITCHES ON DOOR(S)</td>
<td>4</td>
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<tr>
<td>TINTED WINDSHIELD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 LITER WINDSHIELD WASHER RESERVOIR, CAB MOUNTED, WITHOUT FLUID LEVEL INDICATOR</td>
<td></td>
<td></td>
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</tbody>
</table>

**Cab Interior**

- OPAL GRAY VINYL INTERIOR
- MOLDED PLASTIC DOOR PANEL
<table>
<thead>
<tr>
<th>Description</th>
<th>Weight Front</th>
<th>Weight Rear</th>
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<tbody>
<tr>
<td>MOLDED PLASTIC DOOR PANEL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BLACK MATS WITH SINGLE INSULATION</td>
<td></td>
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</tr>
<tr>
<td>DASH MOUNTED ASH TRAYS AND LIGHTER</td>
<td></td>
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</tr>
<tr>
<td>FORWARD ROOF MOUNTED CONSOLE WITH UPPER STORAGE COMPARTMENTS WITHOUT NETTING</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IN DASH STORAGE BIN</td>
<td></td>
<td></td>
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<tr>
<td>(2) CUP HOLDERS LH AND RH DASH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GRAY/CHARCOAL FLAT DASH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SMART SWITCH EXPANSION MODULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 LB. FIRE EXTINGUISHER</td>
<td></td>
<td>10</td>
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<tr>
<td>HEATER, DEFROSTER AND AIR CONDITIONER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STANDARD HVAC DUCTING</td>
<td></td>
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<tr>
<td>MAIN HVAC CONTROLS WITH RECIRCULATION SWITCH</td>
<td></td>
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<tr>
<td>STANDARD HEATER PLUMBING</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DENSO HEAVY DUTY AIR CONDITIONER COMPRESSOR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BINARY CONTROL, R-134A</td>
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<td></td>
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<tr>
<td>STANDARD INSULATION</td>
<td></td>
<td></td>
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<tr>
<td>SOLID-STATE CIRCUIT PROTECTION AND FUSES</td>
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<tr>
<td>12V NEGATIVE GROUND ELECTRICAL SYSTEM</td>
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<tr>
<td>DOME LIGHT WITH 3-WAY SWITCH ACTIVATED BY LH AND RH DOORS</td>
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<tr>
<td>LH AND RH ELECTRIC DOOR LOCKS</td>
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<tr>
<td>(1) 12 VOLT POWER SUPPLY IN DASH</td>
<td></td>
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<tr>
<td>TRIANGULAR REFLECTORS WITHOUT FLARES</td>
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<tr>
<td>BASIC HIGH BACK AIR SUSPENSION DRIVER SEAT WITH MECHANICAL LUMBAR AND INTEGRATED CUSHION EXTENSION</td>
<td></td>
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<tr>
<td>BASIC HIGH BACK AIR SUSPENSION PASSENGER SEAT WITH MECHANICAL LUMBAR AND INTEGRATED CUSHION EXTENSION</td>
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<tr>
<td>DUAL DRIVER AND PASSENGER SEAT ARMRESTS</td>
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<td>8</td>
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<tr>
<td>LH AND RH INTEGRAL DOOR PANEL ARMRESTS</td>
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<tr>
<td>BLACK CORDURA PLUS CLOTH DRIVER SEAT COVER</td>
<td></td>
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<tr>
<td>BLACK CORDURA PLUS CLOTH PASSENGER SEAT COVER</td>
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<tr>
<td>BLACK SEAT BELTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADJUSTABLE TILT AND TELESCOPING STEERING COLUMN</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Description</td>
<td>Weight Front</td>
<td>Weight Rear</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>4-SPOKE 18 INCH (450MM) STEERING WHEEL</td>
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<tr>
<td>DRIVER AND PASSENGER INTERIOR SUN VISORS</td>
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</table>

**Instruments & Controls**

- GRAY DRIVER INSTRUMENT PANEL
- GRAY CENTER INSTRUMENT PANEL
- ENGINE REMOTE INTERFACE WITH PARK BRAKE INTERLOCK
- BLACK GAUGE BEZELS
- LOW AIR PRESSURE INDICATOR LIGHT AND AUDIBLE ALARM
- 2 INCH PRIMARY AND SECONDARY AIR PRESSURE GAUGES
- INTAKE MOUNTED AIR RESTRICTION INDICATOR WITHOUT GRADUATIONS
- PRECO 1040 87 DB TO 112 DB AUTOMATIC SELF-ADJUSTING BACKUP ALARM
- ELECTRONIC CRUISE CONTROL WITH SWITCHES IN LH SWITCH PANEL
- KEY OPERATED IGNITION SWITCH AND INTEGRAL START POSITION; 4 POSITION OFF/RUN/START/ACCESSORY
- ICU3S, 132X48 DISPLAY WITH DIAGNOSTICS, 28 LED WARNING LAMPS AND DATA LINKED
- HEAVY DUTY ONBOARD DIAGNOSTICS INTERFACE CONNECTOR LOCATED BELOW LH DASH
- 2 INCH ELECTRIC FUEL GAUGE
- ENGINE REMOTE INTERFACE FOR REMOTE THROTTLE
- ENGINE REMOTE INTERFACE CONNECTOR AT END OF FRAME
- ELECTRICAL ENGINE COOLANT TEMPERATURE GAUGE
- 2 INCH TRANSMISSION OIL TEMPERATURE GAUGE
- ENGINE AND TRIP HOUR METERS INTEGRAL WITHIN DRIVER DISPLAY

<p>| N     | (1) DASH MOUNTED PTO SWITCH WITH INDICATOR LAMP | 5 |
| N     | ELECTRIC ENGINE OIL PRESSURE GAUGE |              |
| N     | AM/FM/WB WORLD TUNER RADIO WITH BLUETOOTH AND USB AND AUXILIARY INPUTS, J1939 | 10 |
| N     | DASH MOUNTED RADIO |              |</p>
<table>
<thead>
<tr>
<th>Description</th>
<th>Weight Front</th>
<th>Weight Rear</th>
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<tbody>
<tr>
<td>(2) RADIO SPEAKERS IN CAB</td>
<td></td>
<td></td>
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<tr>
<td>AM/FM ANTENNA MOUNTED ON FORWARD LH ROOF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ELECTRONIC MPH SPEEDOMETER WITH SECONDARY KPH SCALE, WITHOUT ODOMETER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STANDARD VEHICLE SPEED SENSOR</td>
<td></td>
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<tr>
<td>ELECTRONIC 3000 RPM TACHOMETER</td>
<td></td>
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<tr>
<td>IGNITION SWITCH CONTROLLED ENGINE STOP</td>
<td></td>
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<tr>
<td>DIGITAL VOLTAGE DISPLAY INTEGRANT WITH DRIVER DISPLAY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SINGLE ELECTRIC WINDSHIELD WIPER MOTOR WITH DELAY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MARKER LIGHT SWITCH INTEGRANT WITH HEADLIGHT SWITCH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ONE VALVE PARKING BRAKE SYSTEM WITH WARNING INDICATOR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SELF CANCELING TURN SIGNAL SWITCH WITH DIMMER/WASHER/WIPER AND HAZARD IN HANDLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>INTEGRAL ELECTRONIC TURN SIGNAL FLASHER WITH HAZARD LAMPS OVERRIDING STOP LAMPS</td>
<td></td>
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</tr>
</tbody>
</table>

**Design**

PAINT: ONE SOLID COLOR

**Color**

CAB COLOR A: L0006EB WHITE ELITE BC
BLACK, HIGH SOLIDS POLYURETHANE CHASSIS PAINT
POWDER WHITE (N0006EA) FRONT WHEELS/RIMS (PKWHT21, TKWHT21, W, TW)
POWDER WHITE (N0006EA) REAR WHEELS/RIMS (PKWHT21, TKWHT21, W, TW)
STANDARD BLACK BUMPER PAINT
SUNVISOR PAINTED SAME AS CAB COLOR A
STANDARD E COAT/UNDERCOATING

**Certification / Compliance**

U.S. FMVSS CERTIFICATION, EXCEPT SALES CABS AND GLIDER KITS

**Sales Programs**

NO SALES PROGRAMS HAVE BEEN SELECTED
## T O T A L  V E H I C L E  S U M M A R Y

### Weight Summary

<table>
<thead>
<tr>
<th></th>
<th>Weight Front</th>
<th>Weight Rear</th>
<th>Total Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factory Weight</td>
<td>8200 lbs</td>
<td>5105 lbs</td>
<td>13305 lbs</td>
</tr>
<tr>
<td>Total Weight*</td>
<td>8200 lbs</td>
<td>5105 lbs</td>
<td>13305 lbs</td>
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</table>

*Weights shown are estimates only. If weight is critical, contact Customer Application Engineering.*
### VEHICLE SPECIFICATIONS SUMMARY - DIMENSIONS

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Measurement</th>
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</thead>
<tbody>
<tr>
<td>Wheelbase (545)</td>
<td>4550MM (179 INCH) WHEELBASE</td>
</tr>
<tr>
<td>Rear Frame Overhang (552)</td>
<td>1600MM (63 INCH) REAR FRAME OVERHANG</td>
</tr>
<tr>
<td>Fifth Wheel (578)</td>
<td>NO FIFTH WHEEL</td>
</tr>
<tr>
<td>Mounting Location (577)</td>
<td>NO FIFTH WHEEL LOCATION</td>
</tr>
<tr>
<td>Maximum Forward Position (in)</td>
<td>0</td>
</tr>
<tr>
<td>Maximum Rearward Position (in)</td>
<td>0</td>
</tr>
<tr>
<td>Amount of Slide Travel (in)</td>
<td>0</td>
</tr>
<tr>
<td>Slide Increment (in)</td>
<td>0</td>
</tr>
<tr>
<td>Desired Slide Position (in)</td>
<td>0.0</td>
</tr>
<tr>
<td>Cab Size (829)</td>
<td>108 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB</td>
</tr>
<tr>
<td>Sleeper (682)</td>
<td>NO SLEEPER BOX/SLEEPERCAB</td>
</tr>
</tbody>
</table>

**Exhaust System (016)**: RH OUTBOARD UNDER STEP MOUNTED HORIZONTAL AFTERTREATMENT SYSTEM ASSEMBLY WITH RH B-PILLAR MOUNTED VERTICAL TAILPIPE

### TABLE SUMMARY - DIMENSIONS
<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Inches</th>
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<tbody>
<tr>
<td>Bumper to Back of Cab (BBC)</td>
<td>106.3</td>
</tr>
<tr>
<td>Bumper to Centerline of Front Axle (CA)</td>
<td>42.7</td>
</tr>
<tr>
<td>Min. Cab to Body Clearance (CB)</td>
<td>3.0</td>
</tr>
<tr>
<td>Back of Cab to Centerline of Rear Axle(s) (CA)</td>
<td>113.4</td>
</tr>
<tr>
<td>Effective Back of Cab to Centerline of Rear Axle(s) (Effective CA)</td>
<td>110.4</td>
</tr>
<tr>
<td>Back of Cab Protrusions (Exhaust/Intake) (CP)</td>
<td>0.0</td>
</tr>
<tr>
<td>Back of Cab Protrusions (Side Extenders/Trim Tab) (CP)</td>
<td>0.0</td>
</tr>
<tr>
<td>Back of Cab Protrusions (CNG Tank)</td>
<td>0.0</td>
</tr>
<tr>
<td>Back of Cab Clearance (CL)</td>
<td>3.0</td>
</tr>
<tr>
<td>Back of Cab to End of Frame</td>
<td>176.4</td>
</tr>
<tr>
<td>Cab Height (CH)</td>
<td>71.8</td>
</tr>
<tr>
<td>Wheelbase (WB)</td>
<td>179.0</td>
</tr>
<tr>
<td>Frame Overhang (CH)</td>
<td>63.0</td>
</tr>
<tr>
<td>Overall Length (OAL)</td>
<td>284.7</td>
</tr>
<tr>
<td>Rear Axle Spacing</td>
<td>0.0</td>
</tr>
<tr>
<td>Unladen Frame Height at Centerline of Rear Axle</td>
<td>41.8</td>
</tr>
</tbody>
</table>

Performance calculations are estimates only. If performance calculations are critical, please contact Customer Application Engineering.
VacHunter HD Hydro X 76410PH6HX: 3000 CFM VACUUM, 6 IN. DIA., PUMP 4000 PSI @ 10 GPM, SINGLE ENGINE, 7 YD. DEBRIS TANK

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Description</th>
<th>Quantity</th>
<th>Price</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1</td>
<td>STD</td>
<td>STD</td>
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<tr>
<td>DEBRIS TANK</td>
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<td>1</td>
<td>STD</td>
<td>STD</td>
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<tr>
<td>1400 Gallon Capacity 7YD</td>
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<td>STD</td>
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<tr>
<td>Hydraulic Rear Door</td>
<td>1</td>
<td>STD</td>
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</tr>
<tr>
<td>Hydraulic Dump Tank Lift</td>
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<tr>
<td>High-Pressure Body Washout System</td>
<td>1</td>
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<tr>
<td>6” ANSI Flange Drain with Butterfly Valve Lower door stand Pipe</td>
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</tr>
<tr>
<td>Ladder On Debris Tank</td>
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</tr>
<tr>
<td>Debris Tank Float Ball Level Indicator</td>
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<tr>
<td>Purge Valve Gravity Drain 1 1/4 Ball Valve</td>
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<tr>
<td>300 GPM Stanley Pump Off Lay Flat Hose</td>
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<tr>
<td>450 GPM Stanley Pump Off Lay Flat Hose</td>
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<tr>
<td>6” Knife Valve</td>
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<td>3” Knife Valve</td>
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<tr>
<td>Lay Flat Hose 6” For Draining Knife Valve 15’</td>
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<td>WATER SYSTEM PUMP PTO DRIVE</td>
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<tr>
<td>9000-0113</td>
<td>3000 PSI @ 10 GPM Water Pump-</td>
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<td>4000 PSI @ 10 GPM Water Pump includes pump strainer</td>
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<tr>
<td>Dual 300 Gallon Water Tanks - Alum. Mounted Ea. Side Debris Tank</td>
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<td>Single 300 Gallon Water Tanks - Alum. Mounted Behind Cab</td>
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<td>25' Fill Hose w Storage Rack</td>
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<td>Water Meter Mount</td>
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<tr>
<td>9000-0119</td>
<td>Hydro excavation Gun with 0 deg tip (1) STD</td>
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<td>HF RipSaw Nozzle</td>
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<tr>
<td>HF Switchbalde</td>
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<td>***</td>
<td>Ext. 3/4” Stainless Steel Barrel 4’ (1) STD</td>
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<td>9000-0062</td>
<td>25’ Retractable Hand Gun Reel w 25’ x 3/8” hose- (1) Std</td>
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<tr>
<td>9000-0124</td>
<td>50’ Retractable Hand Gun Reel w 50’ x 3/8” hose Upgrade Only Passanger Side</td>
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<tr>
<td>9000-0124</td>
<td>50’ Retractable Hand Gun Reel w 50’ x 3/8” hose Driver Side</td>
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<tr>
<td>200ft Lateral reel with 150ft 1/2” sewer hose (1) Nozzle</td>
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<td>100 ft manual reel with 100 ft of 3/8” Hose</td>
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<td>Debris-Water Tank Interconnect</td>
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<td>Hydrant Fill Strainer</td>
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<td>Hydrant Wrench</td>
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<td>9000-0059</td>
<td>Air Purge</td>
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<td>Winter recirculation</td>
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<td>Multi Flow ( Variable 4 gpm to 10 gpm)</td>
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<td>CONTROL PANEL</td>
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<td>Water Pump On/Off</td>
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<tr>
<td>Vacuum On/Off</td>
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<td>Fuel Tank Chassis</td>
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<td>Electric Throttle</td>
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<td>Tachometer</td>
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<td>Water Pressure</td>
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<td><strong>BLOWER PTO BELT DRIVE</strong></td>
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<td>3000 CFM Blower</td>
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<td><strong>6” Vacuum System</strong></td>
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<td>36” x 6” Crown Nozzle W/Hat Flange (1) STD</td>
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<td>Pipe Storage Area 6”</td>
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<td>Clamps For Tubes 6”</td>
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<td>36” x 6” Crown Nozzle W/Hat Flange</td>
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<td>36” x 6” Vacuum Tube w/Hat Flange</td>
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<td>48” x 6” Vacuum Tube w/Hat Flange</td>
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<td>60” x 6” Vacuum Tube w/Hat Flange</td>
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<td>Adaptor 6” to two 3” Ports</td>
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<td>$ -</td>
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<td><strong>TOOL STORAGE</strong></td>
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<td>TOOL BOX 18 X 18 X 36 TM Locking Below Frame Passenger Side</td>
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<td><strong>BOOM WITH OPTIONS</strong></td>
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<td>Boom 8’ of Reach from Center line</td>
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<td>Powered Boom Rotation Std W Boom</td>
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<td>Boom Pendant Control- Up/Down, Telescope, Boom Swing, Vacuum Breaker, 30 foot lanyard</td>
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<td>Extendable Boom w/ 8’ to 11’ of Reach from Center line</td>
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<td>6 FT Telescoping Boom</td>
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<td>Wireless Boom Pendant Control- Up/Down, Telescope, Boom Swing, Vacuum Breaker, Throttle, &amp; Emergency Stop</td>
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<tr>
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<td><strong>LIGHTING</strong></td>
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<td></td>
<td>LED Arrowstick w Control Box &amp; Mounting Bracket</td>
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<td>Corner White Strobes (2) Front (2) Rear</td>
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<tr>
<td></td>
<td>Light - Hand Held Spot Light</td>
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<td>$ -</td>
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<tr>
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<td>Light - Low Water Warning Light</td>
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<td>$ -</td>
<td>$ -</td>
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<td></td>
<td>LED Light - Work Light-(Control panel)</td>
<td>1</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td></td>
<td>LED Light - Work Light (Engine-Pump area)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<td></td>
<td>LED Light - Work Light (BOOM)</td>
<td>2</td>
<td>$ -</td>
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<tr>
<td></td>
<td>LED Light - Work Light (Mounted Please State Area)</td>
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<td>Strobe Light</td>
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<td></td>
<td>Panel Light</td>
<td>$ -</td>
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<tr>
<td></td>
<td>Light - Work Light (Arrowstick PS) LED</td>
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<td>$ -</td>
<td>$ -</td>
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<tr>
<td></td>
<td>Light - Work Light (Arrowstick DS) LED</td>
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<td>12 Volt Power Outlet On Control Panel Female</td>
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<td>Color Back Up Camera In Cab Monitor</td>
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<td><strong>MANUALS</strong></td>
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<td>PipeHunter Operator’s Manual CD</td>
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<td></td>
<td><strong>FRAME &amp; AXLE</strong></td>
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<tr>
<td></td>
<td>6” Frame</td>
<td>1</td>
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<td>STD</td>
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<tr>
<td></td>
<td><strong>DOT LIGHTING PACKAGE</strong></td>
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<td></td>
<td>Ladder PS Side</td>
<td></td>
<td>$ -</td>
<td>$ -</td>
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<td></td>
<td>Traffic Cone Rack</td>
<td>1</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td></td>
<td><strong>LINER OPTION</strong></td>
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<td>PipeHunter Speed Liner Frame &amp; Reel</td>
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<tr>
<td></td>
<td>Liner Color: TBD</td>
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</table>

PipeHunter, Inc.
1617 Garden Road, Pearland, TX 77581
www.pipehunter.com - 281-904-9364
Quoted By: Ricky Sanchez, 281-904-9364, rsanchez@pipehunter.com


Miles @ $2.50

Freight:

Discounted Price $135,597.00

***Purchase Order would need to be issued to Austin Freightliner.

Signing this quote confirms that you have verified the specifications and agree with the final costs. Any specification changes made after verification may alter costs. It is the dealer/customer's responsibility to ensure that the equipment ordered meets specifications and/or quotations.

Terms: MUNICIPAL (NET 30) CONTRACTORS (COD)
AGENDA CAPTION:
Consider approval of Resolution 2019-03R, approving the purchase of a 2018 John Deere 310L Backhoe for the Public Services Department - Water / Wastewater Division in the total amount of $90,428.01 from RDO Equipment Company through the Texas Local Government Purchasing Cooperative Sourcewell for Heavy Construction Equipment with Related Accessories (Contract #NJPA 032515); authorizing the City Manager to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Public Services Department - Tom Taggart, Executive Director (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $90,428.01
Account Number: 22006333.60125
Funds Available: FY19 Capital Outlay Request-$95,000
Account Name: Operating-Equipment

Fiscal Note:

Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
Transportation - Choose an item.
☐ Not Applicable

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

Background Information:
The City of San Marcos is authorized by the Local Government Code, Chapter 271, to participate in cooperative purchasing programs. The Sourcewell Cooperative has awarded contract #NJPA 032515 for Heavy Construction Equipment with Related Accessories, Attachments and Supplies to RDO Equipment Co, located in Pflugerville, Texas.

Through this Sourcewell contract, we are purchasing a new 2018 John Deere 310L Backhoe from RDO Equipment for the Water Wastewater Division in the amount of $90,428.01.

This John Deere backhoe is a replacement for an existing 19 year old JD 310G backhoe. The existing backhoe is in constant need of repairs and is becoming a safety issue due to age. The exterior is showing signs of fatigue and feels unstable when in use. The Water Wastewater division relies heavily on the use of backhoes for system improvements, repairs and emergencies.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Recommend approval of award to purchase through Sourcewell Cooperative a John Deere backhoe from RDO Equipment Co.
RESOLUTION NO. 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF A 2018 JOHN DEERE 310L BACKHOE FOR THE PUBLIC SERVICES DEPARTMENT, WATER / WASTEWATER DIVISION IN THE TOTAL AMOUNT OF $90,428.01 FROM RDO EQUIPMENT COMPANY THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE SOURCEWELL FOR HEAVY CONSTRUCTION EQUIPMENT AND RELATED ACCESSORIES (CONTRACT #NJPA 032515); AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE PURCHASING DOCUMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The purchase of a 2018 John Deere 310L Backhoe for the Public Services Department-Water Wastewater Division from RDO Equipment Company through the Texas Local Government Purchasing Cooperative Sourcewell for Heavy Construction Equipment with Related Accessories (Contract #NJPA 032515) in the total amount of $90,428.01 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate purchasing documents on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 15th day of January 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
# Investment Proposal (Quote)

**RDO Equipment Co.**

16415 N IH-35  
Pflugerville TX, 78660  
Phone: (512) 272-4141 - Fax: (512) 272-9365

---

**Proposal for:**  
CITY OF SAN MARCOS  
FINANCE DEPARTMENT  
630 E HOPKINS ST  
SAN MARCOS, TX, 78666  
HAYS

**Investment Proposal Date:** 12/17/2018  
**Pricing Valid Until:** 1/31/2019  
**Deal Number:** 1125668  
**Customer Account #:** 8032006  
**Sales Professional:** Terry Weeter  
**Phone:** (512) 272-4141  
**Fax:**  
**Email:** TWeeter@rdoequipment.com

## Comments

pricing is based on Source well government coop bid  
contract #032515-JDC  
san marcos member # 94343

## Equipment Information

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<th>Quantity</th>
<th>Serial Number</th>
<th>Hours (approx.)</th>
<th>Status / Year / Make / Model</th>
<th>Additional Items</th>
<th>Cash Price</th>
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<td>1</td>
<td>TBD</td>
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<td>New 2018 JOHN DEERE 310L</td>
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<td>Other SourceWell DISCOUNT</td>
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<td>Freight Out DEL</td>
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<td>Warranty - John Deere Comprehensive-48 Months, 5000 Hours, Deductible: 200</td>
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<td>Attachment - New 2018 JRB 310LCPLR</td>
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**Equipment Subtotal:** $90,428.01

## Purchase Order Totals

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<td>Year / Make / Model</td>
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<td>---------------</td>
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<tr>
<td>1</td>
<td>TBD</td>
<td>2018 JOHN DEERE 310L</td>
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<td>J000084994-1</td>
<td>2017 JRB 310SK24WR</td>
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<tr>
<td>1</td>
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<td>2018 JRB 310LCPLR</td>
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AGENDA CAPTION:
Consider approval of Resolution 2019-04R, approving a list of qualified firms to provide Real Estate Appraisal Services to the City as needed for a period of six years; and declaring an effective date.

Meeting date: January 15, 2019

Department: Engineering/Capital Improvement Program Department - Laurie Moyer, Director (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: N/A
Account Number: Click or tap here to enter text.
Funds Available: Click or tap here to enter text.
Account Name: Click or tap here to enter text.

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: [Please select from the dropdown menu below]
Workforce Housing
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☒ Economic Development - Choose an item.
☒ Environment & Resource Protection - Choose an item.
☒ Land Use - Choose an item.
☒ Neighborhoods & Housing - Choose an item.
☒ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
The City issued a solicitation for real estate appraisal services for the purpose of contracting with qualified firms to provide on-call as-needed appraisal services. On November 15, 2018, nine (9) Statements of Qualifications (SOQs) were received for On-Call Appraisal Services, RFQ 218-283. A City-staffed evaluation committee evaluated each SOQ, which resulted in a final selection of the five (5) most highly qualified firms to contract for these on-call services:

- Eckmann Groll, Inc., located in San Antonio, Texas
- Atrium Real Estate Services located in Austin, Texas
- Allegiant Group, PLLC, located in Austin, Texas
- The Aegis Group, Inc., located in Austin, Texas
- BBG, Inc., located in San Antonio, Texas

Master Agreements with each of the selected firms will be in effect for a period of six (6) years from the date of City Council approval for these services on a per project as needed basis. Project scope and fee will be negotiated per project. Services include real estate appraisal services in Hays, Caldwell, Comal, and Guadalupe Counties as well as other parts of Central Texas as requested by the City. All services will be performed by persons appropriately licensed as a Certified General Appraiser.

These services are being made in compliance with Federal, State, and Local statutory requirements, to include the Federal Funding and Accountability Transparency Act (“FFATA”) for Grant #B-16-MH-48-0002, Public Law 114-113, under the United States Development of Housing and Urban Development (“HUD”) Community Development Block Grant - Disaster Recovery (“CDBG-DR”) grant programs. Each selected firm will be cognizant of all other external requirements for each of the program components, including but not limited to, Federal Emergency Management Agency (“FEMA”), United States Environmental Protection Agency (“EPA”), Federal Highway Administration (“FHWA”), and other federal and state agency requirements. Additional funding from the Texas Water Development Board’s (“TWDB”) Clean Water State Revolving Fund (“CWSRF”) may be utilized to plan and implement flood damage reduction measures. Therefore, the City must meet State and Federal requirements for the distribution of these funds. Additionally, the City has applied for FEMA Hazard Mitigation Grant funding and the selected firms may be required to comply with
associated requirements.

**Council Committee, Board/Commission Action:**

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Approve an on-call list of five (5) qualified Firms for On-Call Appraisal Services.
RESOLUTION NO. 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A LIST OF QUALIFIED FIRMS TO PROVIDE REAL ESTATE APPRAISAL SERVICES TO THE CITY AS NEEDED FOR A PERIOD OF SIX YEARS; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City issued a Request for Qualifications (“RFQ”) No. 218-283 for on-call appraisal services for various City projects.
2. On November 15, 2018, the City received Statements of Qualifications (“SOQ”) from nine firms.
3. An evaluation committee was formed for the purpose of evaluating the SOQ’s and selecting the most qualified firms for placement on an on-call list.
4. The committee selected the five most highly qualified firms to be on the on-call list for appraisal services for a period of six years under the terms of master agreements with the City.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. Based on the evaluator’s scores, the following firms are approved for placement on the City’s on-call list of qualified appraisal firms for various City projects for a period of six years subject to the terms of master agreements with such firms:

A. Eckmann Groll, Inc., located in San Antonio, Texas;
B. Atrium Real Estate Services located in Austin, Texas;
C. Allegiant Group, PLLC, located in Austin, Texas;
D. The Aegis Group, Inc., located in Austin, Texas; and
E. BBG, Inc., located in San Antonio, Texas.

PART 2. This resolution will be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.
Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
# PROPOSAL SUBMITTAL LOG

**On-Call Appraisal Services – RFQ 218-283**  
November 15, 2018, 2:00 P.M.

<table>
<thead>
<tr>
<th>PROPOONENT NAME</th>
</tr>
</thead>
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| Travis R. Taylor  
San Antonio, TX |
| Patricia M. Bell – Allegiant Group, PLLC  
Austin, TX |
| Atrium Real Estate Services  
Austin, Texas |
| Eckmann Groll, Inc.  
San Antonio, Texas |
| Keith Bodungen  
Leander, Texas |
| Lowery Property Advisors  
Irving, TX |
| The Aegis Group Inc.  
Austin, TX |
| Adelaido Gonzales/Southmost Appraisals  
Harlingen, TX |
| CBRE, Inc  
Austin, Texas |

WITNESSED BY:  
[Signature]

[Name]
AGENDA CAPTION:
Consider approval of Resolution 2019-05R, approving a three-year contract with Granicus, Inc. for the Agenda Management Workflow System and Video Streaming Services in the amount of $111,537.48; ratifying the City Staff’s acceptance of the contract; and declaring an effective date.

Meeting date:  January 15, 2019

Department:  Jamie Lee Case, City Clerk (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required:  Total Contract-$111,537.48, FY19-$37,179
Account Number:  10001280/22006335/21006322.52395
Funds Available:  $37,179
Account Name:  Operating-Software License and Maintenance

Fiscal Note:
Prior Council Action:  April 15, 2008, Res. 2008-54R Council approved initial contract for an amount not to exceed $64,631.70.

City Council Strategic Initiative:  [Please select from the dropdown menu below]
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element (s):  [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
This initial contract term with Granicus, Inc. officially ended on May 12, 2018 however, it was necessary for services to continue as required. This new contract is for a three year contract for Granicus video streamlining services and agenda management workflow system for City Council meetings. The new contract period of performance is 05/13/2018 through 05/12/2021. The services provided in the new contract did not change from the initial agreement.

Local Government Code, Section 252.022(7) permits a limited exemption from the competitive bidding process if the items to be purchased are available from only one source. The City considers the Granicus software a sole source procurement from Granicus, Inc, based on captive replacement parts or components for equipment.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Recommended approval of a 3 year contract with Granicus in the total amount of $111,537.48.
RESOLUTION NO. 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A THREE-YEAR CONTRACT WITH GRANICUS, INC. FOR THE AGENDA MANAGEMENT WORKFLOW SYSTEM AND VIDEO STREAMING SERVICES IN THE AMOUNT OF $111,537.48; RATIFYING THE CITY STAFF’S ACCEPTANCE OF THE CONTRACT AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. A three-year agreement with Granicus, Inc. for an agenda management workflow system and video streaming services for $111,537.48 is approved.

PART 2. The City staff’s acceptance of the contract is ratified.

PART 3. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 15th day of January, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
Granicus Proposal for San Marcos, TX

**Granicus Contact**

Name: Shannon Liesinger

Email: shannon.liesinger@granicus.com

**Proposal Details**

Quote Number: Q-39963

Prepared On: 11/19/2018

Valid Through: 12/30/2018

**Pricing**

Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)

Currency: USD

Period of Performance: 5/13/2018 - 5/12/2019

Contract End Date: 5/12/2021

**Annual Fees for Renewing Subscriptions**

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<tr>
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<th>Billing Frequency</th>
<th>Quantity/Unit</th>
<th>Annual Fee</th>
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<tr>
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<td>1 Each</td>
<td>$10,584.96</td>
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<tr>
<td>Legistar</td>
<td>1 Each</td>
<td>$11,124.00</td>
<td></td>
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<tr>
<td>Meeting Efficiency Suite</td>
<td>1 Each</td>
<td>$10,584.96</td>
<td></td>
</tr>
<tr>
<td>Granicus Encoding Appliance Software (GT)</td>
<td>1 Each</td>
<td>$1,200.00</td>
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<tr>
<td>Open Platform Suite</td>
<td>1 Each</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Upgrade to SDI 720p Streaming</td>
<td>1 Each</td>
<td>$1,200.00</td>
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**SUBTOTAL:** $34,693.92
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<td>Government Transparency Suite</td>
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<td><strong>TOTAL:</strong></td>
<td><strong>$37,122.49</strong></td>
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<td></td>
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<tr>
<td>-----------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td><strong>Government Transparency Suite</strong></td>
<td>Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, indexing of event, creation of minutes.</td>
<td></td>
</tr>
<tr>
<td><strong>Legistar</strong></td>
<td>Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire Legislative process of the clerk’s office. By leveraging Legistar, the client will be able to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:&lt;br&gt;• Unlimited user accounts&lt;br&gt;• Unlimited meeting bodies and meeting types&lt;br&gt;• Unlimited data storage and retention&lt;br&gt;• Configuration services for one meeting body\type&lt;br&gt;• One Legistar database&lt;br&gt;• One InSite web portal&lt;br&gt;• Design services for one agenda report template&lt;br&gt;• Design services for one minute’s report template</td>
<td></td>
</tr>
<tr>
<td><strong>Meeting Efficiency Suite</strong></td>
<td>Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk’s office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word or HTML, and publish online with the click of a button. Meeting Efficiency includes:&lt;br&gt;• Unlimited user accounts&lt;br&gt;• Unlimited meeting bodies&lt;br&gt;• Unlimited storage of minutes documents&lt;br&gt;• Access to one Granicus platform site&lt;br&gt;• Access to the LiveManager software application for recording information during meetings&lt;br&gt;• Access to the Word Add-in software component for minutes formatting in MS Word if desired&lt;br&gt;• One MS Word or HTML minutes template (additional templates can be purchased if needed)</td>
<td></td>
</tr>
<tr>
<td>Granicus Encoding Appliance Software (GT)</td>
<td>Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.</td>
<td></td>
</tr>
<tr>
<td>Open Platform Suite</td>
<td>Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.</td>
<td></td>
</tr>
<tr>
<td>Upgrade to SDI 720p Streaming</td>
<td>Upgrade to SDI 720p Streaming (requires Digital encoder and HD feed)</td>
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</table>
**Terms and Conditions**

- Link to Terms: [https://granicus.com/pdfs/Master_Subscription_Agreement.pdf](https://granicus.com/pdfs/Master_Subscription_Agreement.pdf)
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of San Marcos, TX to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- If submitting a Purchase Order, please include the following language: All pricing, terms and conditions of quote Q-39963 dated 11/19/2018 are incorporated into this Purchase Order by reference.
- San Marcos, TX is eligible to receive up to five (5) two-day passes to the 2019 Granicus National Summit, valued at $299.00 each. The Granicus National Summit is the premiere user conference for public sector professionals across federal, state, and local government. Attendees will be provided with hands-on training led by Granicus subject matter experts, as well as opportunities to learn and network with peers and leaders in government. 
  
  *Granicus National Summit Dates: May 14-15, 2019*

**Agreement and Acceptance**

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

**Billing Information**

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**San Marcos, TX**

<table>
<thead>
<tr>
<th>Signature:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Title:</td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
</tr>
</tbody>
</table>
Granicus Video enables organizations to build a content-rich library of live and archived public meeting webcasts and records without hassle, enabling agencies to reach a broader audience and further meet modern transparency demands.

With easy-to-use media management tools, agencies can schedule and broadcast live webcasts while simultaneously recording and archiving the live content to unlimited storage. Agendas can be imported prior to each meeting, allowing for video to be indexed in real-time, which eliminates hours of follow up work after an event has ended. After the meeting, publish a full and integrated public record which links the agenda directly to the video.

Empowered citizens can browse published agendas and supporting documents or save time by performing keyword searches to jump directly to specific topics, making it easier for viewers to find the information they’re most interested in. Citizens can also subscribe to agendas or keyword searches to get real-time notifications when new, relevant content becomes available.

Opt in to HD video for an enhanced viewing experience or further enable accessibility and ensure ADA compliance by adding closed-captioning services. Agencies can monitor and analyze public interest through visitor and viewership reports, which break down visitor statistics, including most-popular content, number of views, length of time on site, and more to better understand the viewing audience.
Customize the entire legislative and agenda management workflow

Reach new levels of automation with a complete legislative solution that manages decisions and automates the workflow of legislative items from introduction to final passage. Extensive configurability sets Legistar apart from the rest with unlimited workflow sequences that can be customized to cater to an unlimited number of users, records and managing bodies. Legistar automates legislation drafting and agenda creation with a built-in, customizable workflow that tracks each item throughout the approval process.

A single piece of legislation can flow through dozens of agendas and drafts before more than a handful of boards until it’s agreed upon, all too often getting lost and rewritten in the process. Easily create new documents for meeting agendas in Legistar or Microsoft Word, then digitally organize them to automatically associate the files to the correct workflow.

The program automates agenda creation and meeting execution with tools to streamline minutes, voting, full reporting and publishing to a citizen-facing web portal for boosted transparency. From drafting files, through assignment to various departments, to final approval, Legistar reduces workloads and creates a more efficient method for managing legislative and agenda processes.

For more info visit granicus.com/legistar or email us at info@granicus.com

---

Eliminate manual workflows  
Automate a customizable legislative workflow  
Automate agenda material compilation and approval

Integration to manage documents with Microsoft Word  
Track progress and generate reports  
Unlimited workflow sequences, users and records
Modernize and simplify meeting minutes creation

Granicus Minutes reduces labor, and streamlines minutes creation by electronically capturing roll-call, agenda items, speakers, motions, votes, and notes through a simple interface. When a meeting ends, the tool transfers captured content to a minutes document, allowing users to finalize minutes quickly and easily in Microsoft Word.

With content 75-80% complete at the time the meeting ends, Minutes saves staff countless hours in their post-meeting workflow.

Minutes can also integrate with other Granicus products to further streamline the meeting process. Import agendas directly from agenda management systems, digitally capture vote results with VoteCast, and publish minutes alongside indexed meeting recordings using Granicus Video.
AGENDA CAPTION:
Consider approval of Resolution 2019-06R, approving the procurement of Insta-Valve Equipment for the Public Services Department - Water/Wastewater Division from Hydra-Stop, LLC on a sole source basis in the amount of $80,110.00; authorizing the City Manager to execute the appropriate procurement documents on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Public Services Department - T. Taggart, Executive Director (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $80,110.00
Account Number: 22006333.60125
Funds Available: FY19 Capital Outlay-$85,000
Account Name: Operating-Equipment

Fiscal Note:
Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
**Master Plan:** [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]

Choose an item.

**Background Information:**
The new Hydra-Stop equipment will replace worn out almost obsolete 15 year old equipment. Hydra-Stop equipment and valves are used regularly by the Water Department in areas of the system where water main line valves are broken, never got installed or overlooked. In some instances shutting off water to an area of town is difficult due to lack of valves or critical customers in the vicinity of the shutoff. Installation of these type valves will avoid service interruption to areas of town where continuous water service disruption is impractical.

The Local Government Code, Section 252.022(7) permits a limited exemption from the competitive bidding process if the items to be purchased are available from only one source. The City considers the Hydra-Stop Insta-Valve Equipment a sole source procurement from Hydra-Stop based on captive replacement parts or components for equipment.

**Council Committee, Board/Commission Action:**
Click or tap here to enter text.

**Alternatives:**
Click or tap here to enter text.

**Recommendation:**
Recommend approval of a contract for the purchase of insta-valve equipment from Hydra-Stop in the amount of $80,110.00
RESOLUTION NO. 2019-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PROCUREMENT OF INSTA-VALVE EQUIPMENT FOR THE PUBLIC SERVICES DEPARTMENT – WATER/WASTEWATER DIVISION FROM HYDRA-STOP, LLC ON A SOLE SOURCE BASIS IN THE AMOUNT OF $80,110.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE PROCUREMENT DOCUMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. Section 252.022 (7) of the Texas Local Government Code permits a limited exemption from the competitive sealed proposal procedure if the items to be purchased are available from only one source.

2. This purchase is a sole source procurement because Hydra-Stop, LLC is the exclusive manufacturer of the product.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The procurement of insta-valve equipment from Hydra-Stop, LLC on a sole source basis in the amount of $80,110.00 is approved.

PART 2. The City Manager or his designee is authorized to execute purchasing documents on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 15th day of January, 2019.

Jane Hughson
Mayor
Attest:

Jamie Lee Case
City Clerk
September 17, 2018

Tony Salinas
City of San Marcos
632 E. Hopkins
San Marcos, TX 78666

Dear Tony Salinas:

Hydra-Stop is the sole designer and manufacturer of the Hydra-Stop System. The Hydra-Stop System is an under-pressure pipe maintenance and repair system engineered to allow the repair and maintenance of water, wastewater and other fluid systems without interrupting service or requiring system shutdown.

The Hydra-Stop System allows any of its four standalone machines to expand capability and function through the use of interchangeable components and expansion kits: Hydra-Tapper 2”-20” pressure tapping, Hydra-Stopper 2”-20” line stopping, Insta-Valve 250® 4”-12” valve insertion. Covered by United States Patent No. 9,829,141,B2 and United States Patent No. 9,644,779,B2 and IVP 250 16” valve insertion (Patent Pending). All design and invention rights are reserved. Additional Patents Pending.

Hydra-Stop Fittings, Insta-Valve 250 insertion valves and IVP 250 insertion valves are engineered specifically to be used with the Hydra-Stop System and are an integral component of the Hydra-Stop System.

If you require any addition information or documentation, please do not hesitate to contact me.

Sincerely,

Chris Vazzana
President
Hydra-Stop
Hydra-Stop LLC
Order Confirmation

FACSIMILE TRANSMITTAL SHEET

NOTES/COMMENTS:

*SALES ORDER ACKNOWLEDGEMENT*

I would like to take this opportunity to thank you for your recent purchase of Hydra-Stop Products. Hydra-Stop is committed to providing our customers quality customer service, equipment and fittings.

Attached you will find your Sales Order Acknowledgement which is being sent to confirm your order with Hydra-Stop. Please take a moment to review your Sales Order Acknowledgement and confirm that all of the order details are correct. (Product, PO Number, Shipping Address, and Special Shipping Instructions if applicable)

If there are any corrections, revisions or special shipping instructions please note them on your Sales Order Acknowledgement and immediately fax back to 708-389-5125. If there are no corrections or revisions Hydra-Stop will process your order based on the information provided on the attached sales order acknowledgement upon receiving a signed sales order acknowledgement back.

If you have any questions you can contact Hydra-Stop at 800-538-7867.

Thank you for your business.

FAX SIGNED ORDER CONFIRMATION TO 708-389-5125
ORDER WILL NOT BE PROCESSED UNTIL WE RECEIVE A SIGNED SALES ORDER ACKNOWLEDGEMENT
## Bill To
**City of San Marcos**
Tony Salinas  
630 E. Hopkins  
San Marcos, TX 78666  
**Phone** (512)393-8011  
**Fax** (855)759-2839

## Ship To
**City of San Marcos**
Tony Salinas  
630 E. Hopkins  
San Marcos, TX 78666  
**Phone** (512)393-8011  
**Fax** (855)759-2839

### Sales Representative
Steve Roehrig  
**Created By** Dan Spratt  
**Tax Exempt** Yes  
**Terms** NET 30  
**Type of Business** FB - Forecasted Business

### Incoterms
Ex-Works  
**Freight** Prepay & Add  
**Lead Time** 4 Weeks ARO  
**Client Request Date**  
**Industry** Water

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<td>3-480IV-250</td>
<td>4-8 IV Base Equipment Unit, 250PSI</td>
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<td>5</td>
<td>3-112IV-250</td>
<td>10-12 IV Add-On Equipment</td>
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<td>6</td>
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<td>$5,721.00</td>
<td>$5,721.00</td>
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<tr>
<td>9</td>
<td>OTHER - HYDRA-STOP</td>
<td>2 Day Training Equipment Training</td>
<td>1</td>
<td>$4,800.00</td>
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The sale of product(s) or services provided by Hydra-Stop shall be governed by the attached Terms and Conditions. Pricing is good for 30 days from the quotation date. Hydra-Stop's offer to sell products to or to provide services to you ("Customer") is expressly limited by Customer's acceptance of these Terms and Conditions, as evidenced by Customer's issuance of a purchase order for products (s) or services, or Customer's payment for any additional products or services under the purchase order. Additional or different terms or conditions proposed by Customer (including those that may be contained in Customer's purchase order) shall be void and of no effect unless a written agreement to contrary is provided by Hydra-Stop.

Authorizing Signature:
I have read the quotation and agree to the terms and conditions outlined therein. To confirm this sales order, provide the following information and fax to (708)389-5125 or email to dspratt@hydra-stop.com.

Signature: _______________________________ P.O Number: ____________________________
Print Name: _______________________________ Date: ________________________________
File #: Res. 2019-07R, Version: 1

AGENDA CAPTION:
Consider approval of Resolution 2019-07R, authorizing the award of a professional services agreement to KGA Architecture for the provision of architectural and engineering services in connection with renovations and additions to the Police Department building in the amount of $459,000.00; authorizing the City Manager or his designee to execute such agreement on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Police Department - Chase Stapp, Chief (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $459,000
Account Number: G608
Funds Available: $5,500,000
Account Name: GO Bond-Police Department Renovations

Fiscal Note:
Prior Council Action: The City purchased the existing Police Department facility from Wide-Lite in 1991. This bond project was approved by voters in May 2017.

City Council Strategic Initiative: [Please select from the dropdown menu below]

Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]

☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☒ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
Background Information:
In May 2017, San Marcos residents approved bonds to fund Police Department renovations for approximately $5.5 million. The project consists of renovating the existing 911 center, adding security and perimeter fencing, renovating the parking and improving drainage, replacing existing HVAC equipment, and creating new offices within the police station.

On October 11, 2018, the City received ten (10) Statements of Qualifications (SOQs) from various Texas architectural and engineering firms. All SOQs were evaluated by a City-staffed evaluation committee including the City's third party project manager, Jacobs Project Management Company. Following initial evaluations, interviews were conducted with the top three (3) shortlisted firms. As a result, the evaluation committee selected KGA Architecture, located in Dallas, Texas, as the most highly qualified firm based on demonstrated competence and qualifications. The City has negotiated a fair and reasonable price with KGA Architecture in the amount of $459,000 for Architectural/Engineering services for the Police Department renovations.

Prior to start of design for this project, KGA Architecture, will conduct a site and building needs assessment to investigate, assess, and report the condition of the existing site, building, and building systems. The assessment will be used to establish the basis of design and baseline cost estimates for the proposed improvements to the site, the building expansion/remodel, potential improvements to the HVAC system, and upgrades to the Information Technology infrastructure and dispatch/911 technology.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Award a contract to KGA Architecture, located in Dallas, Texas, for Architecture/Engineering Services for Police Department Building Renovations and Additions in the amount of $459,000.
RESOLUTION NO. 2019-\hspace{1cm} R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT TO KGA ARCHITECTURE FOR THE PROVISION OF ARCHITECTURAL AND ENGINEERING SERVICES IN CONNECTION WITH RENOVATIONS AND ADDITIONS TO THE POLICE DEPARTMENT BUILDING IN THE AMOUNT OF $459,000.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE SUCH AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. A professional services agreement with KGA Architecture for the provision of architectural and engineering services in connection with renovations and additions to the Police Department building in the amount of $459,000.00 is authorized.

PART 2. The City Manager or his designee is authorized to execute such agreement on behalf of the City.

PART 3. This resolution will be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
## PROPOSAL SUBMITTAL LOG

**Architecture/Engineering Services for Police Department**  
Renovations & Additions – RFQ 218-386  
October 11, 2018 – 2:00 p.m., C.D.T.

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<td>College Station, Texas</td>
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<tr>
<td>Sunland Group, Inc.</td>
<td>Austin, Texas</td>
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<td>The LaBiche Architectural Group</td>
<td>Beaumont, Texas</td>
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<tr>
<td>RPGA Design Group, Inc.</td>
<td>Fort Worth, Texas</td>
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<tr>
<td>Lopez-Salas Architects, Inc.</td>
<td>San Antonio, Texas</td>
</tr>
<tr>
<td>McCall and Associates</td>
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</tr>
<tr>
<td>TSG Architects AIA</td>
<td>Gonzales, Texas</td>
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<tr>
<td>KGA Architects LLC</td>
<td>Dallas, Texas</td>
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<tr>
<td>RGM Architects LLC</td>
<td>Dallas, Texas</td>
</tr>
<tr>
<td>GSC Architects</td>
<td>Austin, Texas</td>
</tr>
</tbody>
</table>

Recorded by: ____________________________  
Witnessed by: ____________________________

Rev. 05/23/18
AGENDA CAPTION:
Consider approval of Resolution 2019-08R, approving the award of a contract between the City and EBR Enterprises of Cypress Texas for removal of invasive plant species within and along the banks of the San Marcos River in the sum of $38,949 for an initial one year term with up to three extensions of one year each; authorizing the City’s Purchasing Manager to execute the contract and contract extensions; and declaring an effective date.

Meeting date: January 15, 2019

Department: Community Services Department - Rodney Cobb, Executive Director Community Services (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $38,949.00 for Year 1
Account Number: 12027008-56318
Funds Available: [Click or tap here to enter text.]
Account Name: Non-native Plant Removal

Fiscal Note:
Prior Council Action: November 6, 2013 Council approved award of the previous 5-year contract for the total amount of $199,924.75.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
File #: Res. 2019-08R, Version: 1

☐ Transportation - Choose an item.
☐ Not Applicable

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

Background Information:
The existing contract for removal of non-native plants expires on December 31, 2018. This new contract is for the same scope of work.

On November 29, 2018, four (4) bids were received for Removal of Littoral and Riparian Invasive Vegetation, Bid #219-040.

This contract award to EBR Enterprises is for an initial one (1) year term from January 2019 to December 31, 2019, with the option for four (4) additional one (1) year terms for a total possible contract term of five (5) years for an annual amount of $38,949 for the first two-years. The remaining three years may be subject to an annual 2% increase.

The work includes removal of non-native plants, identified as a work plan element for the City as part of its participation in the Edwards Aquifer Habitat Conservation Plan. This project is being accomplished in accordance with a Section 10 (a) permit and funded through the Edwards Aquifer Authority.

The contract extensions may be awarded administratively in the form of an Authorization of Change in Service signed by the Purchasing Manager.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Award a contract in the amount of $38,949.00 for the initial one (1) year term of the agreement to EBR Enterprises, Cypress, Texas, who offers the lowest responsible responsive bid and who provides the best value to the City.
RESOLUTION 2019- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT BETWEEN THE CITY AND EBR ENTERPRISES OF CYPRESS TEXAS FOR REMOVAL OF INVASIVE PLANT SPECIES WITHIN AND ALONG THE BANKS OF THE SAN MARCOS RIVER IN THE SUM OF $38,949 FOR AN INITIAL ONE YEAR TERM WITH UP TO THREE EXTENSIONS OF ONE YEAR EACH; AUTHORIZING THE CITY’S PURCHASING MANAGER TO EXECUTE THE CONTRACT AND CONTRACT EXTENSIONS; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The award of a contract with EBR Enterprises of Cypress, Texas for removal of invasive plant species in the littoral and riparian zones of the San Marcos River is hereby approved for an initial term of one year in the sum of $38,949 with up to three additional terms of one year each. The city’s purchasing manager is hereby authorized to sign the contract and up to three contract extensions of one year each, subject to a 2% annual price increase.

PART 2. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Total Bid Item 1</th>
<th>Total Bid Item 1 w/Pcard</th>
<th>Addendum Acknowledged</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$38,949.00</td>
<td>$38,949.00</td>
<td>N/A</td>
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<tr>
<td>Environmental Survey Consulting</td>
<td>$1,000,000.00</td>
<td>No Bid P Card</td>
<td>N/A</td>
</tr>
<tr>
<td>Austin, Texas</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bryce Cuda San Marcos, Texas</td>
<td>$93,600.00</td>
<td>No Bid P Card</td>
<td>N/A</td>
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<tr>
<td>EarthBalance Corporation</td>
<td>$94,880.00</td>
<td>$94,880.00</td>
<td>N/A</td>
</tr>
<tr>
<td>North Port, Florida</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Recorded by: [Signature]
Witnessed by: [Signature]

Rev. 05/29/18
AGENDA CAPTION:
Consider approval of Resolution 2019-09R, approving the award of a contract between the City and Atlas Environmental Services of San Marcos, Texas for removal of Aquatic Invasive Fish and Snail Species in the San Marcos River in the sum of $22,800 for an initial one year term with up to three extensions of one year each; authorizing the City’s Purchasing Manager to execute the contract and contract extensions; and declaring an effective date.

Meeting date: January 15, 2019

Department: Community Services Department - Rodney Cobb, Executive Director Community Services (By Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $22,800 per year
Account Number: 12027008-56319
Funds Available: $22,800
Account Name: Grant funding from Edwards Aquifer Authority-EAA-ILA-Non Native Animals

Fiscal Note:
Prior Council Action: November 18, 2014, Council approved a 4-year contract #213-288 to Atlas Environmental, located in San Marcos, Texas for Aquatic Fish and Snail Removal Services.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☒ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
Background Information:
The current four-year contract for removal of invasive aquatic animals expires on December 31, 2018.

A solicitation was issued for a new contract and on December 13, 2018, two (2) bids were received for Aquatic Invasive Fish and Snail Removal Services, Bid #219-057. The recommended contract is for is part of the City’s participation in the Edwards Aquifer Habitat Conservation Plan. This project is being accomplished in accordance with a Section 10 (a) permit and funded through the Edwards Aquifer Authority (EAA).

The initial term of this contract will be for one (1) year effective January 15, 2019 through December 14, 2019 for the amount of $22,800. The City has the option to extend for three (3) additional one (1) year terms with a 2% price increase for each additional one (1) year term. The contract extension may be awarded administratively in the form of an Authorization of Change in Service signed by the Purchasing Manager.

Recommendation:
The City recommends award to the lowest responsible responsive bidder, Atlas Environmental located in San Marcos, Texas with the bid of $22,800 per year plus escalation.
RESOLUTION 2019-  

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT BETWEEN THE CITY AND ATLAS ENVIRONMENTAL SERVICES OF SAN MARCOS, TEXAS FOR REMOVAL OF AQUATIC INVASIVE FISH AND SNAIL SPECIES IN THE SAN MARCOS RIVER IN THE SUM OF $22,800 FOR AN INITIAL ONE YEAR TERM WITH UP TO THREE EXTENSIONS OF ONE YEAR EACH; AUTHORIZING THE CITY’S PURCHASING MANAGER TO EXECUTE THE CONTRACT AND CONTRACT EXTENSIONS; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The award of a contract with Atlas Environmental of San Marcos, Texas for removal of aquatic fish and snail species in San Marcos River is hereby approved for an initial term of one year in the sum of $22,800 with up to three additional terms of one year each. The city’s purchasing manager is hereby authorized to sign the contract and up to three contract extensions of one year each, subject to a 2% annual price increase.

PART 2. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
# BID TABULATION

Aquatic Invasive Fish and Snail Removal Services
IFB #219-057
December 13, 2018 2:00 P.M.

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Total Bid</th>
<th>Total Bid w/Pcard</th>
<th>Addendum Acknowledged</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIO-WEST Inc. San Marcos, TX</td>
<td>$25,000.00</td>
<td>No P-card Bid</td>
<td>N/A</td>
</tr>
<tr>
<td>Atlas Environmental San Marcos, TX</td>
<td>$22,800.00</td>
<td>No P-card Bid</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Recorded by: [Signature]
Witnessed by: [Signature]

Rev. 05/29/18
AGENDA CAPTION:
Consider approval of Resolution 2019-10R, approving the renewal of a contract with Dell Marketing LP for VMWare software in an amount of $41,200.96 resulting in a total contract price of $66,078.44; authorizing the City Manager to execute the agreement on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: Information Technology - Mike Sturm, Director (by Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $41,200.96
Account Number: 10001280.52395 ($13,733.65), 22006335.52395 ($13,733.65), 21006322.52395 ($13,733.65)
Funds Available: $42,000
Account Name: Operating-Software License & Maintenance

Fiscal Note:
Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
Background Information:
The Texas Comptroller of Public Accounts Department of Information Resources (DIR) awarded a contract (DIR-TSO-3763) to Dell Marketing LP for VMware, a virtualization and cloud computing software provider. In December 2016, the City entered into a contract with Dell Marketing L.P.

The City originally purchased VMware software in 2010 from Unique Digital (VMware has since been purchased by Dell) when the City started developing the virtual environment. Over the years the City purchased various upgrades, expansions, and add-ons of VMware software. The maintenance renewals from these purchased were spaced out throughout the year and in an effort to consolidate the licensing we worked with Dell to co-term all VMware license. This renewal is the accumulation of consolidating multiple contract renewals.

This renewal is to extend the services for an additional 12-month period. The original agreement amount was $24,877.48 and with this renewal amount of $41,200.96, thus requiring City Council approval.

Council Committee, Board/Commission Action:
Click or tap here to enter text.

Alternatives:
Click or tap here to enter text.

Recommendation:
Authorization to extend the contract with Dell Marketing, L.P. for an additional 12 month period in the amount of $41,200.96.
RESOLUTION NO. 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE RENEWAL OF A CONTRACT WITH DELL MARKETING LP FOR VMWARE SOFTWARE IN AN AMOUNT OF $41,200.96 RESULTING IN A TOTAL CONTRACT PRICE OF $66,078.44; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The contract renewal with Dell Marketing LP for VMWare software in an amount of $41,200.96, resulting in a total contract price of $66,078.44, is approved.

PART 2. The City Manager or his designee is authorized to execute the Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 15th day of January 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
A quote for your consideration!

Based on your business needs, we put the following quote together to help with your purchase decision. Please review your quote details below, then contact your sales rep when you're ready to place your order.

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<tr>
<th>Quote number:</th>
<th>Quote date:</th>
<th>Quote expiration:</th>
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<td>1015122377762.1</td>
<td>Dec. 19, 2018</td>
<td>Jan. 29, 2019</td>
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<table>
<thead>
<tr>
<th>Company name:</th>
<th>Customer number:</th>
<th>Phone:</th>
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<tbody>
<tr>
<td>CITY OF SAN MARCOS</td>
<td>53576</td>
<td>(512) 393-8112</td>
</tr>
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<table>
<thead>
<tr>
<th>Sales rep information:</th>
<th>Billing Information:</th>
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</thead>
<tbody>
<tr>
<td>Michael Villa Jr.</td>
<td>CITY OF SAN MARCOS</td>
</tr>
<tr>
<td><a href="mailto:Michael_Villa_Jr@DellTeam.com">Michael_Villa_Jr@DellTeam.com</a></td>
<td>630 E HOPKINS ST</td>
</tr>
<tr>
<td>(800) 456-3355</td>
<td>SAN MARCOS</td>
</tr>
<tr>
<td>Ext: 80000</td>
<td>TX 78666-6314</td>
</tr>
<tr>
<td></td>
<td>US</td>
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<td></td>
<td>(512) 393-8112</td>
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**Pricing Summary**

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<th>Item</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Subtotal</th>
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<tbody>
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<td>$6,166.93</td>
<td>$12,333.86</td>
</tr>
<tr>
<td>VLA VMWARE PROD SUP/SUB VCENTER SERVER 6 STANDARD FOR VSPHERE 6 1YR</td>
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<td>$1,478.99</td>
<td>$2,957.98</td>
</tr>
<tr>
<td>VLA VMWARE PROD SUP/SUB VSPHERE 6 ENT PLUS FOR 1 PROC FOR 1YR</td>
<td>28</td>
<td>$837.20</td>
<td>$23,441.60</td>
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<tr>
<td>VLA VMWARE PROD SUP HORIZ VIEW STD 10PK CCU 1YR</td>
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</tr>
</tbody>
</table>

Subtotal: $41,200.96  
Shipping: $0.00  
Environmental Fees: $0.00  
Non-Taxable Amount: $0.00  
Taxable Amount: $0.00  
Estimated Tax: $0.00  
Total: $41,200.96

Special lease pricing may be available for qualified customers. Please contact your DFS Sales Representative for details.
Dear Customer,

Your Quote is detailed below; please review the quote for product and information accuracy. If you find errors or desire certain changes please contact me as soon as possible.

Regards,

Michael Villa Jr.

Order this quote easily online through your Premier page, or if you do not have Premier, using Quote to Order.
Shipping Group 1

<table>
<thead>
<tr>
<th>SKU</th>
<th>Description</th>
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<td>Contract No: 75AHH</td>
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<tr>
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<tr>
<td>AA464245</td>
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<tr>
<td></td>
<td>Contract No: 75AHH</td>
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<td>Shipping</td>
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<td>Environmental Fees</td>
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<td><strong>Total</strong></td>
<td><strong>$41,200.96</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Unless you have a separate written agreement that specifically applies to this order, your order is subject to Dell's Terms of Sale (for consumers the terms include a binding arbitration provision). Please see the legal disclaimers below for further information.

Important Notes

Terms of Sale

Unless you have a separate written agreement that specifically applies to this order, your order will be subject to and governed by the following agreements, each of which are incorporated herein by reference and available in hardcopy from Dell at your request: Dell's Terms of Sale (www.dell.com/learn/us/en/uscorp1/terms-of-sale), which include a binding consumer arbitration provision and incorporate Dell's U.S. Return Policy (www.dell.com/returnpolicy) and Warranty (for Consumer warranties; for Commercial warranties).

If this purchase includes services: in addition to the foregoing applicable terms, the terms of your service contract will apply (Consumer; Commercial). If this purchase includes software: in addition to the foregoing applicable terms, your use of the software is subject to the license terms accompanying the software, and in the absence of such terms, then use of the Dell-branded application software is subject to the Dell End User License Agreement - Type A (www.dell.com/AEULA) and use of the Dell-branded system software is subject to the Dell End User License Agreement - Type S (www.dell.com/SEULA).

If your purchase is for Mozy, in addition to the foregoing applicable terms, your use of the Mozy service is subject to the terms and conditions located at https://mozy.com/about/legal/terms.

If your purchase is for Boomi services or support, your use of the Boomi Services (and related professional service) is subject to the terms and conditions located at https://boomi.com/msa.

If this purchase is for (a) a storage product identified in the DELL EMC Satisfaction Guarantee Terms and Conditions located at http://www.emc.com/collateral/sales/dellemc-satisfaction-guarantee-terms-and-conditions_ex-gc.pdf ("Satisfaction Guarantee") and (ii) three (3) years of a ProSupport Service for such storage product, in addition to the foregoing applicable terms, such storage product is subject to the Satisfaction Guarantee.

You acknowledge having read and agree to be bound by the foregoing applicable terms in their entirety. Any terms and conditions set forth in your purchase order or any other correspondence that are in addition to, inconsistent or in conflict with, the foregoing applicable online terms will be of no force or effect unless specifically agreed to in a writing signed by Dell that expressly references such terms.

Pricing, Taxes, and Additional Information

All product, pricing, and other information is valid for U.S. customers and U.S. addresses only, and is based on the latest information available and may be subject to change. Dell reserves the right to cancel quotes and orders arising from pricing or other errors. Please indicate any tax-exempt status on your PO, and fax your exemption certificate, including your Customer Number, to the Dell Tax Department at 800-433-9023. Please ensure that your tax-exemption certificate reflects the correct Dell entity name: Dell Marketing L.P.

Note: All tax quoted above is an estimate; final taxes will be listed on the invoice.

If you have any questions regarding tax please send an e-mail to Tax_Department@dell.com.

For certain products shipped to end-users in California, a State Environmental Fee will be applied to your invoice. Dell encourages customers to dispose of electronic equipment properly.
AGENDA CAPTION:
Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2019-02, amending the official zoning map of the City by designating approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984 as “HI” Heavy Industrial District; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2019-02, on the first of two readings.

Meeting date: January 15, 2019

Department: Planning & Development Services

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: Click or tap here to enter text.
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element (s):
☒ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Master Plan: N/A
Choose an item.

Background Information:
The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). This zoning request is being processed concurrently with an annexation request for the property. A full annexation and zoning timeline is attached to this report.

Maxwell Water Supply Corporation and the City of San Marcos will provide water service. The City of San Marcos will provide wastewater service. Bluebonnet Electric Cooperative will provide electric service.

The Planning & Zoning Commission held a public hearing and recommended denial of this request at their meeting on December 11, 2018. Since additional information was since the original action was taken the Planning & Zoning Commission reconsidered the item at their January 8, 2019 meeting. The Commission recommended approval at this meeting.

Approximately 66 acres of this development received approval of a Chapter 380 Economic Development Incentive Agreement by City Council on October 16, 2018. This agreement provides tax incentives and waives certain development standards for this portion of the property. In return, the developer must employ at least 542 persons and invest at least $109 million in the project.

The developer he is requesting Heavy Industrial for the entire property to be able to offset the cost of constructing rail infrastructure through the property.

Heavy Industrial is indicated as “not preferred” on table 4.1, therefore, further scrutiny is required to determine consistency with the Comprehensive Plan. However, due to the property’s location between the airport and two major highways and its adjacency to rail, staff finds that Heavy Industrial Uses, such as what is being proposed with Smart Terminal Site, are suitable at this location.
Council Committee, Board/Commission Action:
At their January 8, 2019 meeting, the Planning & Zoning Commission recommended approval of the request 8-1.

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends approval of the request.
ORDINANCE NO. 2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY DESIGNATING APPROXIMATELY 934.34 ACRES OF LAND, COMPRISED OF SIX TRACTS OF LAND OUT OF THE WILLIAM PETTUS SURVEY, ABSTRACT NO. 21 AND LOCATED ALONG STATE HIGHWAY 80 AND FM 1984 AS “HI” HEAVY INDUSTRIAL DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. On January 8, 2019, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to zone, upon annexation, approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984, as shown on Exhibit A, attached hereto and made a part hereof for all purposes to “HI” Heavy Industrial District.

2. Subsequent to the public hearing on that date, the Planning and Zoning Commission considered the request and voted to recommend approval of the request.

3. The City Council held a public hearing on January 15, 2019 regarding the request and considered the recommendation of the Planning and Zoning Commission.

4. All requirements pertaining to Zoning Map amendments have been met.

5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Official Zoning Map of the City is amended to designate approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984, as shown on Exhibit A, as “HI” Heavy Industrial District.

SECTION 2. If any portion of the property described in Section 1 is determined by the City or a court of competent jurisdiction to be ineligible to be zoned as requested for any reason, this ordinance shall not be effective as to such portion, but shall, otherwise, be effective and enforceable as to the remainder of the property.

SECTION 3. If any word, phrase, clause, sentence, provision or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid
SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect upon its adoption on second reading.

PASSED AND APPROVED on first reading on January 15, 2019.

PASSED, APPROVED AND ADOPTED on second reading on , 2019.

Jane Hughson
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
EXHIBIT A

[Mettes and Bounds Description of the Property to be Attached]
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 12/18/2018
ZC-18-21
Smart Terminal—400' Notification Buffer

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 12/20/2018
# Zoning Request

## ZC-18-21

### Summary

**Request:** Zoning change from Extraterritorial Jurisdiction (ETJ) to Heavy Industrial (HI)

**Applicant:** Texas Transportation Alliance  
110 San Antonio St #3111  
Austin, TX 78701

**Property Owner:** Curby D. Ohnheiser  
19330 San Marcos Hwy.  
San Marcos, TX 78666

### Notification

<table>
<thead>
<tr>
<th>Application:</th>
<th>November 9, 2018</th>
<th>Neighborhood Meeting:</th>
<th>N/A</th>
</tr>
</thead>
</table>
| Published:   | November 25, 2018  
December 23, 2018 | # of Participants | N/A |
| Posted:      | November 21, 2018  
December 21, 2018 | Personal: | November 21, 2018  
December 21, 2018 |
| Response:    | Three phone calls in opposition. | | |

### Property Description

<table>
<thead>
<tr>
<th>Legal Description:</th>
<th>934.34 acres out of the William Pettus Survey.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location:</td>
<td>Near Highway 80 and FM 1984</td>
</tr>
<tr>
<td>Acreage:</td>
<td>934.34</td>
</tr>
<tr>
<td>PDD/DA/Other:</td>
<td>Res. 2018-184R &amp; pending annexation</td>
</tr>
<tr>
<td>Existing Zoning:</td>
<td>Extraterritorial Jurisdiction</td>
</tr>
<tr>
<td>Proposed Zoning:</td>
<td>Heavy Industrial</td>
</tr>
<tr>
<td>Existing Use:</td>
<td>Agriculture</td>
</tr>
<tr>
<td>Proposed Use:</td>
<td>Industrial / Rail Park</td>
</tr>
<tr>
<td>Preferred Scenario:</td>
<td>Low Intensity</td>
</tr>
<tr>
<td>Proposed Designation:</td>
<td>Low Intensity</td>
</tr>
<tr>
<td>CONA Neighborhood:</td>
<td>N/A</td>
</tr>
<tr>
<td>Sector:</td>
<td>N/A</td>
</tr>
<tr>
<td>Utility Capacity:</td>
<td>Arranged</td>
</tr>
<tr>
<td>Floodplain:</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Surrounding Area

<table>
<thead>
<tr>
<th>North of Property:</th>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ETJ &amp; P</td>
<td>Gary Job Corps &amp; San Marcos Regional Airport</td>
<td>Low Intensity</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>South of Property:</th>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ETJ</td>
<td>Agriculture</td>
<td>Low Intensity</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>East of Property:</th>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ETJ</td>
<td>Agriculture / Single Family</td>
<td>Low Intensity</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>West of Property:</th>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FD</td>
<td>Agriculture</td>
<td>Low Intensity</td>
</tr>
</tbody>
</table>

### Staff Recommendation

<table>
<thead>
<tr>
<th>Approval as Submitted</th>
<th>Approval with Conditions / Alternate</th>
<th>Denial</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Staff:** Tory Carpenter, CNU-A  
**Title:** Planner  
**Date:** January 3, 2019
History
The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). This zoning request is being processed concurrently with an annexation request for the property. A full annexation and zoning timeline is attached to this report.

Maxwell Water Supply Corporation and the City of San Marcos will provide water service. The City of San Marcos will provide wastewater service. Bluebonnet Electric Cooperative will provide electric service.

The Planning & Zoning Commission held a public hearing and recommended denial of this request at their meeting on December 11, 2018. This zoning change request will only be reconsidered if the Commission votes affirmatively to reconsider the item earlier on this meeting’s agenda.

Additional Analysis
Approximately 66 acres of this development received approval of a Chapter 380 Economic Development Incentive Agreement by City Council on October 16, 2018. This agreement provides tax incentives and waives certain development standards for this portion of the property. In return, the developer must employ at least 542 persons and invest at least $109 million in the project.

The developer is requesting Heavy Industrial for the entire property to be able to offset the cost of constructing rail infrastructure through the property.

Heavy Industrial is indicated as “not preferred” on table 4.1, therefore, further scrutiny is required to determine consistency with the Comprehensive Plan.

Comments from Other Departments
<table>
<thead>
<tr>
<th>Department</th>
<th>Comment or No Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Comment or No Comment</td>
</tr>
<tr>
<td>Fire</td>
<td>Comment or No Comment</td>
</tr>
<tr>
<td>Public Services</td>
<td>Comment or No Comment</td>
</tr>
<tr>
<td>Engineering</td>
<td>Comment or No Comment</td>
</tr>
</tbody>
</table>
## Compatibility of Uses & Density Criteria (Sec.4.1.2.5)

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Consistent</th>
<th>Inconsistent</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>X</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Helps prevent the impacts of high density uses on low density areas
  
  *Heavy Industrial is intended to accommodate a broad range of high impact manufacturing or industrial uses, that by their nature create a nuisance, and which are not property associated with or are not compatible with nearby residential or commercial uses.*

- The property and proposed rail park is adjacent to the railroad and in close proximity to the airport.

<table>
<thead>
<tr>
<th><strong>N/A</strong></th>
<th>Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Studies were not complete at time of request.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>X</strong></th>
<th>Encourages more opportunities for home ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>This zoning district does not allow residential uses.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>X</strong></th>
<th>Ensures a diversity of housing to serve citizens with varying needs and interests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>This zoning district does not allow residential uses.</td>
</tr>
</tbody>
</table>

## Criteria for Approval (Sec.2.5.1.4)

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Consistent</th>
<th>Inconsistent</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>X</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map

  *This request meets the following Economic Development goals from the Comprehensive Plan:*

  - **Goal 3:** Develop relationships in emerging markets and industries that generate quality entrepreneurial and employment opportunities.

  - **Goal 4:** Create and support a diverse economic environment that is prosperous, efficient and will enhance the lives of residents

  - **Goal 5:** Provide fiscally responsible incentives for economic development.

  - **Goal 6:** Promote and support the maximum potential of the San Marcos Municipal Airport.*
| Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area | N/A | Studies were not complete at time of request. |
| Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect | X | A development agreement is not required because the property is being annexed. However, the request is consistent with the approved Chapter 380 Economic Development Incentive Agreement. |
| Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified | X | While there are residences to the east of the property, the majority of surrounding land is vacant or agricultural. Additionally, the property is adjacent to the San Marcos Regional Airport and the railroad. |
| Whether the proposed zoning will reinforce the existing or planned character of the area | X | The area is primarily vacant and agricultural. |
| Whether the site is appropriate for the development allowed in the proposed district | X | While a small portion of the property is in the floodplain, all development must meet City of San Marcos code requirements. |
| Whether there are substantial reasons why the property cannot be used according to the existing zoning | N/A | The property is currently in the ETJ. |
| Whether there is a need for the proposed use at the proposed location | X | The proposed uses would create rail-based jobs. |
| Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development | X | The developer is negotiating with service providers. Utilities must be approved and extended for any development to occur. |
| Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property | X | While there are residences to the east of the property, the majority of surrounding land is vacant or agricultural. Additionally, the property is adjacent to the San Marcos Regional Airport and the railroad. |
### Zoning Request

**ZC-18-21**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5</strong></td>
<td><em>This request is not for a Neighborhood Density District.</em></td>
</tr>
<tr>
<td><strong>X</strong></td>
<td><strong>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management</strong></td>
</tr>
<tr>
<td></td>
<td><em>The majority of the property is located in a low constrained area according to the Land Use Suitability Map.</em></td>
</tr>
<tr>
<td><strong>X</strong></td>
<td><strong>Any other factors which shall substantially affect the public health, safety, morals, or general welfare</strong></td>
</tr>
<tr>
<td></td>
<td><em>None noted.</em></td>
</tr>
</tbody>
</table>
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 12/14/2018
ZC-18-21
Smart Terminal—Zoning

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 12/20/2018
RESOLUTION NO. 2018-184R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH KATERRA, INC. TO LOCATE AN AUTOMATED BUILDING COMPONENT MANUFACTURING AND DISTRIBUTION FACILITY ALONG STATE HIGHWAY 80 EAST OF STATE HIGHWAY 21, WHICH AGREEMENT PROVIDES INCENTIVES OVER TEN YEARS IN THE FORM OF ANNUAL REFUNDS OF A PORTION OF NEW PROPERTY TAXES GENERATED FROM THE FACILITY AND WAIVES CERTAIN DEVELOPMENT STANDARDS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Chapter 380 Economic Development Incentive Agreement with Katerra, Inc. (the "Agreement") is hereby approved.

PART 2. The City Manager is authorized to execute the Agreement on behalf of the City.

PART 3. This resolution shall be in full force and effect from and after its passage.

ADOPTED on October 16, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of October 16, 2018 (the "Effective Date") this Chapter 380 Economic Development Incentive Agreement (the "Agreement") is entered into between the City of San Marcos, Texas (the "City"), a Texas municipal corporation, and Katerra Construction LLC ("Company"). The City and Company may also be referred to collectively as the "Parties" or individually as a "Party".

PART 1. RECITALS

Section 1.01. The Company is a technology company redefining the construction industry. The Company is focused on optimizing the ways in which buildings are designed and built. Founded in 2015, the Company has more than 3,500 global employees with a growing number of domestic and international offices, factories and building projects. The Company consists of experts in design, material sourcing, manufacturing, logistics, technology, and construction to provide a single integrated offering.

Section 1.02. The Company proposes to construct an advanced manufacturing facility which will include a fully automated assembly line to manufacture building components in the City of San Marcos.

Section 1.03. The Company has requested financial incentives and waivers of certain development standards from the City to facilitate locating such Company facilities and business activities to the City of San Marcos.

Section 1.04. Locating such Company facilities and business activities to the City of San Marcos would benefit the City by creating new jobs and generating revenues for the City from the addition of personal property inventory and improvements to real property, each of which is subject to ad valorem tax assessment.
Section 1.05. The City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City.

Section 1.06. The City has determined that providing economic development incentives, including waiving certain development standards, under this Agreement will promote local economic development and stimulate business and commercial activity in the City.

Section 1.07. For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits to and promises of the Parties set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II
DEFINITIONS

Section 2.01. "Additional Property Taxes" are the City’s share of the ad valorem taxes received from the Hays County Tax Assessor-Collector each tax year during the Term on the value of all Personal Property and Real Property Improvements on the Project Site (defined below) in excess of the Base Year Taxes.

Section 2.02. "Base Year Taxes" means the ad valorem tax real and personal property taxes due and payable on the value of the Real Property Improvements and Personal Property on the Project Site as of January 1, 2018, as established by the Hays County Appraisal District.

Section 2.03. "Business" means the business activities of Company conducted in the City of San Marcos, Texas on the Project Site, including, but not limited to continuously conducting the business activities described in Section 1.02, and including the creation and maintenance of the Minimum Jobs Requirement under Section 3.03.
Section 2.04. "Grant Payments" means the City's payments to Company once per calendar year during the Term of an amount equal to a percentage of the Additional Property Taxes generated from the Project Site as outlined in the schedule in Exhibit "C," attached hereto and made a part hereof for all purposes.

Section 2.05. "Job(s)" means a full-time employment position at the Project Site resulting from or provided in connection with the Project (defined below), which position provides 2,080 annual full-time hours of employment or equivalent, a wage of no less than $15.00 per hour, employer sponsored group health insurance, paid sick days, and annual paid vacation based on length of service and paid holidays. Any position not meeting such criteria does not qualify as a "Job" for purposes of this Agreement.

Section 2.06. "Personal Property" means all materials, supplies, equipment, inventory or other personal property attributable to the Business on the Project Site subject to ad valorem taxes.

Section 2.07. "Project" means the operation of the Business on the Project Site and includes, without limitation, the addition of Real Property Improvements (as defined below), Personal Property, and the creation of Jobs.

Section 2.08. "Project Site" means the real property within the city limits of the City of San Marcos and Hays County, Texas upon which the Project shall be executed, the legal description of which is shown in Exhibit "A," attached hereto and made a part of this Agreement for all purposes.

Section 2.09. "Real Property Improvements" means the real property constituting the Project Site, together with all improvements to real property on the Project Site, other than Personal Property, subject to ad valorem tax assessment.
Section 2.10. The “Term” of this Agreement shall commence on the Effective Date and continue until December 31, 2031 (unless terminated sooner as provided in this Agreement), except that Company’s obligation to submit a Compliance Certificate (as defined below) for the year 2031, together with any other information as may requested by the City under this Agreement, and the City’s obligation, if any, to complete the Grant Payments due under this Agreement for the year 2031 shall continue until satisfied.

ARTICLE III
COMPANY’S PRIMARY OBLIGATIONS

Section 3.01. Addition of Improvements and Personal Property. Company shall cause construction of the Real Property Improvements to be commenced on or before June 1, 2019 and to be completed on or before March 31, 2020. Completion of the Real Property Improvements shall be evidenced by a certificate of occupancy issued by the City in accordance with applicable ordinances. As of March 31, 2020, Company shall have made a minimum cumulative capital investment in Real Property Improvements and Personal Property of at least $109,000,000.00.

Section 3.02. Operation of Business. Company shall begin operation of the Business on the Project Site on or before March 31, 2020, and shall continuously operate, maintain and manage the Business for the duration of the Term.

Section 3.03. Job Creation. On or before March 31, 2021, Company shall employ at least 542 persons in Jobs (the “Minimum Jobs Requirement”) and keep such Jobs filled during the Term. While the titles, personnel, or the classification of such Jobs may change, the Minimum Jobs Requirement shall be continuously maintained through the end of the Term.

Section 3.04. Non-Discrimination. Company agrees that it will maintain, and shall use its best efforts to enforce, employment policies that prohibit discrimination from occurring in the hiring and employment of persons in Jobs on the basis of race, creed, color, national origin, sex or
disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws. Company shall report to the City in its annual Compliance Certificate any judicial or administrative agency determinations that Company has violated any such anti-discrimination laws in relation to persons applying for or employed in Jobs for the applicable reporting period.

Section 3.05. Compliance with Laws. In performing its obligations under this Agreement, Company shall comply with all applicable laws, regulations and ordinances.

ARTICLE IV
GRANT PAYMENTS FROM THE CITY

Section 4.01. Grant Payments. Subject to other terms and conditions of this Agreement and Company’s compliance with this Agreement, the City will make Grant Payments to Company in the manner set forth in this Article.

Section 4.02. Ten-Year Payment Period. The City shall make up to 10 annual Grant Payments to Company, as outlined in Exhibit “C.” The year 2021 will be the first year in which the full value of all completed Real Property improvements will be reflected on the tax rolls (as of January 1) and the requisite 542 Jobs must be created and maintained (as of December 31). Accordingly, the first year in which an application for a Grant Payment may be submitted to and paid by the City is 2022.

Section 4.03. Prerequisites to Payment. The City shall not be required to make a Grant Payment during any applicable calendar year unless and until:

(a) Company has submitted a compliance certificate in the form attached as Exhibit “B” hereto (the “Compliance Certificate”), together with any other information required to be submitted to the City under this Agreement necessary to verify Company’s compliance with the terms of this Agreement on or before April 1 of such calendar year;
(b) Additional Property Taxes for the prior tax year are received by the City from the Hays County Tax Assessor-Collector; and

(c) funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City’s ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and Company is otherwise in compliance with this Agreement, the City shall pay to Company any Grant Payments due within thirty (30) days after the last to occur of the events in subsections (a)-(c) of this Section.

ARTICLE V
WAIVER OF DEVELOPMENT STANDARDS

Section 5.01 Waiver of Development Standards. Pursuant to the City’s authority under section 2.4.5.1 of the City’s Development Code, the City hereby waives the following requirements of such Development Code:

   (a) The requirements of Section 3.6.2.1, Table 3.1 regarding block perimeters and dead end street lengths in EC, HC, HI and LI zoning districts are waived.

   (b) The requirements of Section 4.3.5.3 regarding blank wall area are waived to allow typical industrial construction, using concrete tilt wall as primary building material, as provided in Section 4.3.5.17 (d)(1)(a).

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF COMPANY

As of the Effective Date, Company represents and warrants to the City, as follows:

Section 6.01. Organization. Company is duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to conduct business or own real property in the State of Texas. The activities that Company proposes to carry on at the Project Site
may lawfully be conducted by Company.

Section 6.02. Authority. The execution, delivery and performance by Company of this Agreement are within Company’s powers and have been duly authorized.

Section 6.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 6.04. No Defaults. Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on Company’s ability to perform under this Agreement.

Section 6.05. Full Disclosure. Neither this Agreement nor any schedule or Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE VII
PERSONAL LIABILITY OF PUBLIC OFFICIALS
AND LIMITATIONS ON CITY OBLIGATIONS

Section 7.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.
Section 7.02. Limitations on City Obligations. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated by the City each applicable fiscal year during the Term as provided in this Agreement. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City’s fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment during any fiscal year, Company may at its option terminate this Agreement effective upon written notice to the City, subject to any unpaid Grant Payment properly due to Company for which a lawful appropriation of funds has occurred.

Section 7.03. No Recourse. Company shall have no recourse against the City for the City’s failure to budget and appropriate funds during any fiscal year to meet the purposes of and satisfy its obligations under this Agreement and such failure shall not constitute a breach of this Agreement.

ARTICLE VIII
INFORMATION

Section 8.01. Information. Company shall, at such times and in such form as the City may reasonably request from Company, provide information concerning the performance of Company’s obligations under this Agreement.

Section 8.02. Annual Certification Related to Minimum Jobs Requirement and Compliance With Agreement. Beginning in calendar year 2020 and continuing each calendar year thereafter during the Term, Company shall submit to the City, on or before January 30 of each
such year, a certified Compliance Certificate, acceptable to the city manager of the City and signed by an authorized officer or employee of Company, that Company is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. Beginning in calendar year 2022, each Compliance Certificate shall also include information regarding Company’s satisfaction of the Minimum Jobs Requirement as of the end of the preceding calendar year, as determined in accordance with Section 3.03. After receiving a timely submitted Compliance Certificate, the City shall have thirty (30) days to notify Company in writing of any questions that the City may have concerning any of the information provided by Company in its Compliance Certificate, and Company shall diligently work in good faith to respond to such questions to the City’s reasonable satisfaction.

**Section 8.03. Review of Company Records.** Company agrees that the City will have the right to review the business records of Company that relate to the Project and this Agreement in order to determine Company’s compliance with the terms of this Agreement. Such review shall occur at any reasonable time during regular daytime business hours and upon at least seven days’ prior notice to Company. To the extent reasonably possible, Company shall make all such records available in electronic form or otherwise available to be accessed through the internet.

**Section 8.04. Confidentiality.** Subject to the requirements of the Texas Public Information Act, or order of a court of competent jurisdiction, nothing contained herein shall require Company to disclose or make available to the City any information relating to its employees that would violate the privacy rights of its employees or would violate applicable law, or to disclose or make available proprietary or other confidential information of Company. The City’s obligations under this paragraph do not impose a duty upon the City to challenge any ruling
or opinion of the Texas Attorney General to release information in response to a specific request for information under the Texas Public Information Act.

ARTICLE IX
DEFAULT, TERMINATION AND REMEDIES

Section 9.01. Default and Termination. Except as otherwise provided herein, at any time during the Term of this Agreement that Company is not in material compliance with its obligations under this Agreement, the City may send written notice of such non-compliance to Company. If such non-compliance is not cured within thirty (30) days after Company’s receipt of such notice or, if non-compliance is not reasonably susceptible to cure within thirty (30) days and a cure is not begun within such 30-day period and thereafter continuously and diligently pursued to completion on a schedule approved by the City (in either event, a “Cure”), then the City may, at its sole discretion, terminate this Agreement or withhold Grant Payments otherwise due for the calendar year or years in which the non-compliance occurs. If the City elects to withhold Grant Payments under this Section rather than to terminate the Agreement, then, upon a Cure by Company, Company will be eligible to receive Grant Payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. However, the Grant Payment withheld by the City for any year during which Company was not in compliance, shall be deemed forfeited by Company and the City shall not be liable for later payment of such forfeited Grant Payments. Except as to circumstances arising from an event of force majeure, the Term shall not be extended as a result of any cure period agreed to by the City under this Section.

Section 9.02. Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure under Section 8.01, the City may terminate the Agreement immediately by providing written notice to Company if Company, its officers or
signatories to this Agreement misrepresented or misrepresents any material fact or information: (i) upon which the City relied in entering into this Agreement; (ii) upon which the City relies in making a Grant Payment to Company; or (iii) as an inducement for the City to make a Grant Payment to Company.

Section 9.03. Other Remedies. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, either Party may pursue such remedies as are available at law or in equity for breach of contract. Notwithstanding the foregoing, the City shall not in any case be liable for special, incidental, consequential, indirect, or other similar damages, even if City or its agent(s) have been advised of the possibility of such damages. In no event shall the City’s liability for damages under this Agreement exceed the amount of the Grant Payment due and owing to Company for the Company’s proper performance in the year immediately preceding the year in which the breach by the City Occurred.

Section 9.04. Offset. The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Company.

Section 9.05. Force Majeure. An event of force majeure means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations. If a force majeure event occurs and such event prevents a Party from fulfilling its obligations hereunder, the applicable
time period for performing such obligations shall be extended by the period of delay resulting from
the force majeure.

Section 9.06. Indemnification. The City shall not be obligated to pay any indebtedness or obligations of Company. Company hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against (i) any indebtedness or obligations of Company; (ii) any other loss, claim, demand, lawsuit, liability or damages arising from the negligence or intentional misconduct of Company in the performance of its obligations under this Agreement, or (iii) breach of any representation, warranty, covenant or agreement of Company contained in this Agreement, without regard to any notice or cure provisions. Company's indemnification obligation hereunder shall include payment of the City's reasonable attorneys' fees, costs and expenses with respect thereto.

ARTICLE X
MISCELLANEOUS

Section 10.01. Entire Agreement. This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

Section 10.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 10.03. Assignment; Successors. Company may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.
Section 10.04. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

Section 10.05. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the respective address of the recipient Party set forth below, or at such other address furnished in writing to the other Party hereto:

Company: Katerra Inc.
2494 Sand Hill Rd #100
Menlo Park, CA 94025
Attn: John Somerville
Telephone: 469-831-4219

City: City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Telephone: (512) 393-8101

Section 10.06. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 10.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which
is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 10.08. Third Parties. The City and Company intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Company or permitted assignees or successors of the City and Company, except that the indemnification and hold harmless obligations by Company provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 10.09. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section 10.10. Immunity. The City, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

Section 10.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument, and facsimile or electronic (in PDF) copies of this Agreement and facsimile or electronic (in PDF) signatures to this Agreement shall be authorized and deemed effective.

EXECUTED in duplicate originals to be effective as of the Effective Date.
CITY OF SAN MARCOS, TEXAS

By: [Signature]
   Bert Lumbreras, City Manager

COMPANY

By: [Signature]
   [Name and title]
   HEAD OF MANUFACTURING
EXHIBIT “A”

Legal Description of the Project Site
EXHIBIT “B”

Form of Compliance Certificate

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
ANNUAL COMPLIANCE CERTIFICATE

From: [Name of Company]
[Name and Title of Responsible Party]
[Address 1]
[Address 2]
[Email address]
[Phone Number]

To: City of San Marcos
Attn: City Manager
630 East Hopkins Street
San Marcos, TX 78666

Reporting Period:
[MM/DD/YYYY] to [MM/DD/YYYY]

"Jobs" at Beginning of Reporting Period: [Number of Jobs]

"Jobs" at End of Reporting Period: [Number of Jobs]

<table>
<thead>
<tr>
<th>Real Property Quick Reference ID</th>
<th>Base Year Value Tax Year XX</th>
<th>Reporting Tax Year XX Value of Improvements</th>
<th>Change in Value</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Personal Property Quick Reference ID</td>
<td>Base Year Value Tax Year XX</td>
<td>Reporting Tax Year XX Value of Improvements</td>
<td>Change in Value</td>
</tr>
<tr>
<td>-------------------------------------</td>
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<td>$</td>
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<tr>
<td></td>
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<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Change in Value</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Tax Rate (%)</td>
<td>0.6139</td>
</tr>
<tr>
<td>Total Taxes Paid (Change in Value/100*City Tax Rate)</td>
<td>$</td>
</tr>
<tr>
<td>Incentive multiplier (%)</td>
<td>80%</td>
</tr>
<tr>
<td><strong>Total Incentive Payable to Company</strong></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>-</td>
</tr>
</tbody>
</table>

List all supporting documents attached to this Compliance Certificate:
1)
2)
3)
4)
5)

The City Manager may agree to an amendment to this form from time to time, provided such amended form shall be substantially similar in reporting the information necessary to confirm compliance with the Chapter 380 Agreement and to calculate the Grant Payments.

Upon request of the City Manager, the Company shall supplement this form with such information as is reasonably necessary for the City to audit or verify the information reported by the Company, including such things as jobs reports submitted to state and federal agencies, tax forms and personnel records, subject to the protection of personal information of individual employees protected by applicable laws.

The Company acknowledges and agrees that it is a recipient of public funds. As such, the City has a special right of access to information related to the Company’s performance under the Chapter 380 Agreement. Certain information of the Company may be subject to disclosure under the Texas Public Information Act. While the City may notify the Company of certain requests for information from third parties, the City shall have no obligation to assert exceptions to disclosure of such information to the Texas Attorney General or other authority having jurisdiction on behalf of the Company.
I, the undersigned, certify that I am a duly authorized representative of the Company, that the foregoing information is true and correct, and that the Company has complied with all terms and conditions of the Chapter 380 Agreement.

Matthew [Signature]
Print Name and Title
Date
**EXHIBIT “C”**

Summary of Chapter 380 Payments

<table>
<thead>
<tr>
<th>Year</th>
<th>Performance Required</th>
<th>Grant Payment for Prior Year’s Performance</th>
<th>Percentage of Additional Property Taxes to be Rebated as a Grant Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>Start Improvements</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>2019</td>
<td>Pursue completion of Improvements</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>2020</td>
<td>Improvements Completed, Initial Jobs and Begin to Operate Business</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>2021</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>2022</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes*</td>
<td>80%</td>
</tr>
<tr>
<td>2023</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>80%</td>
</tr>
<tr>
<td>2024</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>80%</td>
</tr>
<tr>
<td>2025</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>70%</td>
</tr>
<tr>
<td>2026</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>70%</td>
</tr>
<tr>
<td>2027</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>70%</td>
</tr>
<tr>
<td>2028</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>60%</td>
</tr>
<tr>
<td>2029</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>60%</td>
</tr>
<tr>
<td>2030</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>60%</td>
</tr>
<tr>
<td>2031</td>
<td>Improvements on Tax Roll, Jobs and Operate Business</td>
<td>Yes</td>
<td>60%</td>
</tr>
</tbody>
</table>

* Although the improvements will be completed in 2020, the full value of the completed improvements for purposes of calculating any Grant Payments will not be reflected on the tax rolls until January 1, 2021. Similarly, the Jobs required will be based on the number of Jobs created as of December 31, 2021. Accordingly, the first Grant Payment application and payment cannot be made until 2022, when all information for the 2021 Reporting Period is available.
S.M.A.R.T Terminal FAQ

- **How will development of this property affect the San Marcos Regional Airport?**
  - The developer is in conversations with Texas Aviation Partners, the organization that manages the San Marcos Regional Airport. Both groups understand that development of this site cannot disrupt future plans to extend runway 35/17.
  - Details regarding the runway expansion will be written into a 380 agreement for Smart Terminal.

- **What is the process for annexation of this property?**
  - The annexation process for this property began in October when the developer and property submitted an application requesting annexation.
  - There have been two public hearings held at City Council.
  - First and second readings for the annexation ordinance are scheduled for January 15 and January 29 respectively. These readings will run concurrently with zoning.
  - A portion of the proposed development is within a disputed area of San Marcos and Martindale’s ETJ. San Marcos staff is working with the City of Martindale to get this boundary resolved. If it is not resolved by second reading of the zoning change and annexation ordinances, then staff will remove this area from the request.

- **What roadway improvements are in this area?**
  - The developer has discussed improvements to Hwy 80 with TxDOT and anticipates the need for center and right turn lanes in the vicinity, which should improve safety in the area.
  - A traffic impact analysis will be required and will determine which improvements are necessary.
  - Construction of FM 110 is scheduled to begin in 2020-2021 and will help alleviate traffic in the area.

- **How will this affect the number of trains in the area?**
  - There are currently approximately 21 trains per day along this rail line.
  - The applicant indicated that development of this site at peak buildout would increase locomotive traffic by 1 to 3 trains a week.
  - Caldwell County has applied for a Department of Transportation Grant for rail improvements.
  - Deferring to rail transportation can reduce a company’s road miles by up to 80%. One of the potential projects of the S.M.A.R.T. terminal has stated that the company currently drives 15,000,000 road miles per year. By using this terminal, 80% of those road miles would be taken off the highway system.

- **What is in the approved 380 Economic Development Incentive Agreement?**
  - 66 Acres are affected by an approved economic incentives development agreement for a project known as Katerra.
  - The company has agreed to employ at least 542 individuals and invest $109 million in the project.
  - This agreement waives the following development standards:
    - Block perimeter maximums
• Dead end street maximums.
  • Maximum blank wall area on a building.

  o This agreement also waives a portion of the property taxes for the site.

• Why is the zoning of all 934 acres being requested by the developer as opposed to the 66 acres for the Katerra site?
  o There is a substantial investment necessary to develop a rail park. The estimated infrastructure necessary for the project is estimated at $45M. The developer needs a level of security that the entire property will be zoned accordingly in order to financially justify the investment.

• What is the economic benefit to San Marcos?
  o The applicant has stated that this project will invest $45 million in infrastructure improvements and an estimated $3 to $4 billion in increased property values. To put this in perspective, the current City of San Marcos’ property tax values for residential and commercial are approximately $4.5 billion in total.

• Fire Stations / ISO Rating
  o This property is within the recommended five miles from Fire Station #5, which gives the property a sufficient ISO rating. This helps minimize hazard insurance premiums for commercial properties located within the development.
  o A new fire station will likely be located closer to this site in the future. The new location may be near Hwy 80 and Hwy 21. This project is not driving the need for a future fire station at this location.

• Floodplain Regulations
  o While the zoning district allows a maximum of 80% impervious cover, the developer states that approximately 200 acres will have restricted impervious cover due to existing floodplain and proposed rail development.
  o City Ordinance treats all floodplain as floodway.
  o Hydraulic analysis is required for improvement within the floodplain showing no-rise.
  o Floodplain storage volume must be maintained.
  o Building lowest floor elevation must be 2-feet above the floodplain.

• Water Quality Requirements
  o Site is located outside Recharge Zone, Transition Zone, SM River Protection Zone, and SM River Corridor and stormwater quality treatment is not required.
  o Water Quality and Buffer Zones are located within the development.

• Additional Impervious Cover Restrictions
  o Existing slopes between 15% and 25% are limited to 35% impervious cover.
  o Existing slopes greater than 25% are limited to 20% impervious cover.
  o No impervious cover is allowed within a Water Quality Zone, except for limited instances
  o Limited impervious cover is allowed within a Buffer Zone.

• Other Drainage Requirements
Increased runoff from increased impervious cover must be addressed with development. Rate of runoff after development must be equal to or less than the rate of runoff prior to development for the 2, 10, 25, and 100-year storms.

Timing of how flows come together downstream of development, as one creek enters another, must also be analyzed to show there is no increase in water surface.

Post project improvements cannot increase water surface elevations off-site.

Upstream flow, based on ultimate buildout conditions, must be conveyed through site.

Drainage infrastructure must be designed for the 25-year storm with the 100-year contained within a drainage easement or ROW.

• **Who will provide utilities to the site?**
  
  Bluebonnet Electric Cooperorative will provide electric service to the development.
  
  This site is within both City of San Marcos and Maxwell’s water CCNs. Water service will be provided by both organizations unless the CCN map is adjusted.
  
  City of San Marcos will provide wastewater service to the site.
ZC-18-21(Smart Terminal)
An amendment to the City’s official zoning map rezoning approximately 934 acres, more or less, out of the William Pettus Survey, Abstract No. 21, generally located near the intersection of State Highway 80 and FM 1984, from “ETJ” Extraterritorial Jurisdiction to “HI” Heavy Industrial. (T. Carpenter)
Location:

- Approximately 934.34 acres located near Highway 80 and FM 1984

- Surrounding uses include Gary Job Corps, San Marcos Regional Airport, agricultural uses, and single-family residences.
Context & History

• Existing Zoning: (Extraterritorial Jurisdiction) ETJ

• Proposed Zoning: Heavy Industrial (HI)

• Proposed Use: Rail Park
Surrounding Development
AN-18-05
Smart Terminal - Katerra Site

171.80 ACRES
OWNERS: CURBY O'NEIL HEVER, DIANE M.
UMBERGER AND CHARLES T. JONES
DOCUMENT NO. 2017-005884 O.P.R.
(DESCRIBED IN

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 12/18/2018

Subject Property
Parcel
City Limit
FM 110
Katerra
ETJ Overlap

0 230 460 920 Feet
N

San Marcos
Katerra Site
Floodplain & Water Quality
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Water Service Areas
Comprehensive Plan Analysis

Step 1: Where is the property located on the Comprehensive Plan?

Located in a Low Intensity Area

“They are generally made up of larger undeveloped tracts of land where the preservation of sensitive environmental areas, flood hazard areas and agricultural lands should be considered as part of any development proposal.” (4.1.1.6)
Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

Applicant is requesting a “Heavy Industrial” (HI) within an Existing Neighborhood.

**Table 4.1 Comprehensive Plan / District Translation**

<table>
<thead>
<tr>
<th>District Classification</th>
<th>Open Space/Agricultural</th>
<th>Low Intensity</th>
<th>Existing Neighborhood</th>
<th>Medium or High Intensity Zone</th>
<th>Employment Center</th>
<th>Corridor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional Residential</td>
<td>NP</td>
<td>NP</td>
<td>C</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Neighborhood Density Districts</td>
<td>NP</td>
<td>NP</td>
<td>See Section 4.1.2.4 - 4.1.2.5</td>
<td>NP</td>
<td>NP</td>
<td>C</td>
</tr>
<tr>
<td>Character Districts</td>
<td>NP</td>
<td>C</td>
<td>--</td>
<td>C</td>
<td>NP</td>
<td>C</td>
</tr>
<tr>
<td>Special Districts</td>
<td>--</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
<td>C</td>
</tr>
</tbody>
</table>

Legend:
- **NP** = Not Preferred
- **--** = Not Allowed (PSA Required)
- **C** = Consider
HI Zoning Analysis:

- HI is intended to accommodate a broad range of high impact manufacturing or industrial uses, that by their nature create a nuisance, and which are not properly associated with or are not compatible with nearby residential or commercial uses.

- Proposed rezoning to HI is consistent with the approved 380 agreement.

- Special Districts are identified as “Not Preferred” within Low Intensity Areas as identified on the Comprehensive Plan.

- Property is adjacent to San Marcos Regional Airport & existing railroad
Staff Recommendation:

• Staff provides this request to the Planning & Zoning Commission for your consideration and recommends **approval** of the request for a zoning change from Extraterritorial Jurisdiction (ETJ) to Heavy Industrial (HI).
AGENDA CAPTION:
Consider approval of Ordinance 2019-01, on the first of two readings, annexing to the City approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984; approving a service plan for this area; including procedural provisions; and providing an effective date.

Meeting date: January 15, 2019

Department: Planning & Development Services

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: Click or tap here to enter text.
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s):
☒ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable

Master Plan: N/A
**Background Information:**
This is a voluntary annexation request submitted by Transportation Alliance for approximately 934.34 acres comprised of six separate tracts of land along State Highway 80 and FM 1984. City Council approved a 380 agreement for the Katerra Development which is part of the larger tract, on October 16, 2018.

Below is the proposed schedule for this annexation which complies with the Texas Local Government Code requirements.

**City Council Resolution:** November 20, 2018 (APPROVED)
**City Council Public Hearing #1:** December 12, 2018 (Complete)
**City Council Public Hearing #2:** December 19, 2018 (Complete)
**City Council Ordinance 1st Reading:** January 15, 2019 (Today)
**City Council Ordinance 2nd Reading:** January 29, 2019

**Council Committee, Board/Commission Action:**
Click or tap here to enter text.

**Alternatives:**
Click or tap here to enter text.

**Recommendation:**
Click or tap here to enter text.
ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, ANNEXING TO THE CITY APPROXIMATELY 934.34 ACRES OF LAND, COMPRISED OF SIX TRACTS OF LAND OUT OF THE WILLIAM PETTUS SURVEY, ABSTRACT NO. 21 AND LOCATED ALONG STATE HIGHWAY 80 AND FM 1984; APPROVING A SERVICE PLAN FOR THIS AREA; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City has received a request for annexation of approximately 934.34 acres of land, comprised of six tracts of land out of the William Pettus Survey, Abstract No. 21 and located along State Highway 80 and FM 1984 as shown on Exhibit A, attached hereto and made a part hereof for all purposes (the "Annexation Area") on behalf of the owner(s) of the Annexation Area.

2. The City Council conducted two public hearings on December 12, 2018 and December 19, 2018, to consider the request for annexation by the City of the Annexation Area.

3. A notice for each public hearing was published in a newspaper having general circulation in the City and in the Annexation Area, on November 30, 2018 and December 2, 2018, such dates being after the 20th day and before the 10th day before the date of the respective hearings. A notice of each of the public hearings was also posted on the City’s Internet website on or after the 20th day and before the 10th day before the date of the respective hearings, and these notices remained posted on the website until the dates of the respective hearings.

4. The Annexation Area is contiguous and adjacent to the current boundaries of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The recitals of this ordinance are approved and adopted.

SECTION 2. The Annexation Area is annexed to the City of San Marcos, Texas.

SECTION 3. The Service Plan for the Annexation Area, a copy of which is attached hereto as Exhibit B and made a part hereof for all purposes, is approved.

SECTION 4. The corporate limits of the City are extended to include the Annexation Area.

SECTION 5. The Annexation Area is a part of the City of San Marcos, Texas, and residents in it are entitled to all the rights and privileges of all citizens of the City, and are bound by the acts, ordinances, resolutions and regulations of the City.
SECTION 6. If any portion of the Annexation Area is determined by the City or a court of competent jurisdiction to be within the extraterritorial jurisdiction of another municipality or ineligible to be annexed for any other reason, this ordinance shall not be effective as to such portion, but shall, otherwise, be effective and enforceable as to the remainder of the Annexation Area.

SECTION 7. If any word, phrase, clause, sentence, provision or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 8. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 9. This ordinance will take effect upon its adoption on second reading.

PASSED AND APPROVED on first reading on January 15, 2019.

PASSED, APPROVED AND ADOPTED on second reading on , 2019.

Jane Hughson
Mayor

Attest: Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney
EXHIBIT A
[Metes and Bounds Description of the Annexation Area to be Attached]
EXHIBIT B

Annexation
Service Plan Hwy 80 & FM 1984
November 27, 2018 AN-18-05

Service Plan for the Annexation of a 934.34 +/- acre tract of land out of the William Pettus
Survey, Abstract No. 21, generally located near the intersection of State Highway 80 and

Pursuant to the provisions of the Texas Local Government Code, Chapter 43, the following service
plan is hereby adopted for the annexation of the above-referenced 934.34 +/- acre area. The
property is being annexed at the request and with the consent of the property owner.

1. Police Protection
Police services, including patrolling, response to calls and other routine services, will begin on the
effective date of the annexation using existing personnel and equipment in the same manner as
provided to other areas of the City.

2. Fire Protection
Fire protection services, including emergency response calls, will begin on the effective date of
the annexation using existing personnel and equipment in the same manner as provided to other
areas of the City, and within the limitations of the available water supply.

3. Emergency Medical Services
Emergency medical services, including emergency response calls, will continue at the same level
of service after the annexation. The City of San Marcos contracts for emergency medical services
through the San Marcos – Caldwell County EMS, which already provides service to the area being
annexed.

4. Solid Waste Collection
Solid waste collection services, provided under contract with a private company, will be made
available to all properties on the effective date of the annexation in the same manner as available
to other areas of the City under applicable ordinances. Residents of the annexed area may elect to
continue using the services of a private solid waste hauler for a period of two years after the
effective date of the annexation. Businesses and institutions must make arrangements with private
solid waste haulers.

5. Operation and Maintenance of Water and Wastewater Facilities
The annexation area is located partially within the CCN service area of the Maxwell Water Supply
Corporation and partly within the CCN service area of the City of San Marcos. Wastewater service
for the annexation area is proposed to be provided the City of San Marcos. Any services provided
by the City will be on the same basis as available to other areas of the City under applicable ordinances, with all extensions made by property owners at their sole expense.

6. Construction, Operation and Maintenance of Roads and Streets
As new development occurs within the annexed area, the property owners will be required to construct streets at their sole expense, in accordance with applicable ordinances.

7. Electric Service
The property is located in the Bluebonnet Electric Cooperative service area.

8. Operation and Maintenance of Parks, Playgrounds, and/or Swimming Pools
No parks, playgrounds and/or swimming pools currently exist within the proposed annexation area. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding recreational facilities to serve the annexed area. Upon annexation, the owners and residents of property located within the annexed area shall be entitled to the use of all municipal parks and recreational facilities, subject to the same restrictions, fees and availability that pertains to the use of those facilities by other citizens of the city.

9. Operation and Maintenance of Other Public Facilities, Buildings and Services
No other City of San Marcos public facilities, buildings or services currently exist within the annexed area. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding other public facilities, buildings and services. Upon annexation, the owners and residents of property located within the annexed area shall be entitled to the use of all municipal facilities, buildings and services, subject to the same restrictions, fees and availability that pertains to the use of those facilities and services by other citizens of the city.
Subject Property
Parcel
City Limit
Outside San Marcos ETJ
Katerra
Approx. FM 110 Allignment

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 12/14/2018
<table>
<thead>
<tr>
<th>Action</th>
<th>Regulation / Timing / Notes</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Zoning Change Application Submittal Deadline</strong></td>
<td>Follow standard P&amp;Z Deadlines</td>
<td>10.30.18</td>
</tr>
<tr>
<td><strong>Annexation Petition Filed</strong></td>
<td></td>
<td>10.26.18</td>
</tr>
<tr>
<td><strong>Notice of (Zoning Change) Application</strong></td>
<td>Before the 12th day after an application is received</td>
<td>11.09.18</td>
</tr>
<tr>
<td><strong>Personal, Posted, and Published Notification for Planning &amp; Zoning Commission and City Council for all (Zoning) Public Hearings.</strong></td>
<td>At least 17 days before public hearing</td>
<td>11.21.18</td>
</tr>
<tr>
<td><strong>City Council Resolution</strong> (no notice required)**</td>
<td>6-29 days from petition filing</td>
<td>11.20.2018</td>
</tr>
<tr>
<td>1) Accepting petition for annexation</td>
<td>Council directs development of service plan for area to be annexed</td>
<td>11.20.2018</td>
</tr>
<tr>
<td>2) Establish public hearing dates</td>
<td></td>
<td>11.20.2018</td>
</tr>
<tr>
<td><strong>Post Notification on Website</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Published Notification for 1st public hearing</strong></td>
<td>11-20 days before public hearing</td>
<td>11.30.18</td>
</tr>
<tr>
<td><strong>Personal Notification</strong> to property owner, public entities (Sec 43.053), utility and other service providers, railroad company if necessary,**</td>
<td>11-20 days before public hearing</td>
<td></td>
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<tr>
<td><strong>Published Notification for 2nd public hearing</strong></td>
<td>11-20 days before public hearing</td>
<td>12.02.18</td>
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<td><strong>Planning &amp; Zoning Commission</strong> <strong>public hearing and action (Zoning)</strong></td>
<td>11-20 days before public hearing</td>
<td>12.11.18</td>
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<td><strong>Last day for submission of written protest</strong></td>
<td>10 days after published notification</td>
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<td><strong>City Council public hearing #1 and present service plan</strong></td>
<td>Not more than 40 days before the 1st reading of ordinance</td>
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<td><strong>City Council public hearing #2 and present service plan</strong></td>
<td>At least 20 days before 1st reading of ordinance</td>
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<td><strong>City Council Ordinance 1st Reading</strong> (Annexation &amp; Zoning) Public Hearing</td>
<td>At least 20 days after public hearing # 2 and no more than 40 days after public hearing #1</td>
<td>1.15.19</td>
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<td><strong>City Council Ordinance 2nd Reading</strong> (Annexation &amp; Zoning)**</td>
<td></td>
<td>1.29.19</td>
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This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 12/14/2018
This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Map Date: Sept. 9, 2017.
Service Plan for the Annexation of a 934.34 +/- acre tract of land out of the William Pettus Survey, Abstract No. 21, generally located near the intersection of State Highway 80 and FM 1984.

Pursuant to the provisions of the Texas Local Government Code, Chapter 43, the following service plan is hereby adopted for the annexation of the above-referenced 934.34 +/- acre area. The property is being annexed at the request and with the consent of the property owner.

1. Police Protection
Police services, including patrolling, response to calls and other routine services, will begin on the effective date of the annexation using existing personnel and equipment in the same manner as provided to other areas of the City.

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3. Emergency Medical Services
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AN-18-05 (Smart Terminal Annexation)

Consider Annexation of a 934.34 +/- acre tract of land out of the William Pettus Survey, Abstract No. 21, generally located near the intersection of State Highway 80 and FM 1984
Location:

- Hwy 80 & FM 1984
- Approximately 934.34 acres
- Six separate tracts of land
Surrounding Development
Historical ETJ Map
Floodplain & Water Quality
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Fire Station Location Allocation Network
Proposed Zoning & Annexation Schedule:

- Annexation Public Hearings
  - Dec. 12, 2018
  - Dec. 19, 2018
  - Jan. 15, 2019

- Zoning Public Hearings
  - Dec. 11, 2018
  - Jan. 15, 2019

- Second Reading & Approval of Ordinance
  - Jan. 29, 2019
S.M.A.R.T Terminal FAQ

• **How will development of this property affect the San Marcos Regional Airport?**
  o The developer is in conversations with Texas Aviation Partners, the organization that manages the San Marcos Regional Airport. Both groups understand that development of this site cannot disrupt future plans to extend runway 35/17.
  o Details regarding the runway expansion will be written into a 380 agreement for Smart Terminal.

• **What is the process for annexation of this property?**
  o The annexation process for this property began in October when the developer and property submitted an application requesting annexation.
  o There have been two public hearings held at City Council.
  o First and second readings for the annexation ordinance are scheduled for January 15 and January 29 respectively. These readings will run concurrently with zoning.
  o A portion of the proposed development is within a disputed area of San Marcos and Martindale’s ETJ. San Marcos staff is working with the City of Martindale to get this boundary resolved. If it is not resolved by second reading of the zoning change and annexation ordinances, then staff will remove this area from the request.

• **What roadway improvements are in this area?**
  o The developer has discussed improvements to Hwy 80 with TxDOT and anticipates the need for center and right turn lanes in the vicinity, which should improve safety in the area.
  o A traffic impact analysis will be required and will determine which improvements are necessary.
  o Construction of FM 110 is scheduled to begin in 2020-2021 and will help alleviate traffic in the area.

• **How will this affect the number of trains in the area?**
  o There are currently approximately 21 trains per day along this rail line.
  o The applicant indicated that development of this site at peak buildout would increase locomotive traffic by 1 to 3 trains a week.
  o Caldwell County has applied for a Department of Transportation Grant for rail improvements.
  o Deferring to rail transportation can reduce a company’s road miles by up to 80%. One of the potential projects of the S.M.A.R.T. terminal has stated that the company currently drives 15,000,000 road miles per year. By using this terminal, 80% of those road miles would be taken off the highway system.

• **What is in the approved 380 Economic Development Incentive Agreement?**
  o 66 Acres are affected by an approved economic incentives development agreement for a project known as Katerra.
  o The company has agreed to employ at least 542 individuals and invest $109 million in the project.
  o This agreement waives the following development standards:
    ▪ Block perimeter maximums
- Dead end street maximums.
  - Maximum blank wall area on a building.
    - This agreement also waives a portion of the property taxes for the site.

- Why is the zoning of all 934 acres being requested by the developer as opposed to the 66 acres for the Katerra site?
  - There is a substantial investment necessary to develop a rail park. The estimated infrastructure necessary for the project is estimated at $45M. The developer needs a level of security that the entire property will be zoned accordingly in order to financially justify the investment.

- What is the economic benefit to San Marcos?
  - The applicant has stated that this project will invest $45 million in infrastructure improvements and an estimated $3 to $4 billion in increased property values. To put this in perspective, the current City of San Marcos’ property tax values for residential and commercial are approximately $4.5 billion in total.

- Fire Stations / ISO Rating
  - This property is within the recommended five miles from Fire Station #5, which gives the property a sufficient ISO rating. This helps minimize hazard insurance premiums for commercial properties located within the development.
  - A new fire station will likely be located closer to this site in the future. The new location may be near Hwy 80 and Hwy 21. This project is not driving the need for a future fire station at this location.

- Floodplain Regulations
  - While the zoning district allows a maximum of 80% impervious cover, the developer states that approximately 200 acres will have restricted impervious cover due to existing floodplain and proposed rail development.
  - City Ordinance treats all floodplain as floodway.
  - Hydraulic analysis is required for improvement within the floodplain showing no-rise.
  - Floodplain storage volume must be maintained.
  - Building lowest floor elevation must be 2-feet above the floodplain.

- Water Quality Requirements
  - Site is located outside Recharge Zone, Transition Zone, SM River Protection Zone, and SM River Corridor and stormwater quality treatment is not required.
  - Water Quality and Buffer Zones are located within the development.

- Additional Impervious Cover Restrictions
  - Existing slopes between 15% and 25% are limited to 35% impervious cover.
  - Existing slopes greater than 25% are limited to 20% impervious cover.
  - No impervious cover is allowed within a Water Quality Zone, except for limited instances
  - Limited impervious cover is allowed within a Buffer Zone.

- Other Drainage Requirements
- Increased runoff from increased impervious cover must be addressed with development. Rate of runoff after development must be equal to or less than the rate of runoff prior to development for the 2, 10, 25, and 100-year storms.
- Timing of how flows come together downstream of development, as one creek enters another, must also be analyzed to show there is no increase in water surface.
- Post project improvements cannot increase water surface elevations off-site.
- Upstream flow, based on ultimate buildout conditions, must be conveyed through site.
- Drainage infrastructure must be designed for the 25-year storm with the 100-year contained within a drainage easement or ROW.

**Who will provide utilities to the site?**
- Bluebonnet Electric Cooperative will provide electric service to the development.
- This site is within both City of San Marcos and Maxwell's water CCNs. Water service will be provided by both organizations unless the CCN map is adjusted.
- City of San Marcos will provide wastewater service to the site.
AGENDA CAPTION:
Consider approval of Ordinance 2018-52 (ZC-18-16), on the first of two readings, amending the Official Zoning Map of the City by rezoning a 1.206 acre, more or less, tract of land, being lots 17 through 22 of the Z Williamson Second Addition located at Earle Street and Baylor Avenue, from “SF-6” Single-Family Residential District to “ND-3” Neighborhood Density District-3; approving a regulating plan associated with such zoning map amendment; and including procedural provision.

Meeting date: January 15, 2019

Department: Planning & Development Services

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: [Please select from the dropdown menu below]
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☒ Land Use - Direct Growth, Compatible with Surrounding Uses
☒ Neighborhoods & Housing - Diversified housing options to serve citizens with varying needs and interests
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
**Master Plan:** [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]

Vision San Marcos - A River Runs Through Us

**Background Information:**

The property owner would like to rezone the property to Neighborhood Density -3 (ND-3) in order to subdivide the property into a maximum of 12 lots and construct zero lot line houses. The site is currently vacant.

The property is located in an Existing Neighborhood on the Comprehensive Plan, therefore, an Existing Neighborhood Regulating Plan is required to accompany the zoning request. If approved, the applicant will construct “Zero Lot Line House” Building Types on the property in accordance with the attached Existing Neighborhood Regulating Plan.

Any deviations from the attached Existing Neighborhood Regulating Plan will require Planning and Zoning Commission and City Council approval.

**Council Committee, Board/Commission Action:**

At their November 13 meeting, the Planning & Zoning Commission voted 7-1 to deny this zoning change request. Adoption of a motion to approve this zoning change request would require affirmative votes from at least 6 members of the City Council.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommended approval of the request.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING A 1.206 ACRE, MORE OR LESS, TRACT OF LAND, BEING LOTS 17 THROUGH 22 OF THE Z WILLIAMSON SECOND ADDITION LOCATED AT EARLE STREET AND BAYLOR AVENUE, FROM “SF-6” SINGLE-FAMILY RESIDENTIAL DISTRICT TO “ND-3” NEIGHBORHOOD DENSITY DISTRICT-3; APPROVING A REGULATING PLAN ASSOCIATED WITH SUCH ZONING MAP AMENDMENT; AND INCLUDING PROCEDURAL PROVISIONS.

RECITALS:

1. On November 13, 2018, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “SF-6” Single-Family Residential District to “ND-3” Neighborhood Density District-3 for a 1.206 acre, more or less, tract of land, being Lots 17 through 22 of the Z Williamson Second Addition located at Earle Street and Baylor Avenue, together with an associated request for approval of a regulating plan.

2. Subsequent to the public hearing on that date, the Planning and Zoning Commission considered the requests and voted to recommend that the requests be denied by the City Council of the City.

3. The City Council held a public hearing on December 4, 2018 regarding the requests and the recommendation.

4. All requirements pertaining to Zoning Map amendments and associated regulating plans have been met.

5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Official Zoning Map of the City is amended to rezone the 1.206 acre, more or less, tract of land described in Exhibit “A,” attached hereto and made a part hereof for all purposes, from “SF-6” Single-Family Residential District to “ND-3” Neighborhood Density District-3.

SECTION 2. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on __________.
PASSED, APPROVED AND ADOPTED on second reading on __________.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael Cosentino
City Attorney
At their regular meeting on November 13, 2018 the Planning and Zoning Commission considered this item during a Public Hearing.

Public Notification:

*Personal and Posted Notification for the November 13, 2018 Planning & Zoning Commission Meeting and December 4, 2018 City Council Meeting was mailed on October 26, 2018 (please see attached map and list).*  

*Notice for these Public Hearings was published in the October 28, 2018 San Marcos Daily Record.*

Correspondence:

*Staff received letters from 4 citizens in opposition of the request.*

Public Hearing:

1. Joe Schneider  
2. Jeff Jones  
3. Joel Barnard  
4. Lisa Marie Coppoletta  
5. Brad Barnard  
6. Laura Schneider  
7. Rita Samaniego  
8. Joe Loya
Planning & Zoning Commission draft meeting minutes:

ZC-18-16 (Earle Street) Hold a public hearing and consider a request by Lance Huber for a zoning change from “SF-6” Single Family to “ND-3” Neighborhood Density - 3 for approximately 1.206 acres, more or less, consisting of lots 17 thru 22 of the Z. Williamson’s Second Addition, located at the intersection of Baylor Avenue and Earle Street. (T. Carpenter)

Chair Garber opened the public hearing.

Tory Carpenter, Planner, gave an overview of the request.

A motion was made by that ZC-18-16 (Earle Street) be denied. The motion carried by the following vote:

For: 7 - Chair Garber, Garber Vice Chair Gleason, Commissioner Ramirez, Commissioner McCarty, Commissioner Rand, Commissioner Dillon, and Commissioner Baker.

Against: 1 - Commissioner Porterfield

Absent: 1 - Commissioner Haverland

Attachments:

1. Notification Map
2. Property Owner List
ZC-18-16
Earle St. Zoning Change
SF-6 to ND-3
Map Date: 9/20/2018

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<table>
<thead>
<tr>
<th>Property</th>
<th>Owner Name</th>
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<tbody>
<tr>
<td>1206 BAYLOR AVE</td>
<td>HUBBARD MACK ESTATE OF</td>
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<td>1205 COLUMBIA AVE</td>
<td>LEAL RAUL E &amp; REBECCA</td>
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<td>1206 COLUMBIA AVE</td>
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<td>1008 COLUMBIA AVE</td>
<td>LYNCH JOHN D &amp; JENNIFER W</td>
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<td>1315 DELMAR ST</td>
<td>SHEA CHRISTOPHER M &amp; MELINDA L</td>
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<td>1112 AMHERST AVE</td>
<td>HERNANDEZ ERNEST &amp; VELIA</td>
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<td>1205 DARTMOUTH AVE</td>
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<td>1213 BAYLOR AVE</td>
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<td>ALLBRIGHT JAMES G &amp; MARY E</td>
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<td>1108 COLUMBIA AVE</td>
<td>UGALDE PROPERTIES MARLTON-COLUMBIA LLC</td>
</tr>
<tr>
<td>1007 COLUMBIA AVE</td>
<td>PULIDO, ALBERT</td>
</tr>
<tr>
<td>1501 EARLE ST</td>
<td>TITTLE, DOLLIE R</td>
</tr>
<tr>
<td>1201 COLUMBIA AVE</td>
<td>LOCKHART KATHY</td>
</tr>
<tr>
<td>1407 DELMAR ST</td>
<td>WADE, JAMES FREDERICK</td>
</tr>
<tr>
<td>1500 EARLE ST</td>
<td>FLORES ALEJANDRO &amp; BEATRIZ I</td>
</tr>
<tr>
<td>1112 COLUMBIA AVE</td>
<td>ACKER, MARK</td>
</tr>
<tr>
<td>1510 EARLE ST</td>
<td>YAGER JAMES H &amp; CHERYL F</td>
</tr>
<tr>
<td>1406 MARLTON ST</td>
<td>P S MOHAN PROPERTIES I LLC</td>
</tr>
<tr>
<td>1414 MARLTON ST</td>
<td>S P MOHAN PROPERTIES I LLC</td>
</tr>
<tr>
<td>1203 COLUMBIA AVE</td>
<td>ZOOK, ROBERT L</td>
</tr>
<tr>
<td>1406 EARLE ST</td>
<td>HOGAN-SCHNEIDER PROPERTIES LTD</td>
</tr>
<tr>
<td>1411 MARLTON ST</td>
<td>PAVIA, RAY</td>
</tr>
<tr>
<td>1113 DARTMOUTH AVE</td>
<td>LIBERTY TRUST COMPANY</td>
</tr>
<tr>
<td>1504 MARLTON ST</td>
<td>GALAVIZ LAURA &amp;</td>
</tr>
<tr>
<td>Address</td>
<td>Name and Details</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>1307 EARLE ST</td>
<td>MYERS FAMILY TRUST</td>
</tr>
<tr>
<td>1104 COLUMBIA AVE</td>
<td>YOUNG RANDY &amp; JANICE TRUSTEES</td>
</tr>
<tr>
<td>1413 MARLTON ST</td>
<td>HART RONALD K &amp; HELEN G</td>
</tr>
<tr>
<td>1415 MARLTON ST</td>
<td>HART, RONALD</td>
</tr>
<tr>
<td>1404 MARLTON ST</td>
<td>HERNANDEZ FERNANDO &amp; YOLANDA</td>
</tr>
<tr>
<td>1204 AMHERST AVE</td>
<td>BARNARD, BRADLEY H</td>
</tr>
<tr>
<td>1507 DELMAR ST</td>
<td>LEAL, RAUL E</td>
</tr>
<tr>
<td>1415 EARLE ST</td>
<td>HUBER LANCE</td>
</tr>
<tr>
<td>1403 EARLE ST</td>
<td>PINALES PHILLIP &amp;</td>
</tr>
<tr>
<td>1207 COLUMBIA AVE</td>
<td>LEAL RAUL JR</td>
</tr>
<tr>
<td>1109 DARTMOUTH AVE</td>
<td>SMITH KENNETH E &amp; CAROLYN C LIVING TRUST</td>
</tr>
<tr>
<td>1318 MARLTON ST</td>
<td>YOUNG R N &amp; J M LIVING TRUST</td>
</tr>
<tr>
<td></td>
<td>CONA Rep Betsy Robertson</td>
</tr>
<tr>
<td></td>
<td>CONA Pres. Sarah Lee Underwood</td>
</tr>
<tr>
<td></td>
<td>Neighborhood Commission Chair Elena Duran</td>
</tr>
<tr>
<td></td>
<td>CONA Rep Rob Roark</td>
</tr>
<tr>
<td></td>
<td>Neighborhood Rep. Tres Hefter III</td>
</tr>
</tbody>
</table>
ZC-18-16
Earle St. Zoning Change
SF-6 to ND-3
Map Date: 9/20/2018

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
Zoning Request
ZC-18-16
Earle Street & Baylor Avenue

Summary
Request: A zoning change from “SF-6” Single Family to “ND-3” Neighborhood Density -3.
Applicant: Lance Huber
PO Box 2634
Seguin, TX 78155
Property Owner: Lance Huber
PO Box 2634
Seguin, TX 78155

Notification
Application: September 19, 2018
Neighborhood Meeting: October 3, 2018
Published: October 28, 2018
# of Participants: 3
Posted: October 26, 2018
Personal: October 26, 2018
Response: Three citizens provided letters in opposition of this request. Additionally, at the November 13, 2018 Planning & Zoning Commission meeting, 8 people spoke against this request during the public hearing.

Property Description
Legal Description: Lots 17, 18, 19, 20, 21, and 22 of the Z Williamson Second Addition
Location: Earle Street & Baylor Avenue
Acreage: 1.206 acres +/-
Existing Zoning: Single Family (SF-6)
Proposed Zoning: Neighborhood Density -3 (ND-3)
Existing Use: Vacant
Proposed Use: Single Family Attached
Preferred Scenario: Existing Neighborhood
Proposed Designation: Same
CONA Neighborhood: Westover
Sector: 2
Utility Capacity: Available
Floodplain: No

Surrounding Area
<table>
<thead>
<tr>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>North of Property:</td>
<td>Duplex (D)</td>
<td>Residential</td>
</tr>
<tr>
<td>Single Family (SF-6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South of Property:</td>
<td>Multifamily (MF-24)</td>
<td>Multifamily Residential</td>
</tr>
<tr>
<td>East of Property:</td>
<td>Single Family-6 (SF-6)</td>
<td>Residential</td>
</tr>
<tr>
<td>West of Property:</td>
<td>Single Family-6 (SF-6)</td>
<td>Residential</td>
</tr>
</tbody>
</table>

Staff Recommendation
X Approval as Submitted
Approval Alternate
Denial

Staff: Tory Carpenter, CNU-A
Title: Planner
Date: November 26, 2018

Commission Recommendation
Approval as Submitted
Approval Alternate
X Denial

Denied with a vote of 7-1
Zoning Request
ZC-18-16

Earle Street & Baylor Avenue

History
The property owner would like to rezone the property to Neighborhood Density -3 (ND-3) in order to subdivide the property into a maximum of 12 lots and construct zero lot line houses. The site is currently vacant.

The property is located in an Existing Neighborhood on the Comprehensive Plan, therefore, an Existing Neighborhood Regulating Plan is required to accompany the zoning request. If approved, the applicant will construct “Zero Lot Line House” Building Types on the property in accordance with the attached Existing Neighborhood Regulating Plan. Any deviations from the attached Existing Neighborhood Regulating Plan will require Planning and Zoning Commission and City Council approval.

Additional Analysis
The proposed lot configuration includes several lots that are considered severely elongated, i.e. their depth is more than three times the lot width. An Alternative Compliance would be required at the time of plat to vary from this standard.

Comments from Other Departments
Police  No Comment
Fire  No Comment
Public Services  No Comment
Engineering  No Comment

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Compatibility of Uses &amp; Density Criteria (Sec.4.1.2.5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consistent</td>
<td>Inconsistent</td>
</tr>
<tr>
<td>X</td>
<td>Helps prevent the impacts of high density uses on low density areas. The property is located in an Existing Neighborhood and is surrounded by residential uses. The proposed rezoning to allow for zero lot line houses would be consistent with the surrounding residential uses and density.</td>
</tr>
<tr>
<td>N/A</td>
<td>Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study. Studies were not complete at time of request.</td>
</tr>
<tr>
<td>X</td>
<td>Encourages more opportunities for home ownership. The proposed rezoning would allow additional properties to be created for single family use.</td>
</tr>
<tr>
<td>X</td>
<td>Ensures a diversity of housing to serve citizens with varying needs and interests. ND-3 is intended to provide a variety of small-scale residential uses, including accessory dwelling units, house, cottage, and a zero lot line house.</td>
</tr>
</tbody>
</table>
### Criteria for Approval (Sec.2.5.1.4)

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consistent</td>
<td>Inconsistent</td>
</tr>
</tbody>
</table>
| X | Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map  
Vision San Marcos states that diversified housing options should serve citizens with varying needs and interests and allow for more infill housing (Neighborhoods & Housing, Goal 3). In accordance with the Existing Neighborhood Regulating Plan, the proposed rezoning allows for an opportunity to establish infill housing. |
| N/A | Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area  
Studies were not complete at time of request. |
| N/A | Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect  
There is no development agreement affecting this site. |
| X | Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified  
The applicant is proposing a single family use in accordance with the attached Existing Neighborhood Regulation Plan and will be required to meet applicable residential standards. |
| X | Whether the proposed zoning will reinforce the existing or planned character of the area  
Approval of this zoning change would allow the property to develop according to the vision of the Comprehensive Plan (Neighborhood and Housing Goal 3), and will be compatible with the existing residential character of the neighborhood. |
| X | Whether the site is appropriate for the development allowed in the proposed district  
The property is vacant and is currently zoned Single-Family (SF-6) which is limited to residential uses. As reflected in the Existing Neighborhood Regulating Plan, the applicant is proposing that residential building types (Zero Lot Line Houses) be constructed on the property. |
| N/A | Whether there are substantial reasons why the property cannot be used according to the existing zoning  
The property can currently be used in accordance with the existing zoning which would allow for six single-family homes. |
| X | Whether there is a need for the proposed use at the proposed location  
The rezoning does serve a public purpose as it furthers the neighborhoods and housing goals of the Comprehensive Plan. |
<table>
<thead>
<tr>
<th>X</th>
<th>Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development. The property has access to sufficient water, wastewater, electric and other City services applicable to properties within the City Limits.</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property. The majority of the area surrounding the property is residential and therefore, the proposed rezoning would be consistent with the surrounding residential uses.</td>
</tr>
<tr>
<td>X</td>
<td>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5. Per Table 4.5, Neighborhood Density District / Existing Zoning Translation Table, a proposed rezoning to ND-3 in a Low Density Category is designated as “Consider”. “Consider” requires that the request be considered based on the zoning criteria in Section 2.5.1.4 and compatibility of uses and density in Section 4.1.2.5 as outlined in this staff report.</td>
</tr>
<tr>
<td>X</td>
<td>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management. The property is located within a low to moderately constrained area according to the Land Use Suitability Map.</td>
</tr>
<tr>
<td>X</td>
<td>Any other factors which shall substantially affect the public health, safety, morals, or general welfare. None noted.</td>
</tr>
</tbody>
</table>
### LAND USE

**Preferred Scenario Map / Land Use Intensity Matrix**

<table>
<thead>
<tr>
<th>Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?</th>
<th>YES</th>
<th>NO (map amendment required)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>X</strong> – Existing Neighborhood</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### ECONOMIC DEVELOPMENT

**Furthering the goal of the Core 4 through the three strategies**

<table>
<thead>
<tr>
<th>STRATEGY</th>
<th>SUMMARY</th>
<th>SUPPORTS</th>
<th>CONTRADICTS</th>
<th>NEUTRAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparing the 21st Century Workforce</td>
<td>Provides / Encourages educational opportunities</td>
<td></td>
<td><strong>X</strong></td>
<td></td>
</tr>
<tr>
<td>Competitive Infrastructure &amp; Entrepreneurial Regulation</td>
<td>Provides / Encourages land, utilities and infrastructure for business</td>
<td></td>
<td><strong>X</strong></td>
<td></td>
</tr>
<tr>
<td>The Community of Choice</td>
<td>Provides / Encourages safe &amp; stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity</td>
<td></td>
<td><strong>X</strong></td>
<td></td>
</tr>
</tbody>
</table>

### ENVIRONMENT & RESOURCE PROTECTION

**Land Use Suitability & Development Constraints**

<table>
<thead>
<tr>
<th></th>
<th>1 (least)</th>
<th>2</th>
<th>3 (moderate)</th>
<th>4</th>
<th>5 (most)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of Overall Constraint</td>
<td></td>
<td></td>
<td><strong>99%</strong></td>
<td><strong>1%</strong></td>
<td></td>
</tr>
<tr>
<td>Constraint by Class</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cultural</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edwards Aquifer</td>
<td></td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
<tr>
<td>Endangered Species</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floodplains</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Geological</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slope</td>
<td>98%</td>
<td></td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soils</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vegetation</td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Watersheds</td>
<td></td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
<tr>
<td>Water Quality Zone</td>
<td></td>
<td></td>
<td></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Notes:** Percentages indicate the portion of the total site within the category

### ENVIRONMENT & RESOURCE PROTECTION

**Water Quality Model Results**

<table>
<thead>
<tr>
<th>Located in Subwatershed:</th>
<th>Purgatory Watershed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modeled Impervious Cover Increase Anticipated for watershed</td>
<td><strong>X</strong></td>
</tr>
</tbody>
</table>

**Notes:** The Purgatory Creek Watershed includes single family neighborhoods and the Downtown. This watershed already has a high impervious cover value, however, it is still important to identify potential pollution from redevelopment as construction runoff and debris can wash into the creek during storm events.
### NEIGHBORHOODS – Where is the property located

<table>
<thead>
<tr>
<th>CONA Neighborhood(s):</th>
<th>Westover</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood Commission Area(s):</td>
<td>Sector 2</td>
</tr>
<tr>
<td>Neighborhood Character Study Area(s):</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### TRANSPORTATION – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

<table>
<thead>
<tr>
<th>Existing Daily LOS</th>
<th>Bishop Street</th>
<th>( \times )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Peak LOS</td>
<td>Bishop Street</td>
<td>( \times )</td>
</tr>
<tr>
<td>Preferred Scenario Daily LOS</td>
<td>Bishop Street</td>
<td>( \times )</td>
</tr>
<tr>
<td>Preferred Scenario Peak LOS</td>
<td>Bishop Street</td>
<td>( \times )</td>
</tr>
</tbody>
</table>

*Note: Level of Service analysis has not been conducted for Earle Street.*

- Sidewalk Availability (Required to build.): \( \times \)
  - Sidewalks will be required at time of site development.
- Adjacent to existing bicycle lane?: \( \times \)
- Adjacent to existing public transportation route?: \( \times \)

*The property is located on a CARTS route, the Bishop Route. The closest bus stop is approximately 300 feet away at the corner of Bishop Street and Hazleton Street. There is currently no designated bicycle lane adjacent to the property.*

### PARKS, PUBLIC SPACES AND FACILITIES – Availability of parks and infrastructure

| Will Parks and / or Open Space be Provided? | Parkland dedication or fee-in-lieu will be required at time of plat. In addition, the San Marcos Development Code requires a $400/unit Parkland Development Fee to be paid prior to development. | \( \times \) |
| Will Trails and / or Green Space Connections be Provided? | \( \times \) |

#### Maintenance / Repair Density

<table>
<thead>
<tr>
<th>Low (maintenance)</th>
<th>Medium</th>
<th>High (maintenance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wastewater Infrastructure</td>
<td>( \times )</td>
<td></td>
</tr>
<tr>
<td>Water Infrastructure</td>
<td>( \times )</td>
<td></td>
</tr>
</tbody>
</table>

### Public Facility Availability

| Parks / Open Space within ¼ mile (walking distance)? | The property is within ¼ mile of the Crockett Elementary park and playground. | \( \times \) |
| Wastewater service available? | \( \times \) |
| Water service available? | \( \times \) |
**EXISTING CONDITIONS ANALYSIS**

**PROXIMITY TO PARKLAND**

**EXISTING STREETSCAPES**

**EXISTING ZONING AND BUILDING TYPES**

**PROPOSED ZONING REGULATIONS**

- **Lots**: Up to 12
- **Zoning District**: Neighborhood Density - 3 (ND-3)
- **Building Type**: Zero Lot Line House
- **Max. Units**: 1 per lot
- **Required Streetscape**: Residential
- **Street Type**: Existing (no new streets required)
- **Transitional Protective Yard**: N/A
- **Residential Infill Compatibility**: N/A
- **Parking location**: Surface Parking: Second or Third Layer
- **Parkland**: Development Fee & Fee in Lieu
ZC-18-16
Earle Street — Single Family Preservation

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Map Date: 9/27/2018
ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION

Updated: March, 2018

CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Applicant's Name</th>
<th>Lance Huber</th>
<th>Property Owner</th>
<th>Same</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant's Mailing Address</td>
<td>P.O. Box 2634, Seguin, Texas 78155</td>
<td>Owner's Mailing Address</td>
<td>Same</td>
</tr>
<tr>
<td>Applicant's Phone #</td>
<td>830-832-7365</td>
<td>Owner's Phone #</td>
<td>Same</td>
</tr>
<tr>
<td>Applicant's Email</td>
<td><a href="mailto:hubercustomhomes2003@yahoo.com">hubercustomhomes2003@yahoo.com</a></td>
<td>Owner's Email</td>
<td>Same</td>
</tr>
</tbody>
</table>

PROPERTY INFORMATION

Subject Property Address(es): 1407, 1411, 1413, and 1415 Earle Street

Legal Description: Lot 17, 18, 19, 20, 21, and 22

Subdivision: Z Williamson #2

Tax ID #: R63424, R47915, R47916, R47917

Total Acreage: 1.2 Acres

Preferred Scenario Designation: Area of Stability

Existing Zoning: SF-6

Existing Land Use(s): Vacant

DESCRIPTION OF REQUEST

Proposed Zoning District(s): ND-3, Neighborhood Character District Three

Proposed Land Uses / Reason for Change: Zero Lot Line Homes

AUTHORIZATION

All required application documents are attached. I understand the fees and the process for zoning and understand my responsibility to be present at meetings regarding this application.

- MF-12, 18, 24 Filing Fee: $1,275 plus $50 per acre Technology Fee $11  
  Maximum Cost: $4,011

- Other Districts Filing Fee: $1,000 plus $100 per acre Technology Fee $11  
  Maximum Cost: $3,011

Submitta of this digital Application shall constitute as acknowledgement and authorization to process this request.

To be completed by Staff:  
Accepted By:  
Date Accepted:  

Proposed Meeting Date:  
Application Deadline:  

APPLY ONLINE – WWW.MYGOVERNMENTONLINE.ORG/

Planning & Development Services • 630 East Hopkins • San Marcos, Texas 78666 • 512-393-8230
AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS

The City of San Marcos Land Development Code requires public notification in the form of notification signs on the subject property, published notice, and/or personal notice based on the type of application presented to the Planning Commission and/or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. **It is the responsibility of the applicant to periodically check the sign locations to verify that the signs remain in place until final action is taken on the application and have not been vandalized or removed until after such final decision or when such application is withdrawn by the applicant. It is the responsibility of the applicant to immediately notify the Planning and Development Services Department of missing or defective signs.**

- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be $85 plus an $11 technology fee.**

- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be $85 plus an $11 technology fee.**

I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.

Signature: [Signature] Date: 8/24/18
Print Name: [Print Name]

To be completed by Staff: Case #__________

Planning & Development Services • 630 East Hopkins • San Marcos, Texas 78666 • 512-393-8230
October 2, 2018

Development Services-Planning  
630 East Hopkins  
San Marcos, TX 78666  
RE: Case # ZC-18-16

Dear Planning Board Members,

As partners of Hogan-Schneider Properties, LTD we are writing to oppose the zoning change referenced above. Hogan-Schneider Properties, LTD owns property directly across Earle Street at 1404, 1406 and 1408 Earle. The Partnership also owns two properties in the next block above Baylor St. at 1509 and 1515 Earle. For many years we have been stakeholders in the Westover Addition and have several other properties just outside of the 400-foot radius on Baylor, Delmar and Clyde. We are very familiar with the problems which can occur if the density is increased from the current 6 single-family lots to ND-3 which will allow for 12 lots.

ND-3 zoning will double the number of housing units that can be built on the currently platted 6 lots. Each unit can have up to three bedrooms which will result in parking problems because the code only requires 2 parking spaces per unit. Where will the overflow parking go? Earle and Baylor Streets and most other streets in Westover are only 20 feet wide. This is 10 feet short of the current standard for streets in new developments. As it is now many people park on the street right of way along Earle and Baylor streets. After this property is developed there will be a side walk on that side of Earle Street and overflow parking will be forced to park in the street. The streets in and around this block are too narrow to accommodate all the overflow parking that will result from this higher density. If the lots are developed as single family there would be 25 feet setbacks from the street (instead of 15 feet for ND-3) which would allow for additional room for overflow parking in the longer driveways.

We don’t believe there is adequate drainage in the Westover area to accommodate the higher density development in this area. In recent years there has already been flooding that has occurred at the corner of Earle and Columbia Streets directly down hill from this proposed zoning change. The ND-3 zoning will create more impervious surfaces than the current SF-6
which will result in more water runoff and even greater possibility of more flooding of homes in the area.

In summary, we are opposed to the zoning change for this property to ND-3. We would much rather see this property developed with its current SF-6 zoning for the above reasons and because it would be more in keeping with the surrounding neighborhood of primarily single family and duplex homes built on much larger lots than the lots proposed in ND-3. We agree with the need for lower cost housing which ND-3 zoning may provide, but not at the impairment and expense of an established neighborhood. ND-3 zoning should be located within new subdivisions that have adequate drainage for the density and 30 feet wide standard streets that can accommodate overflow parking.

We very much hope that these issues will be considered when deciding on this zoning change. Thank you for your attention to our letter.

Respectfully submitted by:

Laura and Joe Schneider,
Hogan-Schneider Properties, LTD
Dear Sir,

After meeting with you this evening at the property in question I have decided oppose your application for zoning change at Earle and Baylor and as I live on the opposite corner, I will urge my neighbors and the city to do the same.

I feel the added traffic and the noise will a degrade the family neighborhood feeling we have here. As my family property here has public right away on my fence line on Baylor, "tenants," in the proposed 12 units (most likely college kids) would likely be parking there for weekend parties and such. The city employee who there as much confirmed this when you said, and I quote... "I can't control where people park." And the city employee just shrugged.

The city has wisely, in my view, built high rise units for students and there seems to be more of these in the pipeline and therefore student housing is in good supply already.

My home was purchase primarily as a location for my retirement and my neighbors across from me on Baylor have been retired for sometime as well.

You were certainly aware of the current zoning at the purchase of the lots. I think the current zoning is correct and my feeling is that single family homes or "spec homes" are a better fit for my neighborhood, my neighbors and me.

I urge you to withdrawal your proposal to build 12 units and build as the current zoning dictates.

Sincerely,
Jeffrey W. Jones
1500 earle st San Marcos, Texas 78666
Dear Commissioners,
Please add this letter to packet for the case reference above.

On Sunday October 7 the developer of this site met with a number of people in our neighbor to discuss the case that comes before you on Tuesday the 9th. Here is a picture of what he said was his plan.
Most of our issues revolve around health and safety of the neighborhood in regard to parking, traffic and crime if he builds the 3bd 2 bath (another Sagewood if you will) as per his original statement on the meeting earlier in the with a city employee present.
It is my understanding that city allows a total of 6 six unrelated ppl in the 3/2 configured buildings which means a possible 24 more cars parked in the street than 2/2 configuartion.
The 3/2 configured units would be and overburden of infrastructure as there are no curbs.

The consensus after he left was few people believed him when he said he would only build 2bd & 2bath units as his "preliminary" plan suggests and that he was basically using the plan shown below to "hoodwink" the neighborhood.

Though others might be, I am not oppose to rhe construction of the 12 units in the 2/2 configuration he brought to our meeting, but I would be strongly opposed to 12 3/2 unit configuration he spoke of in the first meeting that would in essence create another Sagewood-like debacle.

Thank you for your attention.
Jeff Jones
1500 Earle San Marcos tx

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Sammarcos Planning & Zoning Commission
Development Services - Planning
630 East Hopkins
San Marcos, TX 78666

Subject: Zoning Change from "SF-2" Single Family to "ND3 Neighborhood Density 3"

Nov. 13, 2013

Dear Zoning Commission,

We are writing to express our concerns about the zoning change. Several of the families living in this area are against this rezoning change.

We are having to deal with increased traffic. Increase of the traffic will surely come. Problems with parking in areas of road will increase too.

Please hear our voices and deny the change of zoning.

Concerned Citizens in Area.

Francisco Rivas, owner of 4 lots
Delneo Ramirez, owner of 2 lots
Jacq Y. Los, owner of 4 lots
ZC-18-16 (Earle Street)

Hold a public hearing and consider a request by Lance Huber for a zoning change from “SF-6” Single Family to “ND-3” Neighborhood Density - 3 for approximately 1.206 acres, more or less, consisting of lots 17 thru 22 of the Z. Williamson’s Second Addition, located at the intersection of Baylor Avenue and Earle Street.
Location:

- Approximately 1.206 acres located at Earle Street and Baylor Avenue

- Currently Zoned SF-6

- Surrounding uses include Single-Family, Multifamily, and Duplex
Context & History

- **Existing Zoning:**
  Single Family (SF-6)

- **Proposed Zoning:**
  Neighborhood Density – 3 (ND-3)

- Proposed (ND-3) zoning allows for various single family building types

- 12 Single-family lots proposed
Comprehensive Plan Analysis

Step 1: Where is the property located on the Comprehensive Plan?

Located in an “Existing Neighborhood”

“Established, primarily residential area intended to maintain their existing character and to follow development and redevelopment patterns that are compatible with the existing character” (4.1.1.6)
Comprehensive Plan Analysis

Step 2: Is the request consistent with the Comprehensive Plan / District Translation Table?

Applicant is requesting a “Neighborhood Density District” (ND-3) within an Existing Neighborhood. The Code directs us to Section 4.1.2.4 – 4.1.2.5
Comprehensive Plan Analysis

**Step 3:** What is the designated Neighborhood Density Category?

Single-family (SF-6) is consistent with a “Low Density” Neighborhood Density Category

**Step 4:** Which Neighborhood Zoning District is appropriate in this category?

ND-3 Zoning is “Considered”
ND-3 Zoning Analysis:

- ND-3 is intended to accommodate single-family detached houses and encourage opportunities for home ownership.

- Includes requirement for Buffers & Transitions to adjacent residential uses.

- **Proposed Building Type:**
  - Zero Lot Line House

- Proposed rezoning to ND-3 is consistent with surrounding residential uses.

- Neighborhood Density Districts are identified as “Considered” within Existing Neighborhoods as identified on the Comprehensive Plan.

- Existing Neighborhood Regulating Plan is approved with this zoning change.
Existing Neighborhood Regulating Plan

**Property: 1407, 1411, 1413, and 1415 Earle Street**

**Existing Conditions Analysis**

**Proximity to Parkland**

**Existing Streetscapes**

**Proximities**

**Earle St & Baynor Ave**

**Street Type**

- Neighborhood Queueing
- Existing ROW: 50'
- Underdeveloped Alley

**Existing Zoning and Building Types**

**Property: 1407, 1411, 1413, and 1415 Earle Street**

**Existing Neighborhood Regulating Plan**

**Ordinance #: 2018-****

**Proposed Zoning Regulations**

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<th>Requirement</th>
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<tr>
<td>Zoning District</td>
<td>Neighborhood Density - 3 (ND-3)</td>
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<tr>
<td>Building Type</td>
<td>Zero Lot Line House</td>
</tr>
<tr>
<td>Max. Units</td>
<td>1 per lot</td>
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<tr>
<td>Required Streetscape</td>
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<tr>
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<td>N/A</td>
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<tr>
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<td>N/A</td>
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<tr>
<td>Parking location</td>
<td>Surface Parking: Second or Third Layer</td>
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<td>Parkland</td>
<td>Development Fee &amp; Fee in Lieu</td>
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City of San Marcos Planning and Development Services Department
Recommendation:

- Staff recommended **approval** of the request for a zoning change from Single Family (SF-6) to Neighborhood Density – 3 (ND-3).

- At their November 13, 2018 meeting, the Planning & Zoning Commission voted 7-1 to **deny** this zoning change request.
### Zoning District Comparison Chart

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<td>Single-family</td>
<td>Single-family</td>
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<td>Parking Location</td>
<td>No location standards</td>
<td>Must be located in 2nd or 3rd Layer (behind the front façade of building)</td>
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<tr>
<td>Parking Standards</td>
<td>2 space per dwelling unit.</td>
<td>2 space per dwelling unit.</td>
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<tr>
<td>Density (max)</td>
<td>5.5 Units / Acre</td>
<td>10 Units / Acre</td>
</tr>
<tr>
<td>Occupancy Restrictions</td>
<td>Apply</td>
<td>Apply</td>
</tr>
<tr>
<td>Building Height (max)</td>
<td>2 stories</td>
<td>2 stories</td>
</tr>
<tr>
<td>Front Setbacks</td>
<td>25 feet</td>
<td>15 feet</td>
</tr>
<tr>
<td>Impervious Cover (max)</td>
<td>40% based on size and location within the Edward’s Aquifer Recharge Zone</td>
<td></td>
</tr>
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</table>
AGENDA CAPTION:
Consider approval of Ordinance 2019-03, on the first of two readings, authorizing the issuance of the City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District); approving and authorizing an Indenture of Trust, a Bond Purchase Agreement, an Offering Memorandum, a Continuing Disclosure Agreement and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; and providing an effective date.

Meeting date: January 15, 2019

Department: City Manager Office

Amount & Source of Funding
Funds Required: N/A
Account Number: Click or tap here to enter text.
Funds Available: Click or tap here to enter text.
Account Name: Click or tap here to enter text.

Fiscal Note:
Prior Council Action: The City Council approved the Amended Trace Public Improvement District Financing agreement and the Acquisition and Reimbursement agreement on September 18, 2018 and they also amended the Trace Public Improvement District Term Sheet on August 7, 2018. An amended and restated Service Assessment Plan was approved on first reading on December 4, 2018.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Workforce Housing
City Facilities
Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☒ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
Background Information:

Highpointe Communities has approximately 420 acres of land, generally located on the east side of IH-35, south of Posey Road, and also bordered by Old Bastrop Highway, at the southern edge of the City of San Marcos. The property is primarily for residential housing along with a component of multi-family along with a business park and community commercial.

On September 1, 2015, the City of San Marcos approved a term sheet that designated the parameters for which a Public Improvement District for the Trace Subdivision would be created. The key terms of this term included the following:

- Maximum Total Indebtedness $19,500,000
- Total Construction Dollars for which the developer can be reimbursed $15,500,000
- The Maximum Total Equivalent Tax Rate could not exceed $0.50

In October 2016, the City Council adopted a Service and Assessment Plan for the Trace Public Improvement District. Periodic updates to this document are required by the San Marcos City Council usually on an annual basis. The Trace Development is to the point in its project where an update to the Service and Assessment Plan needs to be brought before the City Council. During the update of those documents, a request was made by the developer to amend the deal terms of the Public Improvement District so that the overall Business Park and Commercial equivalent tax rates could be reduced thus making the commercial property more competitive. This does slightly increase the overall residential equivalent tax but the total tax rate is still below the originally approved $0.50 tax rate.

Projected Tax Rate Equivalents
- Residential and Multifamily $0.3387 per $100 of evaluation
- Retail and Business Park $0.1900 per $100 of evaluation
- Initial projections for all phases was approximately $0.46 per $100 of evaluation

This increases the overall maximum assessment to $22.1M up from $19.5M but it should be noted that this does not increase the overall maximum debt to be issued for this project ($19.5M) nor the amount that the developer will be reimbursed for construction improvements ($15.5M).

The developer has installed a significant portion of the infrastructure which directly benefits the Public Improvement District. The City has been working with the City’s Bond Counsel and Bond Underwriter as well
as the developer and their legal representatives to issue the first series of Public Improvement District Revenue Bonds on December 12, 2018.

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:

City staff recommends approving the Trace Public Improvement District Bond issuance.
ORDINANCE NO. 2019-___

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE "CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019 (TRACE PUBLIC IMPROVEMENT DISTRICT)"; APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, AN OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of San Marcos, Texas (the "City"), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code (the "PID Act"), has previously established the "Trace Public Improvement District" (the "District"), pursuant to Resolution No. 2015-145R adopted by the City Council of the City (the "Council") on October 20, 2015; and

WHEREAS, the authorization creating the District became effective on March 27, 2016 upon publication of Resolution No. 2015-145R in the San Marcos Daily Record, a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

WHEREAS, pursuant to the PID Act, on September 16, 2016, the Council published notice of the assessment hearing in the San Marcos Daily Record, a newspaper of general circulation in the City, and held a public hearing on October 3, 2016, regarding the levy of special assessments within the District, and on October 18, 2016, the Council adopted Ordinance No. 2016-42 (the "Initial Assessment Ordinance"); and

WHEREAS, in the Initial Assessment Ordinance, the Council approved and accepted the initial Service and Assessment Plan (the "Initial Service and Assessment Plan") relating to the District and levied the Initial Assessments (as defined in the Initial Service and Assessment Plan, the "Initial Assessments") against the Assessment Roll (as defined and described in the Initial Service and Assessment Plan); and

WHEREAS, after levying the Initial Assessments, the City Council determined that additional assessments were necessary to be levied on property within the District relating to the total cost of the improvements in the District; and

WHEREAS, pursuant to the PID Act, on September 20, 2018, the Council published notice of the additional assessment hearing in the San Marcos Daily Record, a newspaper of general circulation in the City, and held a public hearing on October 1, 2018, regarding the levy of special assessments within the District, and on October 16, 2018, the Council adopted Ordinance No. 2018-38, which was amended and restated on December 12, 2018 to defer collection of the Additional Assessments (defined below) after further publishing notice on November 23, 2018 in the San Marcos Daily Record and holding a public hearing on December 4, 2018 (collectively, the "Additional Assessment Ordinance"); and
WHEREAS, in the Additional Assessment Ordinance, the Council approved and accepted an update to the Initial Service and Assessment Plan (as defined and described in the Additional Assessment Ordinance, the "Updated Service and Assessment Plan"); as amended from time to time, the "Service and Assessment Plan") relating to the District and levied the Additional Assessments (as defined in the Updated Service and Assessment Plan, the "Additional Assessments" and collectively with the Initial Assessments, the "Assessments") against the Assessment Roll (as defined and described in the Updated Service and Assessment Plan); and

WHEREAS, the Council has found and determined that it is in the best interests of the City to issue its bonds to be designated "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)" (the "Bonds"), such Bonds to be payable from and secured by the Pledged Revenues, as defined in the Indenture (defined below); and

WHEREAS, the City is authorized by the PID Act to issue the Bonds for the purpose of (i) paying or reimbursing all or a portion of the costs of certain public improvements (the "Public Improvements") that benefit all of the District, (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds; and

WHEREAS, in connection with the issuance of the Bonds, the Public Improvements are located within the District, and the City has determined that the Public Improvements confer a special benefit on the District as provided in Section IV.C. of the Service and Assessment Plan attached hereto as Exhibit C; and

WHEREAS, the Council has found and determined to approve (i) the issuance of the Bonds to finance the Public Improvements, (ii) the form, terms and provisions of the Indenture securing the Bonds authorized hereby, (iii) the form, terms and provisions of a Bond Purchase Agreement (defined below) between the City and the purchaser of the Bonds, (iv) an Offering Memorandum (defined below), and (v) a Continuing Disclosure Agreement (defined below); and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, THAT:

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.
Section 2. Approval of Issuance of Bonds and Indenture.

(a) The issuance of the Bonds in the principal amount of $_________,000 for the purpose of (i) paying or reimbursing all or a portion of the costs of the Public Improvements that benefit all of the District, (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds, is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust (the "Indenture") dated as of January 15, 2019, between the City and UMB Bank, N.A., as trustee (the "Trustee"), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor or Mayor Pro Tem of the City, such approval to be evidenced by the execution and delivery of the Indenture, which Indenture is hereby approved in substantially final form attached hereto as Exhibit A and incorporated herein as a part hereof for all purposes. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute the Indenture and the City Clerk is hereby authorized and directed to attest such signature of the Mayor or Mayor Pro Tem.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal amount or amounts, shall bear interest, shall be subject to redemption and shall have such other terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture, with such insertions, omissions and modifications as may be required to conform the form of Bond to the actual terms of the Bonds. The Bonds shall be payable from and secured by the Pledged Revenues (as defined in the Indenture) and other assets of the Trust Estate (as defined in the Indenture) pledged to the Bonds, and shall never be payable from ad valorem taxes or any other funds or revenues of the City.

Section 3. Sale of Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold to FMSbonds, Inc. (the "Underwriter") at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the "Bond Purchase Agreement"), dated the date hereof, between the City and the Underwriter, attached hereto as Exhibit B and incorporated herein as a part hereof for all purposes, which terms of sale are declared to be in the best interest of the City. The form, terms and provisions of the Bond Purchase Agreement are hereby authorized and approved and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. The Mayor's signature on the Bond Purchase Agreement may be attested by the City Clerk.

Section 4. Assessment Plan. The Service and Assessment Plan substantially in the form attached hereto as Exhibit C, which is the Updated Service and Assessment Plan previously approved by City Council with the additions required to give effect to the issuance of the Bonds, is hereby accepted and approved pursuant to Sections 372.013 and 372.014 of the PID Act as the service and assessment plan for the District.

Section 5. Offering Memorandum. The form and substance of the Preliminary Limited Offering Memorandum for the Bonds and any addenda, supplement or amendment thereto and the final
Limited Offering Memorandum (the "Offering Memorandum") presented to and considered at the meeting at which this Ordinance is considered are hereby in all respects approved and adopted. The Offering Memorandum, with such appropriate variations as shall be approved by the Mayor or Mayor Pro Tem of the City and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Offering Memorandum. The City Clerk is hereby authorized and directed to include and maintain a copy of the Preliminary Limited Offering Memorandum and Offering Memorandum and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Limited Offering Memorandum in the offering of the Bonds is hereby ratified, approved and confirmed. Notwithstanding the approval and delivery of such Preliminary Limited Offering Memorandum and Offering Memorandum by the Council, the Council is not responsible for and proclaims no specific knowledge of the information contained in the Preliminary Limited Offering Memorandum and Offering Memorandum pertaining to the Public Improvements, the Developer (as defined in the Offering Memorandum) or its financial ability, any builders, any landowners, or the appraisal of the property in the District.

Section 6. Continuing Disclosure Agreement. The Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City and UMB Bank, N.A. is hereby authorized and approved in substantially final form attached hereto as Exhibit D and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 7. Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation. The Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (the "Redemption and Waiver Agreement") between the City, Developer and UMB Bank, N.A. is hereby authorized and approved in substantially final form attached hereto as Exhibit E and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Redemption and Waiver Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 8. Additional Actions. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

Section 9. Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. **Effective Date.** This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, and shall be effective immediately upon its passage and adoption.

[Remainder of page left blank intentionally]
PASSED, APPROVED AND EFFECTIVE this January 15, 2019.

___________________________
Mayor

ATTEST:

___________________________  _____________________________
City Clerk                             City Manager

(City Seal)
EXHIBIT B

BOND PURCHASE AGREEMENT
EXHIBIT C

SERVICE AND ASSESSMENT PLAN
EXHIBIT D

CONTINUING DISCLOSURE AGREEMENT
EXHIBIT E

AGREEMENT REGARDING CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF AGRICULTURAL VALUATION
INDENTURE OF TRUST

By and Between

CITY OF SAN MARCOS, TEXAS

and

UMB BANK, N.A.
as Trustee

DATED AS OF ____________, 2019

SECURING

$____________

CITY OF SAN MARCOS, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)
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EXHIBIT A    DESCRIPTION OF THE PROPERTY WITHIN THE TRACE PUBLIC IMPROVEMENT DISTRICT
EXHIBIT B    FORM OF CERTIFICATION FOR PAYMENT
INDENTURE OF TRUST

THIS INDENTURE, dated as of _____________, 2019, is by and between the CITY OF SAN MARCOS, TEXAS (the "City"), and UMB Bank, N.A., as trustee (together with its successors, the "Trustee"). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Article I.

WHEREAS, on June 4, 2015, a petition was submitted and filed with the City Clerk of the City (the "City Clerk") pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the "PID Act"), requesting the creation of a public improvement district located within the corporate limits of the City to be known as Trace Public Improvement District (the "District" or "PID"); and

WHEREAS, the petition contained the signatures of the owners of taxable real property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signatures of record property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that is liable for assessment by the District; and

WHEREAS, on September 1, 2015, after due notice, the City Council of the City (the "City Council") held the public hearing in the manner required by law on the advisability of the improvement projects and services described in the petition as required by Section 372.009 of the PID Act and on October 20, 2015, the City Council made the findings required by Section 372.009(b) of the PID Act and, by Resolution No. 2015-145R, adopted by a majority of the members of the City Council, authorized the District in accordance with its finding as to the advisability of the improvement projects and services; and

WHEREAS, following the adoption of Resolution No. 2015-145R, the City published notice of its authorization of the District in the San Marcos Record, a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

WHEREAS, on October 20, 2015, the City Council adopted a resolution approving the execution of the Financing Agreement, the Redemption Waiver Agreement and the Reimbursement Agreement; and

WHEREAS, on March 27, 2016, the City published notice of its authorization of the District in a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District were filed by any owners of record of property within the District within 20 days after March 27, 2016; and
WHEREAS, the City, pursuant to Section 372.0l6(b) of the PID Act, published notice on September 16, 2016 of a public hearing in a newspaper of general circulation in the City to consider the proposed "Initial Assessment Roll" and the "Initial Service and Assessment Plan" and the levy of the "Initial Assessments" on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.0l6(c) of the PID Act, mailed notice of the public hearing to consider the proposed Initial Assessment Roll and the Initial Service and Assessment Plan and the levy of Initial Assessments on property in the District to the last known address of the owners of the property liable for the Initial Assessments; and

WHEREAS, the City Council convened the hearing on October 3, 2016, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Initial Service and Assessment Plan, the Initial Assessment Roll, and the Initial Assessments, and to offer testimony pertinent to any issue presented on the amount of the Initial Assessment, the allocation of Actual Costs, the purposes of the Initial Assessments, the special benefits of the Initial Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Initial Assessment; and

WHEREAS, at the public hearing referenced in the preceding paragraph, there were no written objections or evidence submitted to the City Clerk in opposition to the Initial Service and Assessment Plan, the allocation of Actual Costs, the Initial Assessment Roll, or the levy of the Initial Assessments; and

WHEREAS, the City Council closed the hearing and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, at a meeting held on October 18, 2016, approved and accepted the Initial Service and Assessment Plan in conformity with the requirements of the PID Act and adopted the Initial Assessment Ordinance, which Initial Assessment Ordinance approved the Initial Assessment Roll and levied the Initial Assessments; and

WHEREAS, after levying the Initial Assessments, the City Council determined that additional assessments were necessary to be levied on property within the District relating to the total cost of the improvements in the District; and

WHEREAS, the City Council, pursuant to Section 372.0l6(b) of the PID Act, published notice of a public hearing in a newspaper of general circulation in the City on September 21, 2018 to consider the proposed updated assessment roll (the "Additional Assessment Roll") and an amended and restated service and assessment plan (the "Amended and Restated Service and Assessment Plan") and the levy of the "Additional Assessments" on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.0l6(c) of the PID Act, mailed notice of the public hearing to consider the proposed Additional Assessment Roll and the Amended and Restated Service and Assessment Plan and the levy of Additional Assessments on property in the District to the last known address of the owners of the property liable for the Additional Assessments; and
WHEREAS, the City Council convened the hearing on October 1, 2018 at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Amended and Restated Service and Assessment Plan, the Additional Assessment Roll, and the Additional Assessments, and to offer testimony pertinent to any issue presented on the amount of the Additional Assessment, the allocation of Actual Costs, the purposes of the Additional Assessments, the special benefits of the Additional Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Additional Assessment; and

WHEREAS, at the October 1, 2018 public hearing referenced above, there were no written objections or evidence submitted to the City Clerk in opposition to the Amended and Restated Service and Assessment Plan, the allocation of Actual Costs, the Additional Assessment Roll, or the levy of the Additional Assessments; and

WHEREAS, the City Council closed the hearing and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, at a meeting held on October 16, 2018, approved and accepted the Amended and Restated Service and Assessment Plan in conformity with the requirements of the PID Act and adopted the Additional Assessment Ordinance, which approved the Additional Assessment Roll and levied the Additional Assessments; and

WHEREAS, after approval of the Additional Assessments, the City Council determined that collection of such Additional Assessments should be deferred until January of 2020 by amending and restating the Additional Assessment Ordinance levying such Additional Assessments after providing notices and holding the hearing required prior to original levy of assessments; and

WHEREAS, the City Council published notice of a public hearing in a newspaper of general circulation in the City on November 23, 2018 to consider the amended and restated Additional Assessment Ordinance which included the proposed "Assessment Roll" and an amended and restated service and assessment plan (as amended and supplemented, the "Service and Assessment Plan") and the levy of the "Additional Assessments" on property in the District; and

WHEREAS, the City Council mailed notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Additional Assessments on property in the District to the last known address of the owners of the property liable for the Additional Assessments; and

WHEREAS, the City Council convened the hearing on December 4, 2018 at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Assessment Roll, and the Additional Assessments, and to offer testimony pertinent to any issue presented on the amount of the Additional Assessment, the allocation of Actual Costs, the purposes of the Additional Assessments, the special benefits of the Additional Assessments, and the penalties
and interest on annual installments and on delinquent annual installments of the Additional Assessment; and

WHEREAS, at the December 4, 2018 public hearing referenced above, there were no written objections or evidence submitted to the City Clerk in opposition to the Service and Assessment Plan, the allocation of Actual Costs, the Assessment Roll, or the levy of the Additional Assessments; and

WHEREAS, the City Council closed the hearing at its meeting on December 12, 2018 and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, at the meeting held on December 12, 2018, approved and accepted the Service and Assessment Plan in conformity with the requirements of the PID Act and adopted the amended and restated Additional Assessment Ordinance, which approved the Assessment Roll and levied the Additional Assessments; and

WHEREAS, the Initial Assessments and Additional Assessments are collectively referred to herein as the "Assessments"; and

WHEREAS, the City Council is authorized by the PID Act to issue its revenue bonds payable from the Assessments for the purpose of (i) paying the Actual Costs, (ii) funding a reserve fund for payment of principal and interest on the Bonds and (iii) for funding other funds as provided in Section 6.2; and

WHEREAS, the City Council now desires to issue its revenue bonds, in accordance with the PID Act, such bonds to be entitled "City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)" (the "Bonds"), such Bonds being payable solely from the Assessments and other funds pledged under this Indenture to the payment of the Bonds and for the purposes set forth in this preamble; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms set forth in this Indenture;

NOW, THEREFORE, the City, in consideration of the foregoing premises and acceptance by the Trustee of the trusts herein created, of the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, PLEDGE, TRANSFER, ASSIGN, and DELIVER to the Trustee for the benefit of the Owners, a security interest in all of the moneys, rights and properties described in the Granting Clauses hereof, as follows (collectively, the "Trust Estate"):

FIRST GRANTING CLAUSE

The Pledged Revenues, as herein defined, including all moneys and investments held in the Pledged Funds, including any contract or any evidence of indebtedness related thereto or other rights of the City to receive any of such moneys or investments, whether now existing or hereafter coming into existence, and whether now or hereafter acquired; and
SECOND GRANTING CLAUSE

Any and all other property or money of every name and nature which is, from time to time hereafter by delivery or by writing of any kind, conveyed, pledged, assigned or transferred, to the Trustee as additional security hereunder by the City or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property or money at any and all times and to hold and apply the same subject to the terms thereof; and

THIRD GRANTING CLAUSE

Any and all proceeds of the foregoing property and proceeds from the investment of the foregoing property;

TO HAVE AND TO HOLD the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors or assigns;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the benefit of all present and future Owners of the Bonds from time to time issued under and secured by this Indenture, and for enforcement of the payment of the Bonds in accordance with their terms, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture;

PROVIDED, HOWEVER, if the City or its assigns shall well and truly pay, or cause to be paid, the principal or Redemption Price of and the interest on the Bonds at the times and in the manner stated in the Bonds, according to the true intent and meaning thereof, then this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect;

IN ADDITION, the Bonds are special obligations of the City payable solely from the Pledged Revenues, as and to the extent provided in this Indenture. The Bonds do not give rise to a charge against the general credit or taxing powers of the City and are not payable except as provided in this Indenture. Notwithstanding anything to the contrary herein, the Owners of the Bonds shall never have the right to demand payment thereof out of any funds of the City other than the Pledged Revenues. The City shall have no legal or moral obligation to pay for the Bonds out of any funds of the City other than the Pledged Revenues.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and the Trust Estate hereby created, assigned, and pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners from time to time of the Bonds as follows:
ARTICLE I
DEFINITIONS, FINDINGS AND INTERPRETATION

Section 1.1. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Indenture, the following terms shall have the meanings specified below:

"Account", in the singular, means any of the accounts established pursuant to Section 6.1 of this Indenture, and "Accounts", in the plural, means, collectively, all of the accounts established pursuant to Section 6.1 of this Indenture.

"Actual Cost(s)" means, with respect to the Public Improvements, the Developer's demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement, as specified in a payment request in a form that has been reviewed and approved by the City and in an amount not to exceed the amount for each Public Improvement as set forth in the Service and Assessment Plan. Actual Costs may include (a) the costs incurred by or on behalf of the Developer (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvements, (c) construction management fee, (d) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, advertising, marketing and research studies, appraisals, legal, accounting and similar professional services, (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (f) all related permitting and public approval expenses, architectural, engineering, and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and all payments for Annual Collection Costs after the date of a resolution authorizing such reimbursement.

"Additional Assessment Ordinance" means Ordinance No. 2018-38 adopted by the City Council on October 16, 2018 that levied the Additional Assessments, as amended and restated by the City Council on December 12, 2018 pursuant to Ordinance No. 2018-51.

"Additional Assessments" means the assessments levied against Assessed Property in the PID, as provided for in the Additional Assessment Ordinance.

"Additional Bonds" means the additional parity bonds that are authorized to be issued in accordance with the terms and conditions prescribed in Section 13.2(d) of this Indenture.

"Additional Interest" means the amount collected by application of the Additional Interest Rate.
"Additional Interest Rate" means the additional 0.5% interest charged on the Assessments as authorized by the PID Act.

"Administrative Fund" means that Fund established by Section 6.1 and administered pursuant to Section 6.9.

"Administrator" means initially P3Works, LLC, or thereafter an employee or designee of the City who shall have the responsibilities provided in the Service and Assessment Plan, this Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

"Annual Collection Costs" means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the District, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the District and preparing the Assessment Roll, (iii) computing, levying, collecting and transmitting the Assessments or the Annual Installments, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Assessments, (v) issuing, paying and redeeming the Bonds, (vi) investing or depositing the Assessments or other funds, (vii) complying with the PID Act with respect to the Bonds, (viii) paying the paying agent/registrar's and trustee's fees and expense (including the fees and expense of its legal counsel), and (ix) administering the construction of the Public Improvements, in accordance with the terms of this Indenture.

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year (excluding interest paid from funds on deposit in the Capitalized Interest Account of the Bond Fund), assuming that the Outstanding Bonds are retired as scheduled (including by reason of Sinking Fund Installments), and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any Sinking Fund Installments due in such Bond Year).

"Annual Installment" means, with respect to each Parcel, each annual payment of: (i) the Assessments (including the principal of and interest on), as shown on the Assessment Roll attached as Appendix A to the Service and Assessment Plan, as applicable, and calculated as provided in Section VI of the Service and Assessment Plan, (ii) Annual Collection Costs, and (iii) the Additional Interest.

"Annual Service Plan Update" means the annual review and update of the Service and Assessment Plan required by the PID Act and the Service and Assessment Plan.

"Applicable Laws" means the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State or of the United States, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.
"Assessed Property" means property on which Assessments have been levied as shown on the Assessment Roll (as the same may be updated each year by an Annual Service Plan Update) and which includes any and all Parcels within the District other than Non-Benefited Property and the Elementary School Site, each as defined in the Service and Assessment Plan.

"Assessment Ordinance" means, collectively, the Initial Assessment Ordinance and the Additional Assessment Ordinance.

"Assessment Revenues" means the revenues received by the City from the collection of Assessments, including Prepayments, Annual Installments and Foreclosure Proceeds.

"Assessment Roll" means the document attached as Appendix E to the Service and Assessment Plan, showing the total amount of the Assessments, as updated, modified, or amended from time to time in accordance with the terms of the Service and Assessment Plan and the PID Act.

"Assessments" means the assessments levied against Assessed Property in the PID, as provided for in the applicable Assessment Ordinance and in the Service and Assessment Plan, including the Initial Assessments, Additional Assessments, and any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

"Attorney General" means the Attorney General of the State.

"Authorized Denomination" means $100,000 and any integral multiple of $5,000 in excess thereof. The City prohibits any Bond to be issued in a denomination of less than $100,000 and further prohibits the assignment of a CUSIP number to any Bond with a denomination of less than $100,000, and, unless made pursuant to Section 4.5 herein, any attempt to accomplish either of the foregoing shall be void and of no effect.

"Bond" means any of the Bonds.

"Bond Counsel" means McCall, Parkhurst & Horton L.L.P. or any other attorney or firm of attorneys designated by the City that are nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Date" means the date designated as the initial date of the Bonds by Section 3.2(a) of this Indenture.

"Bond Fund" means the Fund established pursuant to Section 6.1 and administered pursuant to Section 6.4.

"Bond Ordinance" means Ordinance No. __________adopted by the City Council on January 15, 2019 authorizing the issuance of the Bonds pursuant to this Indenture.
"Bond Year" means the one-year period beginning on October 1 in each year and ending on September 30 in the following year.

"Bonds" means the City's bonds authorized to be issued by Section 3.1 of this Indenture entitled "City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)."

"Bonds Similarly Secured" means, collectively, any Outstanding Bonds, Additional Bonds and Refunding Bonds.

"Business Day" means any day other than a Saturday, Sunday or legal holiday in the State observed as such by the City or the Trustee or any national holiday observed by the Trustee.

"Certification for Payment" means a certificate given pursuant to the Reimbursement Agreement executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the written approval of a City Representative, specifying the amount of work performed and the cost thereof, presented to the Trustee to request funding for Actual Costs from money on deposit in the Project Fund. The Form of Certification for Payment is attached hereto as Exhibit B.

"City Certificate" means a certificate signed by the City Representative and delivered to the Trustee.

"City Representative" means that official or agent of the City authorized by the City Council to undertake the action referenced herein as evidenced by a written incumbency certificate provided to the Trustee. Such certificate may designate alternates, each of whom shall be entitled to perform all duties of the City Representative.

"Closing Date" means the date of the initial delivery of and payment for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

"Commercial Assessment Prepayment" means the anticipated prepayment by the Developer in the aggregate amount of $2,600,000 for Assessments levied against the business park and retail parcels in the District, as further described in the Service and Assessment Plan. If the Commercial Assessment Prepayment is not made prior to the earlier of the issuance of any Additional Bonds or August 31, 2022, then the Assessments will be reduced by $2,600,000, allocated to each Parcel pro rata based on the amount of outstanding Assessment levied against each Parcel.

"Comptroller" means the Comptroller of Public Accounts of the State.

"Defeasance Securities" means Investment Securities then authorized by applicable law for the investment of funds to defease public securities.
"Delinquency & Prepayment Reserve Requirement" means an amount equal to 5.5% of the principal amount of the then Outstanding Bonds Similarly Secured, which amount will be funded from Assessments and Annual Installments deposited to the Pledged Revenue Fund in accordance with the terms of this Indenture.

"Delinquent Collection Costs" means, for a Parcel, interest, penalties and attorneys' fees that are authorized by the PID Act and by the Assessment Ordinance and that directly or indirectly relate to the collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent payments due under the SAP, including costs and expenses related to the foreclosure of liens.

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named in this Indenture, the transfer/payment office designated by the Paying Agent/Registrar, initially Austin, Texas and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"Developer" means Highpointe Trace, LLC, a California limited liability company, and any successor thereto under the Financing Agreement.

"Developer Property Tax Delinquency Amount" means, as of any date of determination, any amount of ad valorem taxes levied by any taxing entity on Parcels subject to an agricultural valuation for purposes of such ad valorem taxes remaining unpaid on or after February 1 of the year after such ad valorem taxes are due.

"Developer Property Tax Reserve Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.10.

"Developer Property Tax Reserve Fund Release Date" means the date specified in a City Certificate pursuant to Section 6.10(b).

"DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" means brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"Financing Agreement" means the Trace Public Improvement District Financing Agreement between the City and the Developer, dated as of October 20, 2015, as amended and restated on September 18, 2018 and as may be further amended and supplemented from time to time.

"Foreclosure Proceeds" means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.
"Fund", in the singular, means any of the funds established pursuant to Section 6.1 of this Indenture, and "Funds", in the plural, means, collectively, all of the funds established pursuant to Section 6.1 of this Indenture.

"Indenture" means this Indenture of Trust as originally executed or as it may be from time to time supplemented or amended by one or more indentures supplemental hereto and entered into pursuant to the applicable provisions hereof.

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by the City who, or each of whom: (i) is judged by the City, as the case may be, to have experience in matters relating to the issuance and/or administration of the Bonds; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Initial Assessment Ordinance" means Ordinance No. 2016-42 adopted by the City Council on October 18, 2016 that levied the Initial Assessments.

"Initial Assessments" means the assessments levied against Assessed Property in the PID, as provided for in the Initial Assessment Ordinance.

"Initial Bonds" means the Initial Bonds authorized by Section 5.2 of this Indenture.

"Interest Payment Date" means the date or dates upon which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being on ____________ and _____________ of each year, commencing ____________, 20__.

"Investment Securities" means those authorized investments determined by the City and described in the Public Funds Investment Act, Chapter 2256, Government Code, as amended, which investments are, at the time made, included in and authorized by the City's official investment policy as approved by the City Council from time to time.

"Maximum Annual Debt Service" means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

"Outstanding" means, as of any particular date when used with reference to Bonds, all Bonds authenticated and delivered under this Indenture except (i) any Bond that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond for which the payment of the principal or Redemption Price of and interest on such Bond shall have been made as provided in Article IV, (iii) any Bond in lieu of or in substitution for which a new Bond shall have been authenticated and delivered pursuant to Section 3.10, and (iv) Bond alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in this Indenture.
"Owner" or "Holder" means the Person who is the registered owner of a Bond or Bonds, as shown in the Register, which shall be Cede & Co., as nominee for DTC, so long as the Bonds are in book-entry only form and held by DTC as securities depository in accordance with Section 3.11. The term "Owner" or "Holder", when used in connection with the Bonds Similarly Secured, shall also include the Person who is the registered owner of a Bond Similarly Secured under the terms of any indenture relating to any Additional Bonds.

"Parcel" or "Parcels" means a parcel or parcels within the District identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, or by lot and block number in a final subdivision plat recorded in the real property records of Hays County or by any other means determined by the City.

"Paying Agent/Registrar" means initially the Trustee, or any successor thereto as provided in this Indenture.

"Person" or "Persons" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"PID Act" means Chapter 372, Texas Local Government Code, as amended.

"Pledged Funds" means, collectively, the Pledged Revenue Fund (excluding the Developer Reimbursement Pledged Revenue Account), the Bond Fund, the Project Fund, the Reserve Fund, and the Redemption Fund.

"Pledged Revenue Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.3.

"Pledged Revenues" means, collectively, the (i) Assessment Revenues (excluding the portion of the Assessments and Annual Installments collected for the payment of Annual Collection Costs and Delinquent Collection Costs, as set forth in the Service and Assessment Plan, and further excluding the Assessments associated with the Commercial Assessment Prepayment), (ii) the moneys held in any of the Pledged Funds and (iii) any additional revenues that the City may pledge to the payment of the Bonds and Additional Bonds.

"Prepayment" means the payment of all or a portion of an Assessment before the due date thereof, except for the Commercial Assessment Prepayment. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Assessment.

"Project Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.5.
"Public Improvements" mean the improvements permitted by the PID Act and designed, constructed, and installed in accordance with the Service and Assessment Plan for which Assessments are levied against the Assessed Property that received a special benefit from such improvement and depicted in Appendix D to the Service and Assessment Plan.

"Purchaser" means the initial purchaser of the Bonds.

"Rebatable Arbitrage" means rebatable arbitrage as defined in Section 1.148-3 of the Treasury Regulations.

"Rebate Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.8.

"Record Date" means the close of business on the ________ calendar day of the month next preceding an Interest Payment Date.

"Redemption Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.6.

"Redemption Price" means, when used with respect to any Bond or portion thereof, the principal amount of such Bond or such portion thereof plus the applicable premium, if any, plus accrued and unpaid interest on such Bond to the date fixed for redemption payable upon redemption thereof pursuant to this Indenture.

"Redemption Waiver Agreement" means the Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation - Trace PID by and between the City, Trustee and the Developer, dated as of January ____, 2019, as may be amended and supplemented from time to time.

"Refunding Bonds" means bonds issued to refund all or any portion of the Outstanding Bonds and secured by a parity lien with the Outstanding Bonds on the Trust Estate, as more specifically described in the indenture authorizing such Refunding Bonds.

"Register" means the register specified in Article III of this Indenture.

"Reimbursement Agreement" means the Amended and Restated Trace Public Improvement District Reimbursement Agreement by and between the City and the Developer, effective as of September 18, 2018, as may be further amended and supplemented from time to time.

"Reimbursement Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.12 herein.

"Reserve Account Requirement" means the least of: (i) Maximum Annual Debt Service on the Bonds Similarly Secured as of the date of issuance, (ii) 125% of average Annual Debt Service on the Bonds Similarly Secured as of the date of issuance, and (iii) 10% of the proceeds
of the Bonds Similarly Secured; provided, however, that such amount shall be reduced by the amount of any transfers made pursuant to Section 6.7(c); and provided further that as a result of (1) a mandatory sinking fund redemption pursuant to Section 4.2, (2) an optional redemption pursuant to Section 4.3 or (3) an extraordinary optional redemption pursuant to Section 4.4, the Reserve Account Requirement shall be reduced by a percentage equal to the pro rata principal amount of Bonds Similarly Secured redeemed by such redemption divided by the total principal amount of the Outstanding Bonds Similarly Secured prior to such redemption. As of the date of delivery of the Bonds, the Reserve Account Requirement is $______________ which is an amount equal to {Maximum Annual Debt Service – TBD} on the Bonds Similarly Secured as of the date of issuance. The City Representative shall provide the Trustee with written confirmation of the Reserve Account Requirement and any modifications related thereto.

"Reserve Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.7.

"Service and Assessment Plan" and "SAP" each mean the document, including the Assessment Roll, which is attached as Exhibit B to the Additional Assessment Ordinance, as amended and restated, as may be updated, amended and supplemented from time to time.

"Sinking Fund Installment" means the amount of money to redeem or pay at maturity the principal of a Stated Maturity of Bonds payable from such installments at the times and in the amounts provided in Section 4.2.

"Special Record Date" means in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment that will be established by the Trustee, if and when funds for the payment of such interest have been received from the City.

"State" means the State of Texas.

"Stated Maturity" means the date the Bonds, or any portion of the Bonds, as applicable are scheduled to mature without regard to any redemption or prepayment.

"Subaccount" means any of the subaccounts established pursuant to Section 6.1 of this Indenture.

"Supplemental Indenture" means an indenture which has been duly executed by the City Representative pursuant to an ordinance adopted by the City Council and which indenture amends or supplements this Indenture, but only if and to the extent that such indenture is specifically authorized hereunder.

"Treasury Regulations" shall have the meaning assigned to such term in Section 7.5(c).

"Trust Estate" means the Trust Estate described in the granting clauses of this Indenture.
"Trustee" means UMB Bank, N.A., Austin, Texas, and its successors, and any other corporation or association that may at any time be substituted in its place, as provided in Article IX, such entity to serve as Trustee and Paying Agent/Registrar for the Bonds.

"Value of Investment Securities" means the amortized value of any Investment Securities, provided, however, that all United States of America, United States Treasury Obligations – State and Local Government Series shall be valued at par and those obligations which are redeemable at the option of the holder shall be valued at the price at which such obligations are then redeemable. The computations shall include accrued interest on the investment securities paid as a part of the purchase price thereof and not collected. For the purposes of this definition "amortized value," when used with respect to a security purchased at par means the purchase price of such security and when used with respect to a security purchased at a premium above or discount below par, means as of any subsequent date of valuation, the value obtained by dividing the total premium or discount by the number of interest payment dates remaining to maturity on any such security after such purchase and by multiplying the amount as calculated by the number of interest payment dates having passed since the date of purchase and (i) in the case of a security purchased at a premium, by deducting the product thus obtained from the purchase price, and (ii) in the case of a security purchased at a discount, by adding the product thus obtained to the purchase price. The Trustee retains the ability, and may rely upon the City's financial advisor to provide a determination as to the foregoing.

Section 1.2. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Indenture are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.3. Table of Contents, Titles and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Words importing persons include any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.
(c) Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

(d) When used in Article XI of this Indenture in connection with the Bonds Similarly Secured, any reference to this Indenture, Article XI of this Indenture or any Section thereunder, and/or any events of default or remedies set forth therein, such terms and references shall be read and interpreted to include any indenture relating to any Additional Bonds, the related Article or Section in such indenture, and/or the events of default and remedies set forth therein.

(e) This Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Indenture.

ARTICLE II

THE BONDS

Section 2.1. Security for the Bonds.

(a) The Bonds, as to both principal and interest, are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Trust Estate.

(b) The lien on and pledge of the Pledged Revenues shall be valid and binding and fully perfected from and after the Closing Date, which is the date of the delivery of this Indenture, without physical delivery or transfer of control of the Pledged Revenues, the filing of this Indenture or any other act; all as provided in Chapter 1208 of the Texas Government Code, as amended, which applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the City under this Indenture, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Indenture is to be subject to the filing requirements of Chapter 9, Texas Business and Commerce Code, as amended, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business and Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.2. Limited Obligations.

The Bonds are special and limited obligations of the City, payable solely from and secured solely by the Trust Estate, including the Pledged Revenues and the Pledged Funds; and the Bonds shall never be payable out of funds raised or to be raised by taxation or from any other revenues, properties or income of the City.
Section 2.3. **Authorization for Indenture.**

The terms and provisions of this Indenture and the execution and delivery hereof by the City to the Trustee have been duly authorized by official action of the City Council of the City. The City has ascertained and it is hereby determined and declared that the execution and delivery of this Indenture is necessary to carry out and effectuate the purposes set forth in the preambles of this Indenture and that each and every covenant or agreement herein contained and made is necessary, useful and/or convenient in order to better secure the Bonds and is a contract or agreement necessary, useful and/or convenient to carry out and effectuate the purposes herein described.

Section 2.4. **Contract with Owners and Trustee.**

(a) The purposes of this Indenture are to establish a lien and the security for, and to prescribe the minimum standards for the authorization, issuance, execution and delivery of, the Bonds and to prescribe the rights of the Owners, and the rights and duties of the City and the Trustee.

(b) In consideration of the purchase and acceptance of any or all of the Bonds by those who shall purchase and hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the City with the Owner, and shall be deemed to be and shall constitute a contract among the City, the Owners, and the Trustee.

**ARTICLE III**

**AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS**

Section 3.1. **Authorization.**

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State, including particularly the PID Act, as amended. The Bonds shall be issued in the aggregate principal amount of $__________ for the purpose of (i) paying or reimbursing all or a portion of the Actual Costs, (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds.

Section 3.2. **Date, Denomination, Maturities, Numbers and Interest.**

(a) The Bonds shall be dated the date of the initial delivery thereof (the "Bond Date") and shall be issued in Authorized Denominations. The Bonds shall be in fully registered form, without coupons, and shall be numbered separately from R-1 upward, except the Initial Bond, which shall be numbered T-1.
(b) Interest shall accrue and be paid on each Bond from the later of the Bond Date or the most recent Interest Payment Date to which interest has been paid or provided for, at the rate per annum set forth below until the principal thereof has been paid on the maturity date specified below or otherwise provided for. Such interest shall be payable semiannually on __________ and __________ of each year, commencing __________, 20__, computed on the basis of a 360-day year of twelve 30-day months.

(c) The Bonds shall mature on __________ in the years and in the principal amounts and shall bear interest at the rates set forth below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
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(d) The Bonds shall be subject to mandatory sinking fund redemption, optional redemption, and extraordinary optional redemption prior to maturity as provided in Article IV, and shall otherwise have the terms, tenor, denominations, details, and specifications as set forth in the form of Bond set forth in Section 5.2.

Section 3.3. **Conditions Precedent to Delivery of Bonds.**

The Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate the Bonds and, upon payment of the purchase price of the Bonds, shall deliver the Bonds upon the order of the City, but only upon delivery to the Trustee of:

(a) a certified copy of each Assessment Ordinance;

(b) a certified copy of the Bond Ordinance;

(c) a copy of the executed Financing Agreement and all amendments;

(d) a copy of the executed Reimbursement Agreement and all amendments;

(e) a copy of the Redemption Waiver Agreement;

(f) a copy of a Continuing Disclosure Agreement between the City and the dissemination agent and a Continuing Disclosure Agreement between the Developer, the Administrator and the dissemination agent thereunder;

(g) a copy of this Indenture executed by the Trustee and the City;
(h) an executed City Certificate directing the authentication and delivery of the Bonds, describing the Bonds to be authenticated and delivered, designating the purchasers to whom the Bonds are to be delivered, stating the purchase price of the Bonds and stating that all items required by this Section are therewith delivered to the Trustee in form and substance satisfactory to the City;

(i) an executed Signature and No-Litigation Certificate;

(j) satisfactory evidence, in the City's sole discretion, from the Developer delivered to the City of financial ability to complete all improvements not funded from Bond proceeds;

(k) executed opinions of Bond Counsel and the City Attorney; and

(l) the approving opinion of the Attorney General of the State and the State Comptroller's registration certificate.

Section 3.4. **Medium, Method and Place of Payment.**

(a) Principal of and interest on the Bonds shall be paid in lawful money of the United States of America, as provided in this Section.

(b) Interest on the Bonds shall be payable to the Owners thereof as shown in the Register at the close of business on the relevant Record Date or Special Record Date, as applicable.

(c) Interest on the Bonds shall be paid by check, dated as of the Interest Payment Date, and sent, first class United States mail, postage prepaid, by the Paying Agent/Registrar to each Owner at the address of each as such appears in the Register or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement.

(d) The principal of each Bond shall be paid to the Owner of such Bond on the due date thereof, whether at the maturity date or the date of prior redemption thereof, upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in Section 3.2 of this Indenture.
(f) Unclaimed payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which such unclaimed payments pertain. Subject to any escheat, abandoned property, or similar law of the State, any such payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all Outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, none of the City, the Paying Agent/Registrar, or any other Person shall be liable or responsible to any holders of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat law or similar law of the State.

Section 3.5. **Execution and Registration of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Clerk, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Indenture unless and until there appears thereon the Certificate of Trustee substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Trustee. It shall not be required that the same officer or authorized signatory of the Trustee sign the Certificate of Trustee on all of the Bonds. In lieu of the executed Certificate of Trustee described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller’s Registration Certificate substantially in the form provided herein, manually executed by the Comptroller, or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General, is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Closing Date, one Initial Bond representing the entire principal amount of all Bonds, payable in stated installments to the Purchaser, or its designee, executed with the manual or facsimile signatures of the Mayor and the City Clerk, approved by the Attorney General, and registered and manually signed by the Comptroller, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Trustee shall cancel the Initial Bond and upon City order deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC.
Section 3.6. **Ownership.**

(a) The City, the Trustee, the Paying Agent/Registrar and any other Person may treat the Person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the Person in whose name such Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not such Bond is overdue, and none of the City, the Trustee or the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of any Bond shall be valid and effectual and shall discharge the liability of the City, the Trustee and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.7. **Registration, Transfer and Exchange.**

(a) So long as any Bond remains outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Indenture. The Paying Agent/Registrar represents and warrants that it will maintain a copy of the Register, and shall cause the Register to be current with all registration and transfer information as from time to time may be applicable.

(b) A Bond shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any Authorized Denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. The Trustee is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) The Trustee is hereby authorized to authenticate and deliver Bonds transferred or exchanged in accordance with this Section. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each transferred Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such transferred Bond is delivered.
(e) Each exchange Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(f) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Bond.

(g) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond or portion thereof called for redemption prior to maturity within forty-five (45) days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.8. Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Indenture, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Indenture, shall be cancelled, and proper records shall be made regarding such payment, redemption, exchange, or replacement. Whenever in this Indenture provision is made for the cancellation by the Trustee of any Bonds, the Trustee shall destroy such Bonds and deliver a certificate of such destruction to the City.

Section 3.9. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Trustee shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Indenture.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Trustee the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and the Trustee shall authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the Authorized Denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary
form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.10. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Trustee shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the City shall provide and the Trustee, pursuant to the applicable laws of the State and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the Trustee to save them and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Trustee and the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Trustee.

(c) After the delivery of such replacement Bond, if a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the Person to whom it was delivered or any Person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City, the Paying Agent/Registrar or the Trustee in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.
(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.11. **Book-Entry Only System.**

(a) The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the letter of representations from the City to DTC. On the Closing Date the definitive Bonds shall be issued in the form of a single typewritten certificate for each maturity thereof registered in the name of Cede & Co., as nominee for DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any Person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant will respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other Person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other Person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the Person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Indenture, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the registered owner at the close of business on the Record Date or Special Record Date, as applicable, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.
Section 3.12. **Successor Securities Depository: Transfer Outside Book-Entry-Only System.**

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the letter of representations from the City to DTC, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

Section 3.13. **Payments to Cede & Co.**

Notwithstanding any other provision of this Indenture to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the blanket letter of representations from the City to DTC.

**ARTICLE IV**

**REDEMPTION OF BONDS BEFORE MATURITY**

Section 4.1. **Limitation on Redemption.**

The Bonds shall be subject to redemption before their scheduled maturity only as provided in this Article IV.

Section 4.2. **Mandatory Sinking Fund Redemption.**

(a) The Bonds maturing on _________ in the years _____ (collectively, "Term Bonds"), are subject to mandatory sinking fund redemption prior to their respective maturities and will be redeemed by the City in part at the redemption price equal to the principal amount of the Bonds called for redemption, plus accrued and unpaid interest to the date fixed for redemption from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI, on the dates and in the respective sinking fund installments as set forth in the following schedule:
(b) At least thirty (30) days prior to each sinking fund redemption date, the Trustee shall select, in accordance with Section 4.5, a principal amount of Bonds of such maturity equal to the Sinking Fund Installment amount of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 4.6.

(c) The principal amount of Bonds required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least 30 days prior to the sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

(d) The principal amount of Bonds required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced on a pro rata basis among Sinking Fund Installments by the principal amount of any Bonds which, at least 30 days prior to the sinking fund redemption date, shall have been redeemed pursuant to the optional redemption provisions in Section 4.3 hereof or the extraordinary optional redemption provisions in Section 4.4 hereof and not previously credited to a mandatory sinking fund redemption.

Section 4.3. Optional Redemption.

The Bonds may be redeemed prior to their scheduled maturities on any date on or after ____________, 20__, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

Section 4.4. Extraordinary Optional Redemption.

The City reserves the right and option to redeem Bonds before their respective scheduled maturity dates, in whole or in part, on any date, at a redemption price equal to the principal amount of the Bonds called for redemption, plus accrued and unpaid interest to the date fixed for redemption, from amounts on deposit in the Redemption Fund as a result of Prepayments (including related transfers to the Redemption Fund as provided in Section 6.7(d)) or any other transfers to the Redemption Fund under the terms of this Indenture.
Section 4.5. Partial Redemption.

(a) If less than all of the Bonds are to be redeemed pursuant to either Sections 4.2, 4.3 or 4.4, Bonds shall be redeemed in increments of $5,000 by lot, provided that no redemption shall cause the principal amount of any Bond to be less than the minimum Authorized Denomination for such Bond except as provided in the following sentence. Notwithstanding the foregoing, if any Bonds are to be partially redeemed and such redemption results in the redemption of a portion of a single Bond in an amount less than the Authorized Denomination in effect at the time, a Bond in the principal amount equal to the unredeemed portion, but not less than $5,000, may be issued. Each Bond shall be treated as representing the number of Bonds that is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination for such Bond.

(b) Upon surrender of any Bond for redemption in part, the Trustee in accordance with Section 3.7 of this Indenture, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

Section 4.6. Notice of Redemption to Owners.

(a) Upon notification by the City to the Trustee of the exercise of any redemption, the Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register.

(b) The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, and subject to Section 4.5, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

(d) The City has the right to rescind any optional redemption or extraordinary optional redemption described in Section 4.3 or 4.4 by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.
Section 4.7.  Payment Upon Redemption.

(a) The Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Redemption Fund or otherwise received by the Trustee from the City and shall use such funds solely for the purpose of paying the Redemption Price on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the designated corporate trust office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the Redemption Price on such Bond to the date of redemption from the moneys set aside for such purpose.

Section 4.8.  Effect of Redemption.

Notice of redemption having been given as provided in Section 4.6 of this Indenture, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption provided that funds for the payment of the principal amount plus accrued unpaid interest on such Bonds to the date fixed for redemption are on deposit with the Trustee; thereafter, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

ARTICLE V

FORM OF THE BONDS

Section 5.1.  Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Trustee, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Indenture, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.
(d) The Initial Bond submitted to the Attorney General may be typewritten and photocopied or otherwise reproduced.

Section 5.2. Form of the Bonds.

(a) Form of Bond.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE CITY, HAYS COUNTY, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND.

<table>
<thead>
<tr>
<th>INTEREST RATE</th>
<th>MATURITY DATE</th>
<th>DATE OF DELIVERY</th>
<th>CUSIP NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>_____%</td>
<td>_________<strong>, 20</strong></td>
<td>_________<strong>, 20</strong></td>
<td>_______ ___</td>
</tr>
</tbody>
</table>

The City of San Marcos, Texas (the "City"), for value received, hereby promises to pay, solely from the Pledged Revenues, to

______________________________
or registered assigns, on the Maturity Date, as specified above, the sum of

______________________________ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Date of Delivery, as specified above, or the most recent Interest Payment Date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on __________and __________ of each year, commencing ___________, 20__.

Capitalized terms appearing herein that are defined terms in the Indenture (defined below), have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.
The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate trust office in ________, __________ (the "Designated Payment/Transfer Office"), of UMB Bank, N.A., as trustee and paying agent/registrant (the "Trustee"), or, with respect to a successor trustee and paying agent/registrant, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the Interest Payment Date, mailed by the Trustee to the registered owner at the address shown on the registration books kept by the Trustee or by such other customary banking arrangements acceptable to the Trustee, requested by, and at the risk and expense of, the Person to whom interest is to be paid. For the purpose of the payment of interest on this Bond, the registered owner shall be the Person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the __________ day of the month next preceding such Interest Payment Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Trustee, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a duly authorized issue of assessment revenue bonds of the City having the designation specified in its title (herein referred to as the "Bonds"), dated as of the Date of Delivery and issued in the aggregate principal amount of $________ and issued, with the limitations described herein, pursuant to an Indenture of Trust, dated as of _____________, 2019 (the "Indenture"), by and between the City and the Trustee, to which Indenture reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder to the holders of the Bonds, the Trustee, and the City, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each holder of this Bond hereby consents. All Bonds issued under the Indenture are equally and ratably secured by the amounts thereby pledged and assigned. The Bonds are being issued for the purpose of (i) paying or reimbursing all or a portion of the Actual Costs, (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds.
The Bonds are limited obligations of the City payable solely from the Trust Estate. Reference is hereby made to the Indenture, copies of which are on file with and available upon request from the Trustee, for the provisions, among others, with respect to the nature and extent of the duties and obligations of the City, the Trustee and the Owners. The Owner of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms, conditions and provisions of the Indenture.

In the Indenture, the City has reserved the right to issue Additional Bonds and Refunding Bonds payable from and secured by a lien on a pledge of the sources described above on a parity with this Bond.

Notwithstanding any provision hereof, the Indenture may be released and the obligation of the City to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Defeasance Securities sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in denominations of $100,000 and any multiple of $5,000 in excess thereof ("Authorized Denominations"). The City prohibits the breaking up or allocation of CUSIP numbers to any Bond or Bonds in denominations of less than $100,000, and any attempt to do so will be void and of no effect, except as may be the result of a partial redemption of a single Bond as provided in the Indenture.

The Bonds maturing on __________ in the years _________ (collectively, "Term Bonds"), are subject to mandatory sinking fund redemption prior to their respective maturities and will be redeemed by the City in part a redemption price equal to the principal amount thereof plus accrued and unpaid interest thereon to the date set for redemption from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI of the Indenture, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

<table>
<thead>
<tr>
<th>Term Bonds Maturing ________<strong>, 20</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Redemption Date</td>
</tr>
</tbody>
</table>

At least thirty (30) days prior to each sinking fund redemption date, the Trustee shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Bonds of such maturity equal to the sinking fund installments of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory
sinking fund redemption date, and shall give notice of such redemption, as provided in Section 4.6 of the Indenture.

The principal amount of Bonds required to be redeemed on any sinking fund redemption date shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least 30 days prior to the sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued and unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

The principal amount of Bonds required to be redeemed on any sinking fund redemption date shall be reduced, on a pro rata basis among Sinking Fund Installments by the principal amount of any Bonds which, at least 30 days prior to the sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

The Bonds may be redeemed prior to their scheduled maturities on any date on or after ____________, 20__, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

The Bonds are subject to extraordinary optional redemption prior to maturity in whole or in part, on any date, at a redemption price equal to the principal amount of the Bonds called for redemption, plus accrued and unpaid interest to the date fixed for redemption from amounts on deposit in the Redemption Fund as a result of Prepayments or any other transfers to the Redemption Fund under the terms of the Indenture.

The Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register. The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.
The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the holders of the Bonds under the Indenture at any time Outstanding affected by such modification. The Indenture also contains provisions permitting the holders of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the holders of all the Bonds, to waive compliance by the City with certain past defaults under the Bond Ordinance or the Indenture and their consequences. Any such consent or waiver by the holder of this Bond or any predecessor Bond evidencing the same debt shall be conclusive and binding upon such holder and upon all future holders thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Trustee, and upon delivery to the Trustee of such certifications and/or opinion of counsel as may be required under the Indenture for the transfer of this Bond. Upon satisfaction of such requirements, one or more new fully registered Bonds of the same Stated Maturity, of Authorized Denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Trustee shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Trustee, and any other Person may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the Person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Trustee shall be affected by notice to the contrary.

The City has reserved the right to issue Additional Bonds on the terms and conditions specified in the Indenture.

NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY, HAYS COUNTY, OR THE STATE OF TEXAS, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE BONDS.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any Constitutional or statutory limitation.
IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be executed under the official seal of the City.

___________________________________
City Clerk, City of San Marcos, Texas

___________________________________
Mayor, City of San Marcos, Texas

[CITY SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. ______________
THE STATE OF TEXAS §

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this ______________

___________________________________
Comptroller of Public Accounts
of the State of Texas

[SEAL]

(c) Form of Certificate of Trustee.

CERTIFICATE OF TRUSTEE

It is hereby certified that this is one of the Bonds of the series of Bonds referred to in the within mentioned Indenture.

UMB Bank, N.A., as Trustee

DATED: ________________

By: ________________________
(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto (print or typewrite name and address, including zip code, of Transferee.)

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
(Social Security or other identifying number: ____________________________) the within Bond and all rights hereunder, and hereby irrevocably constitutes and appoints ____________________________, attorney, to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ___________________________

Signature Guaranteed by:

____________________________________________________________________________

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Trustee.

(e) The Initial Bond shall be in the form set forth in paragraphs (a) through (d) of this section, except for the following alterations:

(i) immediately under the name of the Bond the heading "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below," and the reference to the "CUSIP NUMBER" shall be deleted;

(ii) the Initial Bond shall be numbered T-1; and

(ii) in the first paragraph of the Bond, the words "on the Maturity Date, as specified above, the sum of __________________________ DOLLARS" shall be deleted and the following will be inserted: "on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:
CUSIP Registration.

The City may secure identification numbers through CUSIP Global Services, managed by S&P Global Market Intelligence on behalf of the American Bankers Association, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and none of the City, the attorneys approving said Bonds as to legality or the Trustee are to be held responsible for CUSIP numbers incorrectly printed on the Bonds. The City prohibits any Bond to be issued in a denomination of less than $100,000 and further prohibits the assignment of a CUSIP number to any Bond with a denomination of less than $100,000, and any attempt to accomplish either of the foregoing shall be void and of no effect, except as provided in Section 4.5 hereof. The Trustee may include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the City nor the Trustee shall be liable for any inaccuracies in such numbers.

Legal Opinion.

The approving legal opinion of Bond Counsel may be printed on or attached to each Bond over the certification of the City Clerk of the City, which may be executed in facsimile.

ARTICLE VI

FUNDS AND ACCOUNTS

Establishment of Funds and Accounts.

Creation of Funds. The following Funds are hereby created and established under this Indenture:

(i) Pledged Revenue Fund;
(ii) Bond Fund;
(iii) Project Fund;
(iv) Reserve Fund;
(v) Redemption Fund;
(vi) Rebate Fund;
(vii) Administrative Fund;
(viii) Reimbursement Fund; and
(ix) Developer Property Tax Reserve Fund.

(b) Creation of Accounts and Subaccounts.

(i) The following Accounts are hereby created and established under the Bond Fund:

(A) Capitalized Interest Account; and
(B) Principal and Interest Account.

(ii) The following Accounts are hereby created and established under the Reserve Fund:

(A) Reserve Account; and
(B) Delinquency & Prepayment Reserve Account.

(iii) The following Accounts are hereby created and established under the Project Fund:

(A) Improvement Account; and
(B) Costs of Issuance Account.

(iv) The following Accounts are hereby created and established under the Pledged Revenue Fund:

(A) Bond Pledged Revenue Account; and
(B) Developer Reimbursement Pledged Revenue Account.

(c) Each Fund, each Account and each Subaccount created within such Fund shall be maintained by the Trustee separate and apart from all other funds and accounts of the City. The Pledged Funds shall constitute trust funds which shall be held in trust by the Trustee as part of
the Trust Estate solely for the benefit of the Owners of the Bonds. Amounts on deposit in the Funds, Accounts and Subaccounts shall be used solely for the purposes set forth herein.

(d) Interest earnings and profit on each respective Fund and Account established by this Indenture shall be applied or withdrawn for the purposes of such Fund or Account as specified below.

Section 6.2. **Initial Deposits to Funds and Accounts.**

(a) The proceeds from the sale of the Bonds shall be paid to the Trustee and deposited or transferred by the Trustee as follows:

(i) to the Capitalized Interest Account of the Bond Fund: $\_\_\_\_\_\_\_\_\_;

(ii) to the Reserve Account of the Reserve Fund $\_\_\_\_\_\_\_\_\_, which is equal to the initial Reserve Account Requirement;

(iii) to the Costs of Issuance Account of the Project Fund: $\_\_\_\_\_\_\_\_\_;

(iv) to the Improvement Account of the Project Fund: $\_\_\_\_\_\_\_\_\_\_; and

(b) Funds received from the Developer on the Closing Date in the amount of $\_\_\_\_\_\_\_\_\_ (the "Initial Deposit", as defined by the Redemption Waiver Agreement) shall be deposited to the Developer Property Tax Reserve Fund.

Section 6.3. **Pledged Revenue Fund.**

(a) Immediately upon receipt thereof, the City shall transfer to the Trustee for deposit to the Pledged Revenue Fund the Pledged Revenues, as set forth in the Service and Assessment Plan. Specifically, the City shall direct the Trustee in writing to deposit or cause to be deposited the foregoing amounts as follows (each as set forth in a City Certificate specifying the funds or accounts into which the amounts are to be deposited): (i) first, to the Bond Pledged Revenue Account of the Pledged Revenue Fund in an amount sufficient to pay debt service on the Bonds next coming due, (ii) second, to the Reserve Account of the Reserve Fund in an amount to cause the amount in the Reserve Account to equal the Reserve Account Requirement, (iii) third to the Developer Reimbursement Pledged Revenue Account of the Pledged Revenue Fund the amounts the City determines is necessary to pay and reimburse the Developer for costs of Public Improvements (pursuant to the terms of the Reimbursement Agreement), (iv) fourth to pay other costs of the Public Improvements, and (v) fifth to pay other costs permitted by the PID Act. Notwithstanding the foregoing, the Additional Interest of the Annual Installments shall only be utilized for the purposes set forth in Section 6.7(a) hereof and, on each March 1, beginning March 1, 2019, and on any other day set forth in a City Certificate, the amount of Additional Interest of the Annual Installments confirmed by the City pursuant to a City Certificate, will be deposited into the Delinquency & Prepayment Reserve Account, and/or the Redemption Fund, as
applicable. Moneys transferred to the Developer Reimbursement Pledged Revenue Account shall not be a part of the Trust Estate and are not security for the Bonds.

(b) From time to time as needed to pay the obligations relating to the Bonds, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Bond Pledged Revenue Account of the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account and any expected transfers from the Capitalized Interest Account to the Principal and Interest Account, such that the amount on deposit in the Principal and Interest Account equals the principal (including any Sinking Fund Installments) and interest due on the Bonds on the next Interest Payment Date.

(c) From time to time as needed to pay the obligations relating to costs of Public Improvements the Trustee shall, at the written request of the Developer and approval of the City, withdraw from the Developer Reimbursement Pledged Revenue Account and transfer to the Reimbursement Fund such amount, as specified in the written request, as needed to reimburse the Developer for funds used to fund costs of Public Improvements.

(d) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7, there are insufficient funds to make the payments provided in paragraph (b) above, the Trustee shall apply the available funds in the Principal and Interest Account first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds.

(e) The Trustee shall transfer the amounts determined in writing by the City as Prepayments to the Redemption Fund promptly after deposit of such amounts into the Pledged Revenue Fund.

(f) Upon receipt of Foreclosure Proceeds, the Trustee shall transfer such amount of Foreclosure Proceeds determined in writing by the City, first to the Reserve Fund to restore any transfers from the Reserve Fund made to which the Foreclosure Proceeds relate, and second, to the Redemption Fund.

(g) After satisfaction of the requirement to provide for the payment of the principal and interest on the Bonds and to fund any deficiency that may exist in the Reserve Fund and to fund any obligations due to the Developer with funds deposited to the Reimbursement Fund, the Trustee shall, at the written request of the City, transfer any Pledged Revenues remaining in the Pledged Revenue Fund to the City, which monies may be used for any lawful purpose for which Assessments may be used under the PID Act. The Trustee may rely upon any such request of the City and shall have no obligation to determine the lawful purposes permitted under the PID Act.

Section 6.4. **Bond Fund.**

(a) On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account and transfer to the Paying Agent/Registrar the principal (including any Sinking Fund Installments) and interest then due and payable on the Bonds, less any amount to be used to
pay interest on the Bonds on such Interest Payment Date from the Capitalized Interest Account as provided below.

(b) If amounts in the Principal and Interest Account are insufficient for the purposes set forth in paragraph (a) above, the Trustee shall withdraw from the Reserve Fund amounts to cover the amount of such insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited in the Principal and Interest Account and transferred to the Paying Agent/Registrar.

(c) Moneys in the Capitalized Interest Account shall be used for the payment of all interest due on the Bonds on ________________, and ______________. Any amounts on deposit in the Capitalized Interest Account after the payment of interest on the dates and in the amounts listed above shall be transferred to the Project Fund, or if the Project Fund has been closed as provided in Section 6.5(d), such amounts shall be transferred to the Redemption Fund to be used to redeem Bonds and the Capitalized Interest Account shall be closed.

(d) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7, there are insufficient funds to make the payments provided in paragraph (a) above, the Trustee shall apply the available funds in the Principal and Interest Account first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds.

Section 6.5. **Project Fund.**

(a) Money on deposit in the Project Fund shall be used for the purposes specified in Section 3.1.

(b) Disbursements from the Costs of Issuance Account of the Project Fund shall be made by the Trustee to pay costs of issuance of the Bonds pursuant to one or more City Certificates. Disbursements from all other Accounts of the Project Fund to pay Actual Costs shall be made by the Trustee upon receipt by the Trustee of a properly executed and completed Certification for Payment. Each such City Certificate shall include a list of the payees and the payments (not to exceed) to be made to such payees as well as a statement that all payments shall be made by check or wire transfer in accordance with the payment instructions set forth in such written request and the Trustee may rely on such payment instructions though given by the City with no duty to investigate or inquire as to the authenticity of or authorization for the invoice or the payment instructions contained therein.

(c) Except as provided in Section 6.5(d) and (f), money on deposit in the Improvement Account shall be used solely to pay Actual Costs provided the Trustee shall have no responsibility for the application of any funds disbursed from the Improvement Account in reliance upon a Certification for Payment approved by the City.

(d) If the City Representative determines in his or her sole discretion that amounts then on deposit in the Improvement Account of the Project Fund are not expected to be expended for purposes of the Project Fund due to the abandonment, or constructive abandonment, of one or more of the Public Improvements such that, in the reasonable opinion of the City Representative,
it is unlikely that the amounts in the Improvement Account of the Project Fund will ever be expended for the purposes of the Project Fund, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the Improvement Account of the Project Fund that are not expected to be used for purposes of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the Improvement Account of the Project Fund shall be transferred to the Redemption Fund to redeem Bonds on the earliest practicable date after notice of redemption has been provided in accordance with this Indenture. Upon such transfers, the Improvement Account of the Project Fund shall be closed.

(e) In making any determination pursuant to this Section, the City Representative may conclusively rely upon a certificate of an Independent Financial Consultant.

(f) Upon the filing of a City Certificate stating that all Public Improvements have been completed and that all Actual Costs have been paid, or that any Actual Costs are not required to be paid from the Improvement Account of the Project Fund pursuant to a Certification for Payment, the Trustee shall transfer the amount, if any, remaining within the Improvement Account of the Project Fund to the Bond Fund or to the Redemption Fund as directed by the City Representative in a City Certificate filed with the Trustee. Upon such transfers, the Improvement Account of the Project Fund shall be closed.

(g) Upon the Trustee's receipt of a written determination by the City Representative that all costs of issuance of the Bonds have been paid, any amounts remaining in the Costs of Issuance Account shall be transferred to another Account or Subaccount in the Project Fund and used to pay Actual Costs or to the Principal and Interest Account and used to pay interest on the Bonds, as directed in a City Certificate filed with the Trustee and the Costs of Issuance Account shall be closed.

Section 6.6. Redemption Fund.

Subject to adequate amounts on deposit in the Pledged Revenue Fund, the Trustee shall cause to be deposited to the Redemption Fund from the Pledged Revenue Fund an amount sufficient to redeem Bonds as provided in Sections 4.3 and 4.4 on the dates specified for redemption as provided in Sections 4.3 and 4.4. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee to redeem Bonds as provided in Article IV.

Section 6.7. Reserve Fund.

(a) The City agrees with the Owners of the Bonds to accumulate and, when accumulated, maintain in the Reserve Account, an amount equal to not less than the Reserve Account Requirement. All amounts deposited in the Reserve Account shall be used and withdrawn by the Trustee for the purpose of making transfers to the Principal and Interest Account of the Bond Fund as provided in this Indenture.

(b) Subject to 6.3(a) herein, the Trustee will transfer from the Bond Pledged Revenue Account of the Pledged Revenue Fund to the Delinquency & Prepayment Reserve Account on March 1 of each year, commencing March 1, 2019, and on any other day set forth in a City
Certificate, an amount equal to the Additional Interest until the Delinquency & Prepayment Reserve Requirement has been accumulated in the Delinquency & Prepayment Reserve Account. At any time, the amount on deposit in the Delinquency & Prepayment Reserve Account is less than Delinquency & Prepayment Reserve Requirement, the Trustee shall resume depositing such Additional Interest into the Delinquency & Prepayment Reserve Account on March 1 of each year, and on any other day set forth in a City Certificate, until the Delinquency & Prepayment Reserve Requirement has been met. Furthermore, once the Delinquency & Prepayment Reserve Requirement has accumulated in the Delinquency & Prepayment Reserve Account, any amounts in excess of the Delinquency & Prepayment Reserve Requirement shall be transferred by the Trustee to the Redemption Fund to redeem Bonds as provided in Article IV provided, however, that at any time the amount on deposit in the Delinquency & Prepayment Reserve Account is less than Delinquency & Prepayment Reserve Requirement, the Trustee shall resume depositing such Additional Interest into the Delinquency & Prepayment Reserve Account until the Delinquency & Prepayment Reserve Requirement has accumulated in the Delinquency & Prepayment Reserve Account. In determining the amounts to be transferred pursuant to this Section, the Trustee may conclusively rely on a City Certificate specifying the amounts to transfer.

(c) Whenever a transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the City, specifying the amount withdrawn and the source of said funds.

(d) In the event of an extraordinary optional redemption of Bonds pursuant to Section 4.4, the Trustee, pursuant to written directions from the City, shall transfer from the Reserve Account of the Reserve Fund to the Redemption Fund the amount specified in such directions, which shall be an amount equal to the principal amount of Bonds to be redeemed multiplied by the lesser of: (i) the amount required to be in the Reserve Account of the Reserve Fund divided by the principal amount of Outstanding Bonds prior to the redemption, and (ii) the amount actually in the Reserve Account of the Reserve Fund divided by the principal amount of Outstanding Bonds prior to the redemption. If after such transfer, and after applying investment earnings on the Prepayment toward payment of accrued interest, there are insufficient funds to pay the principal amount plus accrued and unpaid interest on such Bonds to the date fixed for redemption of the Bonds to be redeemed as a result of such Prepayment, the Trustee shall transfer an amount equal to the shortfall from the Delinquency & Prepayment Reserve Account to the Redemption Fund to be applied to the redemption of the Bonds.

(e) Whenever, on any Interest Payment Date, or on any other date at the request of a City Representative, the value of cash and Value of Investment Securities on deposit in the Reserve Account exceeds the Reserve Account Requirement, the Trustee shall provide written notice to the City Representative of the amount of the excess. Such excess shall be transferred to the Principal and Interest Account to be used for the payment of interest on the Bonds on the next Interest Payment Date in accordance with Section 6.4, unless prior to the next Interest Payment Date, the Trustee receives a City Certificate instructing the Trustee to apply such excess: (i) to pay amounts due under Section 6.8 hereof, (ii) to the Administrative Fund in an amount not more than the Annual Collection Costs for the Bonds or (iii) to the Project Fund to pay Actual Costs if such application and the expenditure of funds is expected to occur within three years of the date hereof.
(f) Whenever, on any Interest Payment Date, or on any other date at the written request of the City Representative, the amount in the Delinquency & Prepayment Reserve Account exceeds the Delinquency & Prepayment Reserve Requirement, the Trustee shall provide written notice to the City of the amount of the excess, and the Trustee shall transfer such excess pursuant to Section 6.7(b) hereof.

(g) Whenever, on any Interest Payment Date, the amount on deposit in the Bond Fund is insufficient to pay the debt service on the Bonds Similarly Secured due on such date, the Trustee shall transfer first from the Delinquency & Prepayment Reserve Account of the Reserve Fund, and second from the Reserve Account of the Reserve Fund to the Bond Fund the amounts necessary to cure such deficiency.

(h) At the final maturity of the Bonds Similarly Secured, the amount on deposit in the Reserve Account and the Delinquency & Prepayment Reserve Account shall be transferred to the Redemption Fund and applied to the payment of the principal of the Bonds Similarly Secured.

(i) If, after a Reserve Account withdrawal, the amount on deposit in the Reserve Account is less than the Reserve Account Requirement, the Trustee shall transfer from the Pledged Revenue Fund to the Reserve Account the amount of such deficiency, but only to the extent that such amount is not required for the timely payment of principal, interest, or Sinking Fund Installments.

(j) If the amount held in the Reserve Fund together with the amount held in the Pledged Revenue Fund, the Bond Fund and Redemption Fund is sufficient to pay the principal amount and of all Outstanding Bonds Similarly Secured on the next date the Bonds Similarly Secured may be optionally redeemed by the City at a redemption price of par, together with the unpaid interest accrued on such Bonds Similarly Secured as of such date, the moneys shall be transferred to the Redemption Fund and thereafter used to redeem all Bonds Similarly Secured on such date.


(a) The Rebate Fund is to be held by the Trustee in accordance with the terms and provisions of this Indenture. Amounts on deposit in the Rebate Fund shall be used solely for the purpose of paying amounts due the United States Government in accordance with the Code. The Rebate Fund shall not be part of the Trust Estate and shall not be security for the Bonds.

(b) In order to assure that Rebatable Arbitrage is paid to the United States rather than to a third party, investments of funds on deposit in the Rebate Fund shall be made in accordance with the Code and the Tax Certificate.

(c) The Trustee conclusively shall be deemed to have complied with the provisions of this Section and shall not be liable or responsible if it follows the instructions of the City and shall not be required to take any action under this Section in the absence of instructions from the City.
(d) If, on the date of each annual calculation, the amount on deposit in the Rebate Fund exceeds the amount of the Rebatable Arbitrage, the City may direct the Trustee, pursuant to a City Certificate, to transfer the amount in excess of the Rebatable Arbitrage to the Bond Fund.

Section 6.9. Administrative Fund.

(a) Immediately upon receipt thereof, the City shall deposit or cause to be deposited to the Administrative Fund the portion of the Assessments and Annual Installments allocated to the payment of Annual Collection Costs and Delinquent Collection Costs, as set forth in the Service and Assessment Plan.

(b) Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered hereunder and used as directed by a City Certificate solely for the purposes set forth in the Service and Assessment Plan, including payment of Annual Collection Costs and Delinquent Collection Costs or may be withdrawn by the Trustee without further authorization for the payment of the fees, expenses, advances and indemnities owed to the Trustee in accordance with Section 9.6. The Administrative Fund shall not be part of the Trust Estate and shall not be security for the Bonds.

Section 6.10. Developer Property Tax Reserve Fund.

(a) The Developer shall deposit or cause to be deposited the Initial Deposit into the Developer Property Tax Reserve Fund on or prior to the issuance of the Bonds. Prior to the Developer Property Tax Reserve Fund Release Date, and upon receipt by the Trustee of a City Certificate specifying (1) the amount to be transferred and that such amount is equal to all outstanding Developer Property Tax Delinquency Amounts and (2) the dates on which such transfer shall be made, funds deposited in the Developer Property Tax Reserve Fund shall be transferred by the Trustee in an aggregate amount equal to all outstanding Developer Property Tax Delinquency Amounts to the City for payment of the related unpaid delinquent ad valorem taxes levied by any taxing entity on any property located in the District and any penalties, costs and interest related thereto. The City shall use amounts received by the Trustee from the Developer Property Tax Reserve Fund solely for payment of outstanding Developer Property Tax Delinquency Amounts and any penalties, costs and interest related thereto, all in accordance with the Redemption Waiver Agreement. Prior to the Developer Property Tax Reserve Fund Release Date, upon any transfer of funds deposited in the Developer Property Tax Reserve Fund to the City in accordance with this clause (a), the Developer shall deposit or cause to be deposited an equivalent amount of funds into the Developer Property Tax Reserve Fund to replenish such Fund, all in accordance with the Redemption Waiver Agreement.

(b) Any amounts deposited in the Developer Property Tax Reserve Fund shall be released to the Developer, except during the occurrence of an ongoing current Event of Default, pursuant to the Redemption Waiver Agreement. The City shall provide the Trustee with a City Certificate authorizing any such release, upon which the Trustee may conclusively rely in disbursing the amounts in the Developer Property Tax Reserve Fund.
At such time as the Trustee receives a City Certificate confirming the condition for release is met, any amounts deposited in the Developer Property Tax Reserve Fund shall be irrevocably and unconditionally released to the Developer, or to the Developer's successors and assigns or designees as identified in a written notice from the Developer to the Trustee and the City. The City and the Trustee shall solely and conclusively rely as to payment of amounts released from the Developer Property Tax Reserve Fund on any such written notice from the Developer as to their successors and assigns or designees. The City shall provide written notice of the release to the Trustee and Developer, or to the Developer's successors and assigns. The Developer Property Tax Reserve Fund shall not be a part of the Trust Estate and shall not be security for the Bonds.

Section 6.11. Investment of Funds.

(a) Money in any Fund or Account, other than the Reserve Account, shall be invested by the Trustee as directed by the City pursuant to a City Certificate filed with the Trustee in Investment Securities; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund or Account will be available at the proper time or times. Money in the Reserve Account shall be invested in such Investment Securities as directed by the City pursuant to a City Certificate filed with the Trustee, provided that the final maturity of any individual Investment Security shall not exceed 270 days and the average weighted maturity of any investment pool or no-load money market mutual fund shall not exceed 90 days. Each such City Certificate shall be a certification that the investment directed therein constitutes an Investment Security and that such investments meet the maturity and average weighted maturity requirements set forth in the preceding sentence. Such investments shall be valued each year in terms of the Value of Investment Securities as of September 30. For purposes of maximizing investment returns, to the extent permitted by law, money in the Funds and Accounts may be invested in common investments of the kind described above, or in a common pool of such investment which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund or Account are held by or on behalf of each such Fund or Account. If necessary, such investments shall be promptly sold, in order to make the disbursements required or permitted by this Indenture, to prevent any default under this Indenture. To ensure that cash on hand is invested, if the City does not give the Trustee written or timely instructions with respect to investments of funds, the Trustee shall invest and re-invest cash balances in authorized and permitted investments under the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, or any successor law, as in effect from time to time which initially shall be money market mutual funds that are rated in either of the two highest categories by a rating agency, including funds for which the Trustee and/or its affiliates provide investment advisory or other management services, until directed otherwise by the City Certificate.

(b) Obligations purchased as an investment of moneys in any Fund or Account shall be deemed to be part of such Fund or Account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in
Funds and Accounts. Whenever in this Indenture any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Investment Securities as determined and directed in writing by the City.

(c) The Trustee and its affiliates may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. The Trustee shall not incur any liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the legality of any investments.

(d) Investments in any and all Funds and Accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular Funds or Accounts of amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture.

(e) The Trustee will furnish to the City, upon the City's written request, periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the City. Upon the City's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

(f) In the event it is found, after an annual calculation has been done pursuant to Section 6.8 hereof, that the City owes Rebatable Arbitrage to the United States Government, the City shall direct the Trustee, pursuant to a City Certificate, to transfer to the Rebate Fund the investment earnings on funds on deposit in the Pledged Funds in an amount equal to the Rebatable Arbitrage owed by the City. The City Certificate shall specify the amount to the transferred and the Pledged Fund or Pledged Funds from which the investment earnings shall be transferred.


All Funds heretofore created or reaffirmed, to the extent not invested as herein permitted, shall be secured in the manner and to the fullest extent required by law for the security of public funds, and such Funds shall be used only for the purposes and in the manner permitted or required by this Indenture.
Section 6.13. **Reimbursement Fund.**

Money on deposit in the Reimbursement Fund shall be used to pay costs as directed in a City Certificate. When the Developer provides written notice to the Trustee, as confirmed in writing by the City, that all amounts due to the Developer to reimburse it for the funds withdrawn from the Project Fund have been paid to the Developer, whether through Assessments received and applied in accordance with the Service and Assessment Plan or an Annual Service Plan Update or through the proceeds of Additional Bonds, no further deposits shall be made to the Reimbursement Fund and the Reimbursement Fund shall be closed.

**ARTICLE VII**

**COVENANTS**

Section 7.1. **Confirmation of Assessments.**

The City hereby confirms, covenants, and agrees that, in the Assessment Ordinance, it has levied the Assessments against the property in the District from which the Assessment Revenues will be collected and received.

Section 7.2. **Collection and Enforcement of Assessments.**

(a) For so long as any Bonds are Outstanding and amounts are due to the Developer under the Reimbursement Agreement to reimburse it for its funds it has contributed to pay Actual Costs, the City covenants, agrees and warrants that it will take and pursue all reasonable actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and to cause no reduction, abatement or exemption in the Assessments.

(b) To the extent permitted by law, notice of the Annual Installments shall be sent by, or on behalf of, the City to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

(c) The City will determine or cause to be determined, no later than February 15 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessments or the corresponding property.

(d) The City shall not be required under any circumstances to expend any funds for Delinquent Collection Costs or Annual Collection Costs in connection with its covenants and
agreements under this Section or otherwise other than funds on deposit in the Administrative Fund.

Section 7.3. **Against Encumbrances.**

(a) The City shall not create and, to the extent Pledged Revenues are received, shall not suffer to remain, any lien, encumbrance or charge upon the Pledged Revenues or upon any other property pledged under this Indenture, except the pledge created for the security of the Bonds Similarly Secured or any Refunding Bonds, and other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

(b) So long as Bonds Similarly Secured are Outstanding hereunder or under any indenture relating to any Additional Bonds, the City shall not issue any bonds, notes or other evidences of indebtedness, other than the Bonds, Refunding Bonds and Additional Bonds, secured by any pledge of or other lien or charge on the Pledged Revenues or other property pledged under this Indenture or under any indenture relating to any Additional Bonds, other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

Section 7.4. **Records, Accounts, Accounting Reports.**

The City hereby covenants and agrees that so long as any Bonds are Outstanding and amounts are due to the Developer under the Reimbursement Agreement to reimburse it for its funds it has contributed to pay Actual Costs, it will keep and maintain a proper and complete system of records and accounts pertaining to the Assessments. The Trustee and holder or holders of any Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all such records, accounts, and data relating thereto, upon written request to the City by the Trustee or duly authorized representative, as applicable. The City shall provide the Trustee or duly authorized representative, as applicable, an opportunity to inspect such books and records relating to the Bonds during the City's regular business hours and on a mutually agreeable date not later than thirty days after the City receives such request.

Section 7.5. **Covenants Regarding Tax Exemption of Interest on Bonds.**

(a) The City covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Bonds as an obligation described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Article or any underlying arrangement, directly or indirectly, secure or provide for
the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount that is greater than the lesser of $5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action that would otherwise result in the Bonds being treated as a "private activity bond" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Bonds, other than investment property acquired with –

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, for a period of 90 days or less until such proceeds are needed for the purpose for which the Bonds is issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code;

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to
90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds has been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and,

(9) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code.

(b) In order to facilitate compliance with the above covenant (a)(8), the Rebate Fund is established by the City pursuant to Section 6.1 for the sole benefit of the United States of America, and such Rebate Fund shall not be subject to the claim of any other person, including without limitation the Registered Owner. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto (the "Treasury Regulations"). In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, that may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(d) The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for Actual Costs on its books and records in accordance with the requirements of the Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Public Improvements are completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds is retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes
hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) The City covenants that the projects funded with the proceeds of the Bonds will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax proposes from gross income of the interest.

ARTICLE VIII

LIABILITY OF CITY

Section 8.1. Liability of City.

(a) Neither the full faith and credit nor the general taxing power of the City is pledged to the payment of the Bonds, and no City taxes, fee or revenues from any source are pledged to the payment of, or available to pay any portion of, the Bonds or any other obligations relating to the District. The City shall never be liable for any obligations relating to the Bonds or other obligations relating to the District, other than as specifically provided for in this Indenture.

(b) The City shall not incur any responsibility in respect of the Bonds or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own willful default or act of bad faith. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds, or as to the existence of a default or event of default thereunder.

(c) In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Indenture. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

(d) No provision of this Indenture, the Bonds, the Assessment Ordinance, or any agreement, document, instrument, or certificate executed, delivered or approved in connection with the issuance, sale, delivery, or administration of the Bonds (collectively, the "Bond Documents"), shall require the City to expend or risk its own general funds or other funds or otherwise incur any financial liability (other than with respect to the Pledged Revenues) in the
performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if in the judgment of the City there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it.

(e) Neither the Owners nor any other Person shall have any claim against the City or any of its officers, officials, agents, or employees for damages suffered as a result of the City's failure to perform in any respect any covenant, undertaking, or obligation under any Bond Documents or as a result of the incorrectness of any representation in, or omission from, any of the Bond Documents, except to the extent that any such claim relates to an obligation, undertaking, representation, or covenant of the City, in accordance with the Bond Documents and the PID Act. Any such claim shall be payable only from Pledged Revenues. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency, or instrumentality against the City or any of its officers, officials, agents, or employees to enforce the provisions of any of the Bond Documents or to enforce all rights of the Owners of the Bonds by mandamus or other proceeding at law or in equity.

(f) The City may rely on and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. Whenever in the administration of its duties under this Indenture the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Trustee, an Independent Financial Consultant, an independent inspector or City Manager or other person designated by the City Council to so act on behalf of the City, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Indenture upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

(g) In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.
ARTICLE IX

THE TRUSTEE

Section 9.1. Acceptance of Trust; Trustee as Registrar and Paying Agent.

(a) The Trustee accepts and agrees to execute the respective trusts imposed upon it by this Indenture, but only upon the terms and conditions and subject to the provisions of this Indenture to all of which the parties hereto and the respective Owners of the Bonds agree.

(b) The Trustee is hereby designated and agrees to act as Paying Agent/Registrar for and in respect to the Bonds.

Section 9.2. Trustee Entitled to Indemnity.

The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction by the Owners against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct; provided, however, that in no event shall the Trustee request or require indemnification as a condition to making scheduled debt service payments prior to the occurrence of a default, or to delivering any notice when required hereunder. To the extent permitted by law, the Trustee shall be entitled to indemnification as a condition to making any deposits, payments or transfers when required hereunder, or to delivery any notice when required hereunder. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as the Trustee, without indemnity, and in such case the Trustee may make transfers from the Pledged Revenue Fund and Administrative Fund to pay all fees, costs, and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith and shall be entitled to a preference therefor over any Bonds Outstanding hereunder.

Section 9.3. Responsibilities of the Trustee.

(a) The recitals contained in this Indenture and in the Bonds shall be taken as the statements of the City and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Bonds or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. Except as otherwise expressly provided in this Indenture, the Trustee shall have no responsibility or duty with respect to: (i) the issuance of Bonds for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the City or others in accordance with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; (iv) any calculation of arbitrage or rebate under the Code; or (v) any loss suffered in connection with any investment of funds.
(b) The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture.

(c) The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for its own negligence or willful misconduct. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Project and shall not be responsible for any misconduct or negligence on the part of any agent, attorney, or receiver appointed or chosen with due care.

(d) The Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts.

(e) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of at least a majority of the aggregate outstanding principal of the Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the City or by the Owners of at least a majority of the aggregate outstanding principal of the Bonds at that time. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no Event of Default, except as noted above.

(g) The Trustee’s immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee’s officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee’s right to compensation, shall survive the Trustee’s resignation or removal, the discharge of this Indenture, and final payment of the Bonds.

Section 9.4. Property Held in Trust.

All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 9.5. Trustee Protected in Relying on Certain Documents.

(a) The Trustee may conclusively rely upon any order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, or other document provided to the
Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument. Subject to Section 9.1 and 9.3, the Trustee may consult with counsel selected by the Trustee with due care, who may or may not be Bond Counsel, and any advice from such counsel with respect to compliance with the provisions of this Indenture shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder, reasonably and in good faith, in accordance with such advice.

(b) Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed to be conclusively proved and established by a City Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such City Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Except as otherwise expressly provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee shall be sufficiently executed if executed in the name of the City by the City Representative. The Trustee shall be entitled to conclusively rely upon the foregoing as sufficient evidence of the facts set forth herein. The execution of any City Certificate shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent thereto have occurred.

(c) The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any Person of notice of the provisions hereof except as expressly required in Section 9.13.

Section 9.6. Compensation.

Unless otherwise provided by contract with the Trustee, the Trustee shall transfer from the Administrative Fund, from time to time, reasonable compensation for all services rendered by it hereunder, including its services as Paying Agent/Registrar, together with all its reasonable expenses, charges, and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, which, with respect to ordinary fees and expenses incurred prior to an Event of Default hereunder, shall be transferred pursuant to a City Certificate and subject to any limit on the amount of such compensation or recovery of expenses or other charges as shall be prescribed by such City Certificate, and the Trustee shall have a lien therefor on any and all funds at any time held by it hereunder prior to any Bonds Outstanding. Following an Event of Default, the foregoing limitation on expenses shall not apply. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its
duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the City shall fail to make any payment required by this Section, the Trustee may make such payment from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any Bonds Outstanding hereunder. The right of the Trustee to fees, expense, and indemnification shall survive the release, discharge, and satisfaction of the Indenture.

Section 9.7. Permitted Acts.

The Trustee and its directors, officers, employees, or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Bonds and may join in any action that any Owner of Bonds may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the City or any committee formed to protect the rights of holders of Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not such committee shall represent the holders of a majority of the Bonds.

Section 9.8. Resignation of Trustee.

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 60 days' notice, specifying the date when such resignation shall take effect, to the City and each Owner of any Outstanding Bond. Such resignation shall take effect upon the appointment of a successor as provided in Section 9.10 and the acceptance of such appointment by such successor.

Section 9.9. Removal of Trustee.

The Trustee may be removed at any time by (i) the Owners of at least a majority of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or by their attorneys-in-fact, duly authorized and delivered to the City, or (ii) so long as the City is not in default under this Indenture, the City. Copies of each such instrument shall be delivered by the City to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the City or the Owners of not less than 10% of the aggregate principal amount of Bonds then outstanding.

Section 9.10. Successor Trustee.

(a) If the Trustee shall resign, be removed, be dissolved, or become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant.
(b) If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, a successor Trustee may be appointed within one year after any such vacancy shall have occurred by the Owners of at least 25% of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or their attorneys-in-fact, duly authorized and delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and the City.

(c) Until such successor Trustee shall have been appointed by the Owners of the Bonds, the City shall forthwith appoint a Trustee to act hereunder. Copies of any instrument of the City providing for any such appointment shall be delivered by the City to the Trustee so appointed. The City shall mail notice of any such appointment to each Owner of any Outstanding Bonds within 30 days after such appointment. Any appointment of a successor Trustee made by the City immediately and without further act shall be superseded and revoked by an appointment subsequently made by the Owners of Bonds.

(c) If in a proper case no appointment of a successor Trustee shall be made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 9.8 or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Owner of Bonds may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor and the City shall be responsible for the costs of such appointment process.

(e) Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided profits aggregating at least $50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

(f) Each successor Trustee shall mail, in accordance with the provisions of the Bonds, notice of its appointment to the Trustee, any rating agency which, at the time of such appointment, is providing a rating on the Bonds and each of the Owners of the Bonds.

Section 9.11. **Transfer of Rights and Property to Successor Trustee.**

Any successor Trustee appointed under the provisions of Section 9.10 shall execute, acknowledge, and deliver to its predecessor and the City an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations, and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the City or of such successor and upon receipt of its outstanding charges, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all
the rights, immunities, powers, and trusts of such Trustee and all the right, title, and interest of such Trustee in and to the Trust Estate, and shall pay over, assign, and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any deed, conveyance, or instrument in writing from the City be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties, or obligations, any and all such deeds, conveyances, and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged, and delivered by the City.

Section 9.12. Merger, Conversion or Consolidation of Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 9.10, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

Section 9.13. Trustee To File Continuation Statements.

The City will cause to be filed all appropriate financing statements. If necessary, the Trustee shall file or cause to be filed, at the City's expense, such continuation statements as may be delivered to the Trustee and which may be required by the Texas Uniform Commercial Code, as from time to time in effect (the "UCC"), in order to continue perfection of the security interest and rights of the Trustee in such items of tangible or intangible personal property and any fixtures as may have been granted to the Trustee pursuant to this Indenture in the time, place and manner required by the UCC. Unless otherwise notified in writing by the City or the Developer, the Trustee may conclusively rely upon the initial financing statements in filing any continuation statements hereunder.

Section 9.14 Offering Documentation.

The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum, or any other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any State or federal securities laws in connection with the Bonds.

Section 9.15 Expenditure of Funds and Risk.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of its rights or powers if the Trustee shall have reasonable grounds for believing that the repayment of such funds or indemnity against such risk or liability is not assured.
Section 9.16  **Environmental Hazards.**

The Trustee may inform any Owner of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and in such event, no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

The Trustee shall not be responsible or liable for the environmental condition related to the improvements to any real property or for diminution in value of the same, or for any claims by or on behalf of the owners thereof as the result of any contamination by a hazardous substance, hazardous material, pollutant, or contaminant. The Trustee assumes no duty or obligation to assess the environmental condition of any improvements or with respect to compliance thereof under State or federal laws pertaining to the transport, storage, treatment, or disposal of hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits, or licenses issued under such laws.

Section 9.17.  **Accounts, Periodic Reports and Certificates.**

The Trustee shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City, and the Owner or Owners of not less than 10% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

Section 9.18.  **Construction of Indenture.**

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners of the Bonds.

**ARTICLE X**

**MODIFICATION OR AMENDMENT OF THIS INDENTURE**

Section 10.1.  **Amendments Permitted.**

(a) This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture, except as provided below, pursuant to the affirmative vote at a meeting of Owners of the Bonds, or with the written consent without a meeting, of the Owners of the Bonds of at least a majority of the aggregate outstanding principal of the Bonds at that time and City approval of such modification or
amendment. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Pledged Revenues superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by Applicable Laws or this Indenture), or reduce the percentage of Bonds required for the amendment hereof. Any such amendment shall not modify any of the rights or obligations of the Trustee without its written consent. In executing or accepting any Supplemental Indenture, the Trustee shall be fully protected in relying upon an opinion of qualified counsel addressed and delivered to the Trustee stating that (a) the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture, (b) the execution and delivery of will not adversely affect the exclusion from federal gross income of the interest on the Bonds, and (c) such Supplemental Indenture will, upon the execution and delivery thereof, to be a valid and binding obligation of the City.

(b) This Indenture and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by law, and only for anyone or more of the following purposes:

(i) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect;

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in regard to questions arising under this Indenture, as the City may deem necessary or desirable and not inconsistent with this Indenture, and that shall not adversely affect the rights of the Owners of the Bonds; and

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

Section 10.2. Owners' Meetings.

The City may at any time call a meeting of the Owners of the Bonds. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

Section 10.3. Procedure for Amendment with Written Consent of Owners.

(a) The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture, to the extent that such amendment is
permitted by Section 10.1, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, if such consent is required pursuant to Section 10.1, shall be mailed by first class mail, by the Trustee to each Owner of Bonds from whom consent is required under this Indenture, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

(b) Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the written consents of the Owners as required by this Indenture and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 11.6. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

(c) After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). Proof of the mailing of such notice shall be filed with the Trustee. A record, consisting of the papers required by this Section 10.3 to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Indenture shall become effective upon the filing with the Trustee of the proof of mailing of such notice, and the Supplemental Indenture shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 10.4. Procedure for Amendment Not Requiring Owner Consent.

(a) The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture, to the extent that such amendment is permitted by Section 10.1, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a notice stating that the Supplemental Indenture does not require Owner consent, shall be mailed by first class mail by the Trustee to each Owner of Bonds, but failure to mail copies of such Supplemental Indenture shall not affect the validity of the Supplemental Indenture. The Trustee shall retain the proof of its mailing of such notice. A record, consisting of the papers required by this Section 10.4, shall be proof of the matters therein stated until the contrary is proved.
(b) The Supplemental Indenture shall become effective upon the execution and delivery of such Supplemental Indenture by the Trustee and the City, and the Supplemental Indenture shall be deemed conclusively binding upon the City, the Trustee and the Owners of all Bonds as of the date of such execution and delivery.

Section 10.5. **Effect of Supplemental Indenture.**

From and after the time any Supplemental Indenture becomes effective pursuant to this Article X, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties, and obligations under this Indenture of the City, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.6. **Endorsement or Replacement of Bonds Issued After Amendments.**

The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the designated office of the Trustee or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners’ action, shall be prepared, executed, and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the designated office of the Trustee without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 10.7. **Amendatory Endorsement of Bonds.**

The provisions of this Article X shall not prevent any Owner from accepting any amendment as to the particular Bonds held by such Owner, provided that due notation thereof is made on such Bonds.

Section 10.8. **Waiver of Default.**

Subject to Section 10.01, with the written consent of at least a majority of the aggregate outstanding principal of the Bonds at that time, the Owners may waive compliance by the City with certain past defaults under this Indenture and their consequences. Any such consent shall be conclusive and binding upon the Owners and upon all future Owners.

Section 10.9. **Execution of Supplemental Indenture.**

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel
addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

**ARTICLE XI**

**DEFAULT AND REMEDIES**

Section 11.1.  **Events of Default.**

Each of the following occurrences or events shall be and is hereby declared to be an "Event of Default," to wit:

(i) The failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;

(ii) The failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings, in accordance with Section 7.2;

(iii) Default in the performance or observance of any covenant, agreement or obligation of the City under this Indenture other than a default under (iv) below, and the continuation thereof for a period of ninety (90) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Owners of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured then Outstanding; provided, however, if the default stated in the notice is capable of cure but cannot reasonably be cured within the applicable period, the City shall be entitled to a further extension of time reasonably necessary to remedy such default so long as corrective action is instituted by the City within the applicable period and is diligently pursued until such failure is corrected, but in no event for a period of time of more than one hundred eighty (180) days after such notice; and

(iv) The failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable and such failure is not remedied within thirty (30) days thereafter.

Section 11.2.  **Immediate Remedies for Default.**

(a) Subject to Article VIII, upon the happening and continuance of any of the Events of Default described in Section 11.1, then and in every such case the Trustee may proceed, and upon the written request of the Owners of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured then Outstanding hereunder and its receipt of indemnity satisfactory to it shall proceed, to protect and enforce the rights of the Owners under this Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by
Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction; provided, however, that no action for money damages against the City may be sought or shall be permitted. The Trustee retains the right to obtain the advice of counsel in its exercise of remedies for default.

(b) PURSUANT TO SECTION 11.7, THE PRINCIPAL OF THE BONDS SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

(c) Whenever moneys are to be applied pursuant to this Article XI, irrespective of and whether other remedies authorized under this Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto and the right of redemption thereof, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms as the Trustee may deem appropriate and as may be required by law and apply the proceeds thereof in accordance with the provisions of this Section. The Trustee shall sell Trust Estate assets, according to the appraised value thereof, beginning with the asset of the highest value and continuing such sales in the order of next succeeding most valuable asset until satisfaction of debts pertaining to the outstanding Bonds. Upon such sale, the Trustee may make and deliver to the purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary or, in the judgment of the Trustee, proper for the purpose which may be designated in such request.

(d) In an Event of Default shall have occurred and be continuing, the City, upon demand of the Trustee, shall surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers, and accounts of the City pertaining thereto, and including the rights and the position of the City, and to hold, operate, and manage the same, and from time to time make all needed repairs and improvements, as well as set up proper reserve for the payment of all proper costs and expenses, holding and managing the same, including (i) reasonable compensation to the Trustee, its agents, and counsel, (ii) any reasonable charges of the Trustee hereunder, (iii) any taxes and assessments and other charges prior to the lien of this of Indenture, and (iv) all expenses of such repairs and improvements. After payment in full of the foregoing, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns.

Section 11.3. Restriction on Owner's Action.

(a) No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (i) a default has occurred and is continuing of which the Trustee has been notified in writing as provided in Section 9.3(f), or of which by such Section it is
deemed to have notice, (ii) such default has become an Event of Default and the Owners of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured then Outstanding have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in Section 9.2, (iv) the Trustee has for 60 days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, (v) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee; however, no one or more Owners of the Bonds Similarly Secured shall have any right in any manner whatsoever to affect, disturb, or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner provided herein, and that all proceedings at law or in equity shall be instituted and maintained in the manner provided herein and for the equal benefit of the Owners of all Bonds Similarly Secured then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

(b) Subject to Article VIII, nothing in this Indenture shall affect or impair the right of any Owner to enforce, by action at law, payment of any Bond at and after the maturity thereof, or on the date fixed for redemption or the obligation of the City to pay each Bond issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed herein and in the Bonds.

(c) In case the Trustee or any Owners of Bonds Similarly Secured shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners of Bonds Similarly Secured, then and in every such case the City, the Trustee and the Owners of Bonds Similarly Secured shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 11.4. **Application of Revenues and Other Moneys After Default.**

(a) All moneys, securities, funds and Pledged Revenues and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost, liabilities, advances and expenses of the proceedings resulting in the collection of such amounts, the expenses (including its counsel), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out this Indenture, during the continuance of an Event of Default, notwithstanding Section 11.2, be applied by the Trustee, on behalf of the City, to the payment of interest and principal or Redemption Price then due on Bonds Similarly Secured, as follows:
FIRST: To the payment to the Owners entitled thereto all installments of interest then due in the direct order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Owners entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the Owners entitled thereto of the unpaid principal of Outstanding Bonds Similarly Secured, or Redemption Price of any Bonds Similarly Secured which shall have become due, whether at maturity or by call for redemption, in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds Similarly Secured due on any date, then to the payment thereof ratably, according to the amounts of principal due and to the Owners entitled thereto, without any discrimination or preference.

Within thirty (30) days of receipt of such good and available funds, the Trustee may fix a record date and a payment date for any payment to be made to Owners of Bonds Similarly Secured pursuant to this Section 11.4.

(b) In the event funds are not adequate to cure any of the Events of Default described in Section 11.1, the available funds shall be allocated to the Bonds Similarly Secured that are Outstanding in proportion to the quantity of Bonds Similarly Secured that are currently due and in default under the terms of this Indenture.

(c) The restoration of the City to its prior position after any and all defaults have been cured, as provided in Section 11.3, shall not extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

Section 11.5. Effect of Waiver.

The Trustee may, with the prior written consent of at least a majority of the aggregate outstanding principal of the Bonds at that time, waive an Event of Default occurring hereunder. No delay or omission of the Trustee, or any Owner, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 11.6. Evidence of Ownership of Bonds.

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, or the holding by any Person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:
(i) The fact and date of the execution of such instruments by any Owner of Bonds or the duly appointed attorney authorized to act on behalf of such Owner may be provided by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(ii) The ownership of Bonds and the amount, numbers and other identification and date of holding the same shall be proved by the Register.

(b) Except as otherwise provided in this Indenture with respect to revocation of a consent, any request or consent by an Owner of any Bond shall bind all future Owners of the same Bond in respect of anything done or suffered to be done by the City or the Trustee in accordance therewith.

Section 11.7. No Acceleration.

In the event of the occurrence of an Event of Default under Section 11.1, the right of acceleration of any Stated Maturity is not granted as a remedy hereunder and the right of acceleration under this Indenture is expressly denied.

Section 11.8. Mailing of Notice.

Any provision in this Article for the mailing of a notice or other document to Owners shall be fully complied with if it is mailed, first class postage prepaid, only to each Owner at the address appearing upon the Register.

Section 11.9. Exclusion of Bonds.

Bonds owned or held by or for the account of the City will not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Indenture, and the City shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Indenture.
ARTICLE XII

GENERAL COVENANTS AND REPRESENTATIONS

Section 12.1.  Representations as to Pledged Revenues.

(a) The City represents and warrants that it is authorized by Applicable Laws to authorize and issue the Bonds, to execute and deliver this Indenture and to pledge the Pledged Revenues in the manner and to the extent provided in this Indenture, and that the Pledged Revenues are and will be and remain free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Indenture except as expressly provided herein.

(b) The City shall at all times, to the extent permitted by Applicable Laws, defend, preserve and protect the pledge of the Pledged Revenues and all the rights of the Owners and the Trustee, under this Indenture against all claims and demands of all Persons whomsoever.

(c) Subject to Section 7.2(d), the City will take all steps reasonably necessary and appropriate, and will direct the Trustee to take all steps reasonably necessary and appropriate, to collect all delinquencies in the collection of the Assessments and any other amounts pledged to the payment of the Bonds to the fullest extent permitted by the PID Act and other Applicable Laws.

Section 12.2.  General.

The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of this Indenture.

ARTICLE XIII

SPECIAL COVENANTS

Section 13.1.  Further Assurances; Due Performance.

(a) At any and all times the City will duly execute, acknowledge and deliver, or will cause to be done, executed and delivered, all and every such further acts, conveyances, transfers, and assurances in a manner as the Trustee shall reasonably require for better conveying, transferring, pledging, and confirming unto the Trustee, all and singular, the revenues, Funds, Accounts and properties constituting the Pledged Revenues, and the Trust Estate hereby transferred and pledged, or intended so to be transferred and pledged.

(b) The City will duly and punctually keep, observe and perform each and every term, covenant and condition on its part to be kept, observed and performed, contained in this Indenture.
Section 13.2. Other Obligations or Other Liens; Refunding Bonds; Additional Bonds.

(a) The City reserves the right to issue obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on the Trust Estate and are not payable from Pledged Revenues.

(b) Other than Refunding Bonds and Additional Bonds, the City will not create or voluntarily permit to be created any debt, lien or charge on the Trust Estate, and will not do or omit to do or suffer to be done or omit to be done any matter or things whatsoever whereby the lien of this Indenture or the priority hereof might or could be lost or impaired; and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with this Indenture as a lien or charge upon the Pledged Revenues or Pledged Funds; provided, however, that nothing in this Section shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of counsel to the Trustee, the same would endanger the security for the Bonds.

(c) Notwithstanding any contrary provision of this Indenture, the City shall not issue additional bonds, notes or other obligations under this Indenture, secured by any pledge of or other lien or charge on the Pledged Revenues or other property pledged under this Indenture, other than Additional Bonds and Refunding Bonds. The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State.

(d) The City reserves the right to issue Additional Bonds for any purpose permitted by the PID Act and in accordance with the conditions set forth below:

(i) A City Representative shall certify that the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to it contained in the Indenture.

(ii) The Trustee shall receive a certificate from the Administrator certifying that the Developer is not delinquent on any Assessments, other than any Assessments being contested in good faith.

(iii) The Trustee shall receive a certificate from the City Representative certifying that (1) the Developer is not delinquent on any ad valorem taxes, fees or any other funds or commitments to the City, (2) the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to the City contained in this Indenture, (3) the City is in material compliance with its continuing disclosure agreements entered into in connection with all Outstanding Bonds, Additional Bonds and any other applicable City obligations, pursuant to Rule 15c2-12 of the Securities Exchange Commission.
(iv) The Trustee shall receive a certificate from the Developer, through an authorized representative, certifying that: (1) the Developer is not in default in the performance and observance of any of the terms, provisions and conditions applicable to it contained in the Financing Agreement, Reimbursement Agreement; (2) the Developer is in material compliance with its continuing disclosure agreements entered into in connection with all Outstanding Bonds, Additional Bonds and any other applicable City obligations, pursuant to Rule 15c2-12 of the Securities Exchange Commission, (3) 100% of the residential lots within the Phase C are under contract with or have been sold to merchant homebuilders unaffiliated with the Developer, and (4) the Multifamily A tract or site will be under contract for sale with a developer.

(v) The Developer shall provide the City with a certificate or report from either the Hays Central Appraisal District, an independent certified appraiser, appraisal firm or financial consultant, selected by the City in consultation with the Developer, assuming completion of the improvements financed with the proceeds of the Additional Bonds, demonstrating that (1) the ratio of the aggregate appraised value of all assessed Parcels within the District to the portion of the aggregate principal amount of the Outstanding Bonds and the Additional Bonds to be issued (the "Aggregate Value to Lien Ratio") is at least 3:1 and (2) the ratio of the appraised value of each type of assessed Parcel within the District to the portion of the allocable principal amount of the Outstanding Bonds and the Additional Bonds to be issued for each type of assessed Parcel (each an "Individual Value to Lien Ratio") is at least 2:1. In calculating the Aggregate Value to Lien Ratio and Individual Value to Lien Ratio, the Hays Central Appraisal District, independent certified appraiser, appraisal firm or financial consultant may rely on a certificate from the Administrator that home construction has commenced and the County appraiser's assessed valuation for completed homes and a certification of value for lots on which homes are under construction.

(vi) Additional Bonds may only be issued for the purposes of financing the costs of the Public Improvements as described in the Service and Assessment Plan, including related soft costs and financing costs.

(vii) The principal of and interest on any Additional Bonds must be scheduled to be paid or mature on __________ or _____________, or both, of the years in which principal or interest is scheduled to be paid or mature.

(viii) The maximum aggregate principal amount of all Additional Bonds that may be issued is [$_ _, ___, 000].

(ix) There shall be deposited to the Reserve Fund an amount equal to the Reserve Account Requirement taking into account the Outstanding Bonds Similarly Secured and the Additional Bonds then proposed to be issued.
Section 13.3. **Books of Record.**

(a) The City shall cause to be kept full and proper books of record and accounts, in which full, true and proper entries will be made of all dealings, business and affairs of the City, which relate to the Pledged Revenues, the Pledged Funds, and the Bonds.

(b) The Trustee shall have no responsibility with respect to the financial and other information received by it pursuant to this Section 13.3 except to receive and retain same, subject to the Trustee's document retention policies, and to distribute the same in accordance with the provisions of this Indenture.

**ARTICLE XIV**

PAYMENT AND CANCELLATION OF THE BONDS AND SATISFACTION OF THE INDENTURE

Section 14.1. **Trust Irrevocable.**

The trust created by the terms and provisions of this Indenture is irrevocable until the Bonds secured hereby are fully paid or provision is made for their payment as provided in this Article.

Section 14.2. **Satisfaction of Indenture.**

If the City shall pay or cause to be paid, or there shall otherwise be paid to the Owners, principal of and interest on all of the Bonds, at the times and in the manner stipulated in this Indenture, and all amounts due and owing with respect to the Bonds have been paid or provided for, then the pledge of the Trust Estate and all covenants, agreements, and other obligations of the City to the Owners of such Bonds, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City copies of all such documents as it may have evidencing that principal of and interest on all of the Bonds has been paid so that the City may determine if this Indenture is satisfied; if so, the Trustee shall pay over or deliver all moneys held by it in the Funds and Accounts held hereunder as directed in writing by the City.

Section 14.3. **Bonds Deemed Paid.**

(a) Any Outstanding Bonds shall, prior to the Stated Maturity or redemption date thereof, be deemed to have been paid and no longer Outstanding within the meaning of this Trust Indenture (a "Defeased Debt"), and particularly this Article XIV, when payment of the principal of, premium, if any, on such Defeased Debt, plus interest thereon to the due date thereof (whether such due date be by reason of maturity, redemption, or otherwise), either (1) shall have been made in accordance with the terms thereof, or (2) shall have been provided by irrevocably depositing with the Trustee, in trust, and irrevocably set aside exclusively for such payment, (A) money sufficient to make such payment or (B) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in
such amount and at such times as will insure the availability, without reinvestment, of sufficient money to make such payment, and all necessary and proper fees, compensation, and expenses of the Trustee pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, be reinvested in Defeasance Securities as directed by the City maturing at times and in amounts sufficient to pay when due the principal of and interest on the Bonds on and prior to such redemption date or maturity date thereof, as the case may be. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

(b) Any determination not to redeem Defeased Debt that is made in conjunction with the payment arrangements specified in Sections 14.3(a)(1) or 14.3(a)(2) shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the Defeased Debt for redemption; (2) the City gives notice of the reservation of that right to the Owners of the Defeased Debt immediately following the defeasance; (3) the City directs that notice of the reservation be included in any defeasance or redemption notices that it authorizes; and (4) at or prior to the time of the redemption, the City satisfies the conditions of clause (a) of this Section 14.3 with respect to such Defeased Debt as though it was being defeased at the time of the exercise of the option to redeem the Defeased Debt, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the Defeased Debt.

ARTICLE XV

MISCELLANEOUS

Section 15.1. Benefits of Indenture Limited to Parties.

Nothing in this Indenture, expressed or implied, is intended to give to any Person other than the City, the Trustee and the Owners, any right, remedy, or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Trustee.

Section 15.2. Successor is Deemed Included in All References to Predecessor.

Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.
Section 15.3. **Execution of Documents and Proof of Ownership by Owners.**

(a) Any request, declaration, or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys duly appointed in writing.

(b) Except as otherwise expressly provided herein, the fact and date of the execution by any Owner or his attorney of such request, declaration, or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such request, declaration, or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

(c) Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number, and date of holding the same shall be proved by the Register.

(d) Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Trustee in good faith and in accordance therewith.

Section 15.4. **No Waiver of Personal Liability.**

No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

Section 15.5. **Notices to and Demands on City and Trustee.**

(a) Except as otherwise expressly provided herein, all notices or other instruments required or permitted under this Indenture shall be in writing and shall be faxed, delivered by hand, or mailed by first class mail, postage prepaid, and addressed as follows:

If to the City

City of San Marcos, Texas  
630 East Hopkins  
San Marcos, Texas 78666  
Attn: City Manager  
Telephone: (512) 393-8170

If to the Trustee

Or the Paying Agent/Registrar

UMB Bank, N.A.  
6034 West Courtyard Drive, Suite 370  
Austin, TX 78730  
Attn: V.P. Relationship Manager  
Telephone: (512)579-1401
(b) Any such notice, demand, or request may also be transmitted to the appropriate party by telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

(c) Any of such addresses may be changed at any time upon written notice of such change given to the other party by the party effecting the change. Notices and consents given by mail in accordance with this Section shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

(d) The Trustee shall mail to each Owner of a Bond notice of (1) any substitution of the Trustee; or (2) the redemption or defeasance of all Bonds Outstanding.

Section 15.6. **Partial Invalidity.**

If any Section, paragraph, sentence, clause, or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The City hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause, or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that anyone or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid, or unenforceable.

Section 15.7. **Applicable Laws.**

This Indenture shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 15.8. **Payment on Business Day.**

In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Indenture is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day that is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 15.9. **Counterparts.**

This Indenture may be executed in counterparts, each of which shall be deemed an original.
Section 15.10. **No Boycott of Israel; No Terrorist Organization.**

(a) Pursuant to Section 2270.002, Texas Government Code, the Trustee hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Indenture is a contract for goods or services, will not boycott Israel during the term of this Indenture. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

(b) Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit."

Section 15.11. **Electronic Storage.**

The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

{Remainder of page left blank intentionally}
IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture of Trust to be executed as of the date hereof.

CITY OF SAN MARCOS, TEXAS

By: ___________________________
   Mayor

Attest:

_________________________
City Clerk

(CITY SEAL)
EXHIBIT A

DESCRIPTION OF THE PROPERTY WITHIN THE TRACE PUBLIC IMPROVEMENT DISTRICT
EXHIBIT B

FORM OF CERTIFICATION FOR PAYMENT
January 15, 2019

City of San Marcos, Texas
630 East Hopkins
San Marcos, Texas 78666

Ladies and Gentlemen:

The undersigned, FMSbonds, Inc. (the “Underwriter”), offers to enter into this Bond Purchase Agreement (this “Agreement”) with the City of San Marcos, Texas (the “City”), which will be binding upon the City and the Underwriter upon the acceptance of this Agreement by the City. This offer is made subject to its acceptance by the City by execution of this Agreement and its delivery to the Underwriter on or before 10:00 p.m., Central Time, on the date hereof and, if not so accepted, will be subject to withdrawal by the Underwriter upon written notice delivered to the City at any time prior to the acceptance hereof by the City. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Indenture (defined herein) between the City and UMB Bank, N.A., Austin, Texas, as trustee (the “Trustee”), authorizing the issuance of the Bonds (defined herein), and in the Limited Offering Memorandum (defined herein).

1. Purchase and Sale of Bonds. Upon the terms and conditions and upon the basis of representations, warranties, and agreements hereinafter set forth, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to sell to the Underwriter, all (but not less than all) of the $[PRINCIPAL] aggregate principal amount of the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)” (the “Bonds”), at a purchase price of $__________ (representing the aggregate principal amount of the Bonds, less an Underwriter’s discount of $_______).

Inasmuch as this purchase and sale represents a negotiated transaction, the City understands, and hereby confirms, that the Underwriter is not acting as a municipal advisor or fiduciary of the City (including, without limitation, a “municipal advisor” (as such term is defined in Section 975(e) of the Dodd Frank Wall Street Reform and Consumer Protection Act)), but rather is acting solely in its capacity as Underwriter for its own account. The City acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm’s length commercial transaction between the City and the Underwriter and the
Underwriter has financial and other interests that differ from any other party to this Agreement, (ii) in connection with the discussions, undertakings, and procedures leading up to the consummation of this transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the City, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering described herein or the discussions, undertakings, and procedures leading thereto (regardless of whether the Underwriter has provided other services or is currently providing other services to the City on other matters) and the Underwriter has no obligation to the City with respect to the offering described herein except the obligations expressly set forth in this Agreement, (iv) the City has consulted its own legal, financial and other advisors to the extent it has deemed appropriate, (v) the Underwriter has financial and other interests that differ from those of the City, and (vi) the Underwriter has provided to the City prior disclosures under Rule G-17 of the Municipal Securities Rulemaking Board (“MSRB”), which have been received by the City. The City further acknowledges and agrees that following the issuance and delivery of the Bonds, the Underwriter has indicated that it may have periodic discussions with the City regarding the expenditure of Bond proceeds and the construction of the Public Improvements (as defined herein) financed with the Bonds and, in connection with such discussions, the Underwriter shall be acting solely as a principal and will not be acting as the agent or fiduciary of, and will not be assuming an advisory or fiduciary responsibility in favor of, the City.

The Bonds shall be dated January 31, 2019 and shall have the maturities and redemption features, if any, and bear interest at the rates per annum shown on Schedule I hereto. Payment for and delivery of the Bonds, and the other actions described herein, shall take place on January 31, 2019 (or such other date as may be agreed to by the City and the Underwriter) (the “Closing Date”).

2. Authorization Instruments and Law. The Bonds were authorized by Ordinance No. ________ enacted by the City Council of the City (the “City Council”) on January 15, 2019 (the “Bond Ordinance”) and shall be issued pursuant to the provisions of Subchapter A of Chapter 372, Texas Local Government Code, as amended (the “Act”), and the Indenture of Trust, dated as of January 15, 2019, between the City and the Trustee, authorizing the issuance of the Bonds (the “Indenture”). The Bonds shall be substantially in the form described in, and shall be secured under the provisions of, the Indenture.

The Bonds and interest thereon shall be secured by the proceeds of special assessments (the “Assessments,” which consist of the Initial Assessments (as defined below) and the Additional Assessments (as defined below)) levied on the assessable parcels (consisting of approximately 303 acres) within the Trace Public Improvement District (the “District”). The District was established by Resolution No. 2015-145R (the “Creation Resolution”), enacted by the City Council on October 20, 2015, in accordance with the Act. Special assessments (the “Initial Assessments”) were levied in accordance with a service and assessment plan, adopted by the City Council on October 18, 2016 (the “Initial Service and Assessment Plan”), pursuant to Ordinance No. 2016-42, (the “Initial Assessment Ordinance”). Additionally, special assessments (the “Additional Assessments”) were levied in accordance with an amended and restated service and assessment plan, adopted by the City Council on October 16, 2018 (the “Amended and Restated Service and Assessment Plan”), pursuant to Ordinance No. 2018-38. On December 12, 2018, Ordinance No. 2018-38 and the Amended and Restated Service and Assessment Plan were...
amended and restated by the City Council’s approval of Ordinance No. 2018-51 (the “Amended and Restated Additional Assessment Ordinance,” and, together with the Initial Assessment Ordinance, the “Assessment Ordinance” and, together with the Creation Resolution, the Indenture and the Bond Ordinance, the “Authorizing Documents”) and adoption of an amended and restated service and assessment plan (as updated for the Bonds, and as further amended and supplemented from time to time, the “Service and Assessment Plan”), which defers the Additional Assessments and sets forth the costs of the Public Improvements and the method of payment of the Assessments. The Bonds shall be further secured by certain applicable funds and accounts created under the Indenture.

The Bonds shall be as described in Schedule I, the Indenture, and the Limited Offering Memorandum. The proceeds of the Bonds shall be used for (i) paying or reimbursing all or a portion of the costs of certain public improvements that benefit the entire District (the “Public Improvements”), (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for the payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuing the Bonds.

3. Public Offering. The Underwriter agrees to make a bona fide limited public offering of all of the Bonds. On or before the third (3rd) business day prior to the Closing Date, the Underwriter shall execute and deliver to Bond Counsel (defined herein) the Issue Price Certificate (defined herein), in substantially the form attached hereto as Appendix B.


a. The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City on or before the third (3rd) business day prior to Closing (as defined herein) an “issue price” or similar certificate (the “Issue Price Certificate”), together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Appendix B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this Section to establish the issue price of the Bonds may be taken on behalf of the City by the City’s Financial Advisor identified herein and any notice or report to be provided to the City may be provided to the City’s Financial Advisor.

b. The Underwriter confirms that it has offered all the Bonds of each maturity to the public on or before the date of this Agreement at the respective offering price (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto, except as otherwise set forth therein. The City will treat the first price at which 10% of each maturity of the Bonds is sold to the public as of the sale date as the issue price of that maturity (the “10% test”). At or promptly after the execution of this Agreement, the Underwriter shall report to the City on Schedule A to the issue price certificate the first price at which the Underwriter has sold to the public
each maturity of Bonds, and shall identify to the City on Schedule A to the Issue Price Certificate those maturities of the Bonds for which the 10% test has not been satisfied. If different interest coupons apply within a maturity, each separate CUSIP number within that maturity will be treated as a separate maturity for this purpose.

c. The City and the Underwriter agree that the restrictions set forth in the next sentence shall apply to those maturities of the Bonds for which the 10% test has not been met as of the date of this Agreement, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(i) the close of the fifth (5th) business day after the sale date; or

(ii) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City when the Underwriter has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if such sale occurs prior to the close of the fifth (5th) business day after the sale date.

d. The Underwriter confirms that any selling group agreement and each third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group, and each broker-dealer that is a party to such third-party distribution agreement, as applicable, to (A) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter and as set forth in the related pricing wires, (B) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public, and (C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public. The City acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the third-party distribution agreement and the related pricing wires.
wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

e. The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this Section. Further, for purposes of this Section:

(i) “public” means any person other than an underwriter or a related party,

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) “sale date” means the date of execution of this Agreement by all parties.

5. Limited Offering Memorandum.

a. Delivery of Limited Offering Memorandum. The City previously has delivered, or caused to be delivered, to the Underwriter the Preliminary Limited Offering Memorandum for the Bonds dated January 7, 2019 (the “Preliminary Limited Offering Memorandum”), in a “designated electronic format,” as defined in the MSRB Rule G-32 (“Rule G-32”). The City will prepare, or cause to be prepared, a final Limited Offering Memorandum relating to the Bonds (the “Limited Offering Memorandum”) which will be (i) dated the date of this Agreement, (ii) complete within the meaning of the United States Securities and Exchange Commission’s Rule 15c2-12, as amended (“Rule 15c2-12”), (iii) in a “designated electronic format,” and (iv) substantially in the form of the most recent version of the Preliminary Limited Offering Memorandum provided to the
Underwriter before the execution hereof. The Limited Offering Memorandum, including
the cover page thereto, all exhibits, schedules, appendices, maps, charts, pictures, 
diagrams, reports, and statements included or incorporated therein or attached thereto, 
and all amendments and supplements thereto that may be authorized for use with respect 
to the Bonds are collectively referred to herein as the “Limited Offering Memorandum.” 
Until the Limited Offering Memorandum has been prepared and is available for 
distribution, the City shall provide to the Underwriter sufficient quantities (which may be 
in electronic format) of the Preliminary Limited Offering Memorandum as the 
Underwriter reasonably deems necessary to satisfy the obligation of the Underwriter 
under Rule 15c2-12 with respect to distribution to each potential customer, upon request, 
of a copy of the Preliminary Limited Offering Memorandum.

b. Preliminary Limited Offering Memorandum Deemed Final. The 
Preliminary Limited Offering Memorandum has been prepared for use by the 
Underwriter in connection with the public offering, sale, and distribution of the Bonds. 
The City hereby represents and warrants that the Preliminary Limited Offering 
Memorandum has been deemed final by the City as of its date, except for the omission of 
such information which is dependent upon the final pricing of the Bonds for completion, 
all as permitted to be excluded by Section (b)(1) of Rule 15c2-12.

c. Use of Limited Offering Memorandum in Offering and Sale. The City 
hereby authorizes the Limited Offering Memorandum and the information therein 
contained to be used by the Underwriter in connection with the public offering and the 
sale of the Bonds. The City consents to the use by the Underwriter prior to the date 
hereof of the Preliminary Limited Offering Memorandum in connection with the public 
offering of the Bonds. The City shall provide, or cause to be provided, to the Underwriter 
as soon as practicable after the date of the City’s acceptance of this Agreement (but, in 
any event, not later than the earlier of the Closing Date or seven (7) business days after 
the City’s acceptance of this Agreement) copies of the Limited Offering Memorandum 
which is complete as of the date of its delivery to the Underwriter. The City shall provide 
the Limited Offering Memorandum, or cause the Limited Offering Memorandum to be 
provided, (i) in a “designated electronic format” consistent with the requirements of Rule 
G-32 and (ii) in a printed format in such quantity as the Underwriter shall reasonably 
request in order for the Underwriter to comply with Section (b)(4) of Rule 15c2-12 and 
the rules of the MSRB.

d. Updating of Limited Offering Memorandum. If, after the date of this 
Agreement, up to and including the date the Underwriter is no longer required to provide 
a Limited Offering Memorandum to potential customers who request the same pursuant 
to Rule 15c2-12 (the earlier of (i) ninety (90) days from the “end of the underwriting 
period” (as defined in Rule 15c2-12) and (ii) the time when the Limited Offering 
Memorandum is available to any person from the MSRB, but in no case less than the 
25th day after the “end of the underwriting period” for the Bonds), the City becomes 
aware of any fact or event which might or would cause the Limited Offering 
Memorandum, as then supplemented or amended, to contain any untrue statement of a 
material fact or to omit to state a material fact required to be stated therein or necessary to
make the statements therein, in the light of the circumstances under which they were

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made, not misleading, or if it is necessary to amend or supplement the Limited Offering Memorandum to comply with law, the City will notify the Underwriter (and for the purposes of this clause provide the Underwriter with such information as it may from time to time reasonably request), and if, in the reasonable judgment of the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to the Limited Offering Memorandum, the City will forthwith prepare and furnish, at no expense to the Underwriter (in a form and manner approved by the Underwriter), either an amendment or a supplement to the Limited Offering Memorandum so that the statements therein as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or so that the Limited Offering Memorandum will comply with law; provided, however, that for all purposes of this Agreement and any certificate delivered by the City in accordance herewith, (i) the City makes no representations with respect to the descriptions in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum of The Depository Trust Company, New York, New York (“DTC”), or its book-entry-only system, and (ii) the City makes no representation with respect to the information in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) or under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “— Status of Public Improvements and Lot Development,” “— Homebuilders and Status of Home Construction” and “— Status of Multi-family, Retail and Office/Business Park Sites,” “BOOK-ENTRY ONLY SYSTEM,” “THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT,” “THE DEVELOPER,” “THE SPECIAL ASSESSMENT CONSULTANT,” “THE PID ADMINISTRATOR,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation – The Developer,” “CONTINUING DISCLOSURE — The Developer” and “— The Developer’s Compliance with Prior Undertakings” and “INFORMATION RELATING TO THE TRUSTEE,” “APPENDIX E-2” and “APPENDIX F.” If such notification shall be subsequent to the Closing, the City, at no expense to the Underwriter, shall furnish such legal opinions, certificates, instruments, and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Limited Offering Memorandum. The City shall provide any such amendment or supplement, or cause any such amendment or supplement to be provided, (i) in a “designated electronic format” consistent with the requirements of Rule G-32 and (ii) in a printed format in such quantity as the Underwriter shall reasonably request in order for the Underwriter to comply with Section (b)(4) of Rule 15c2-12 and the rules of the MSRB.

e. Filing with MSRB. The Underwriter hereby agrees to timely file the Limited Offering Memorandum with the MSRB through its Electronic Municipal Market Access (“EMMA”) system within one business day after receipt but no later than the Closing Date. Unless otherwise notified in writing by the Underwriter, the City can assume that the “end of the underwriting period” for purposes of Rule 15c2-12 is the Closing Date.
f. **Limited Offering.** The Underwriter hereby represents, warrants and covenants that the Bonds were initially sold pursuant to a limited offering. The Bonds were sold to not more than thirty-five persons that qualify as “Accredited Investors” (as defined in Rule 501 of Regulation D under the Securities Act (as defined herein)) or “Qualified Institutional Buyers” (within the meaning of Rule 144A under the Securities Act).

6. **City Representations, Warranties and Covenants.** The City represents, warrants and covenants that:

   a. **Due Organization, Existence and Authority.** The City is a political subdivision of the State of Texas (the “State”), and has, and at the Closing Date will have, full legal right, power and authority:

      (i) to enter into:

      (1) this Agreement;

      (2) the Indenture;

      (3) the Amended and Restated Trace Public Improvement District Reimbursement Agreement, effective September 18, 2018 (the “Reimbursement Agreement”), executed and delivered by the City and Highpointe Trace, LLC, a California limited liability company (the “Developer”);

      (4) the Trace Public Improvement District Financing Agreement, dated October 20, 2015, which was amended and restated on September 18, 2018 (the “Financing Agreement”), executed and delivered by the City and the Developer, and, as consenting parties, Pacesetter Homes, LLC and Buffington Texas Classic Homes, LLC;

      (5) the Landowner Agreement, effective as of October 18, 2016 (the “Landowner Agreement”), executed and delivered by the City and the Developer;

      (6) the Agreement Regarding Fire Station, effective November 2, 2015 (the “Fire Station Agreement”), executed and delivered by the City and the Developer;

      (7) the Agreement Regarding Conveyance of Right and Redemption and Waiver of Agricultural Valuation (TRACE PID) dated as of January 15, 2019, executed and delivered by the City, the Developer and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

      (8) the Continuing Disclosure Agreement of Issuer with respect to the Bonds, dated as of January 15, 2019 (the “Continuing
Disclosure Agreement of Issuer”), executed and delivered by the City and UMB Bank, N.A., as Dissemination Agent.

(ii) to issue, sell, and deliver the Bonds to the Underwriter as provided herein; and

(iii) to carry out and consummate the transactions on its part described in (1) the Authorizing Documents, (2) this Agreement, (3) the Reimbursement Agreement, (4) the Financing Agreement, (5) the Landowner Agreement, (6) the Fire Station Agreement, (7) the Redemption Waiver Agreement, (8) the Continuing Disclosure Agreement of Issuer, (9) the Limited Offering Memorandum, and (10) any other documents and certificates described in any of the foregoing (the documents described by subclauses (1) through (10) being referred to collectively herein as the “City Documents”).

b. Due Authorization and Approval of City. By all necessary official action of the City, the City has duly authorized and approved the adoption or execution and delivery by the City of, and the performance by the City of the obligations on its part contained in, the City Documents and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded, except as may have been approved by the Underwriter. When validly executed and delivered by the other parties thereto, the City Documents will constitute the legally valid and binding obligations of the City enforceable upon the City in accordance with their respective terms, except insofar as enforcement may be limited by principles of sovereign immunity, bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles relating to or affecting creditors’ rights generally. The City has complied, and will at the Closing be in compliance, in all material respects, with the obligations on its part to be performed on or prior to the Closing Date under the City Documents.

c. Due Authorization for Issuance of the Bonds. The City has duly authorized the issuance and sale of the Bonds pursuant to the Bond Ordinance, the Indenture, and the Act. The City has, and at the Closing Date will have, full legal right, power and authority (i) to enter into, execute, deliver, and perform its obligations under this Agreement and the other City Documents, (ii) to issue, sell, and deliver the Bonds to the Underwriter pursuant to the Indenture, the Bond Ordinance, the Act, and as provided herein, and (iii) to carry out, give effect to and consummate the transactions on the part of the City described by the Bond Ordinance and the other City Documents.

d. No Breach or Default. As of the time of acceptance hereof, and to its knowledge, the City is not, and as of the Closing Date the City will not be, in breach of or in default in any material respect under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument related to the Bonds and to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or event of
default under any such instrument which breach, default or event could have a material adverse effect on the City’s ability to perform its obligations under the Bonds or the City Documents; and, as of such times, the authorization, execution and delivery of the Bonds and the City Documents and compliance by the City with obligations on its part to be performed in each of such agreements or instruments does not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the City (or any of its officers in their respective capacities as such) is subject, or by which it or any of its properties are bound, nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be permitted by the City Documents.

e. **No Litigation.** At the time of acceptance hereof there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body (collectively and individually, an “Action”) pending against the City with respect to which the City has been served with process, nor to the knowledge of the City is any Action threatened against the City, in which any such Action (i) in any way questions the existence of the City or the rights of the members of the City Council to hold their respective positions, (ii) in any way questions the formation or existence of the District, (iii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the City Documents or the consummation of the transactions on the part of the City described therein, or contests the exclusion of the interest on the Bonds from federal income taxation, or (iv) which may result in any material adverse change in the financial condition of the City; and, as of the time of acceptance hereof, to the City’s knowledge, there is no basis for any action, suit, proceeding, inquiry, or investigation of the nature described in clauses (i) through (iv) of this sentence.

f. **Bonds Issued Pursuant to Indenture.** The City represents that the Bonds, when issued, executed, and delivered in accordance with the Indenture and sold to the Underwriter as provided herein, will be validly issued and outstanding obligations of the City subject to the terms of the Indenture, entitled to the benefits of the Indenture and the security of the pledge of the proceeds of the levy of the Assessments received by the City, all to the extent provided for in the Indenture. The Indenture creates a valid pledge of the monies in certain funds and accounts established pursuant to the Indenture to the extent provided for in the Indenture, including the investments thereof, subject in all cases to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

g. **Assessments.** The Assessments constituting the security for the Bonds have been levied by the City in accordance with the Act on those parcels of land
identified in the Assessment Roll (as defined in the Service and Assessment Plan). According to the Act, such Assessments constitute a valid and legally binding first and prior lien against the properties assessed, superior to all other liens and claims, except liens or claims for state, county, school district, or municipality ad valorem taxes.

h. **Consents and Approvals.** All authorizations, approvals, licenses, permits, consents, elections, and orders of or filings with any governmental authority, legislative body, board, agency, or commission having jurisdiction in the matters which are required by the Closing Date for the due authorization of, which would constitute a condition precedent to or the absence of which would adversely affect the due performance by the City of, its obligations in connection with the City Documents have been duly obtained or made and are in full force and effect, except the approval of the Bonds by the Attorney General of the State, registration of the Bonds by the Comptroller of Public Accounts of the State, and the approvals, consents and orders as may be required under Blue Sky or securities laws of any jurisdiction.

i. **Public Debt.** Prior to the Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by a pledge of the Assessments which secure the Bonds without the prior approval of the Underwriter.

j. **Preliminary Limited Offering Memorandum.** The information contained in the Preliminary Limited Offering Memorandum is true and correct in all material respects, and such information does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the City makes no representations with respect to (i) the descriptions in the Preliminary Limited Offering Memorandum of DTC, or its book-entry-only system, and (ii) the City makes no representation with respect to the information in the Preliminary Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) or under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “— Status of Public Improvements and Lot Development,” “— Homebuilders and Status of Home Construction” and “— Status of Multi-family, Retail and Office/Business Park Sites,” “BOOK-ENTRY ONLY SYSTEM,” “THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT,” “THE DEVELOPER,” “THE SPECIAL ASSESSMENT CONSULTANT,” “THE PID ADMINISTRATOR,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation – The Developer,” “CONTINUING DISCLOSURE — The Developer” and “— The Developer’s Compliance with Prior Undertakings” and “INFORMATION RELATING TO THE TRUSTEE,” “APPENDIX E-2” and “APPENDIX F.”

k. **Limited Offering Memorandum.** At the time of the City’s acceptance hereof and (unless the Limited Offering Memorandum is amended or supplemented pursuant to paragraph (d) of Section 5 of this Agreement) at all times subsequent thereto during the period up to and including the twenty-fifth (25th) day subsequent to the “end
of the underwriting period,” the information contained in the Limited Offering Memorandum does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the City makes no representations with respect to (i) the descriptions in the Limited Offering Memorandum of the DTC, or its book-entry-only system, and (ii) the City makes no representation with respect to the information in the Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) or under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Public Improvements and Lot Development,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Retail and Office/Business Park Sites,” “BOOK-ENTRY ONLY SYSTEM,” “THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT,” “THE DEVELOPER,” “THE SPECIAL ASSESSMENT CONSULTANT,” “THE PID ADMINISTRATOR,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation – The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings” and “INFORMATION RELATING TO THE TRUSTEE,” “APPENDIX E-2” and “APPENDIX F;” and further provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 5(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Limited Offering Memorandum, then the Limited Offering Memorandum in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

1. Supplements or Amendments to Limited Offering Memorandum. If the Limited Offering Memorandum is supplemented or amended pursuant to paragraph (d) of Section 5 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the twenty-fifth (25th) day subsequent to the “end of the underwriting period,” the Limited Offering Memorandum as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 5(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Limited Offering Memorandum, then the Limited Offering Memorandum in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

m. Compliance with Rule 15c2-12. During the past five years, the City has complied in all material respects with its previous continuing disclosure undertakings made by it in accordance with Rule 15c2-12, except as described in the Limited Offering Memorandum.
n. Use of Bond Proceeds. The City will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Indenture and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

o. Blue Sky and Securities Laws and Regulations. The City will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request, at no expense to the City, (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (ii) to continue such qualifications in effect so long as required for the initial distribution of the Bonds by the Underwriter (provided, however, that the City will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the City of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose.

p. Certificates of the City. Any certificate signed by any official of the City authorized to do so in connection with the transactions described in this Agreement shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein and can be relied upon by the Underwriter as to the statements made therein.

q. Intentional Actions Regarding Representations and Warranties. The City covenants that between the date hereof and the Closing it will not intentionally take actions which will cause the representations and warranties made in this Section to be untrue as of the Closing.

r. Financial Advisor. The City has engaged Specialized Public Finance Inc. as its financial advisor (the “Financial Advisor”) in connection with its offering and issuance of the Bonds.

By delivering the Limited Offering Memorandum to the Underwriter, the City shall be deemed to have reaffirmed, with respect to the Limited Offering Memorandum, the representations, warranties and covenants set forth above.

7. Developer Letter of Representations. At the signing of this Agreement, the City and Underwriter shall receive from the Developer an executed Developer Letter of Representations (the “Developer Letter of Representations”) in the form of Appendix A hereto, and at the Closing, a certificate signed by the Developer as set forth in Section 10(e) hereof.

8. The Closing. At 10:00 a.m., Central time, on the Closing Date, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by the City and the Underwriter, (i) the City will deliver or cause to be delivered to DTC through its “FAST”
System, the Bonds in the form of one fully registered Bond for each maturity, registered in the name of Cede & Co., as nominee for DTC, duly executed by the City and authenticated by the Trustee as provided in the Indenture, and (ii) the City will deliver the closing documents hereinafter mentioned to McCall, Parkhurst & Horton L.L.P. (“Bond Counsel”), or a place to be mutually agreed upon by the City and the Underwriter. Settlement will be through the facilities of DTC. The Underwriter will accept delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by wire transfer in federal funds payable to the order of the City or its designee. These payments and deliveries, together with the delivery of the aforementioned documents, are herein called the “Closing.” The Bonds will be made available to the Underwriter for inspection not less than twenty-four (24) hours prior to the Closing.

9. Underwriter’s Closing Conditions. The Underwriter has entered into this Agreement in reliance upon the representations and covenants herein and in the Developer Letter of Representations and the performance by the City of its obligations under this Agreement, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Agreement to purchase, accept delivery of, and pay for the Bonds shall be conditioned upon the performance by the City of its obligations to be performed hereunder at or prior to Closing and shall also be subject to the following additional conditions:

   a. Bring-Down Representations of the City. The representations and covenants of the City contained in this Agreement shall be true and correct in all material respects as of the date hereof and at the time of the Closing, as if made on the Closing Date.

   b. Executed Agreements and Performance Thereunder. At the time of the Closing (i) the City Documents shall be in full force and effect, and shall not have been amended, modified, or supplemented except with the written consent of the Underwriter; (ii) the Authorizing Documents shall be in full force and effect; (iii) there shall be in full force and effect such other resolutions or actions of the City as, in the opinion of Bond Counsel and Underwriter’s Counsel (as defined herein), shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the City described in this Agreement and the City Documents; (iv) there shall be in full force and effect such other resolutions or actions of the Developer as, in the opinions of Metcalfe, Wolff, Stuart & Williams, LLP (“Developer’s Counsel”), shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the Developer described in the Developer Letter of Representations, the Reimbursement Agreement, the Financing Agreement, the Landowner Agreement, the Fire Station Agreement, the Redemption Waiver Agreement, the Land Contribution Agreement, dated as of April 17, 2018, executed and delivered by the Developer and the San Marcos Consolidated Independent School District (the “Elementary School Agreement”) and the Continuing Disclosure Agreement of the Developer with respect to the Bonds, dated as of January 15, 2019, executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent (the “Continuing Disclosure Agreement of Developer” and, together with the Developer Letter of Representation, the Reimbursement Agreement, the Financing Agreement, the Landowner Agreement, the Fire Station Agreement, the Redemption Waiver Agreement and the Elementary School Agreement, the “Developer Documents”); and (vi) the City shall perform or have
performed its obligations required or specified in the City Documents to be performed at or prior to Closing.

c. No Default. At the time of the Closing, no default shall have occurred or be existing and no circumstances or occurrences that, with the passage of time or giving of notice, shall constitute an event of default under this Agreement, the Indenture, the City Documents, the Developer Documents or other documents relating to the financing and construction of the Public Improvements and the District, and the Developer shall not be in default in the payment of principal or interest on any of its indebtedness which default shall materially adversely impact the ability of the Developer to pay the Assessments when due.

d. Closing Documents. At or prior to the Closing, the Underwriter shall have received each of the documents required under Section 10 below.

e. Termination Events. The Underwriter shall have the right to cancel its obligation to purchase the Bonds and to terminate this Agreement without liability therefor by written notification to the City if, between the date of this Agreement and the Closing, in the Underwriter’s sole and reasonable judgment, any of the following shall have occurred:

(i) the market price or marketability of the Bonds, or the ability of the Underwriter to enforce contracts for the sale of the Bonds, shall be materially adversely affected by the occurrence of any of the following:

(1) legislation shall have been introduced in or enacted by the Congress of the United States or adopted by either House thereof, or legislation pending in the Congress of the United States shall have been amended, or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice, or otherwise) by the President of the United States, the Treasury Department of the United States, or the Internal Revenue Service or legislation shall have been proposed for consideration by either the U.S. Senate Committee on Finance or the U.S. House of Representatives Committee on Ways and Means or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision by a court of the United States or the Tax Court of the United States shall be rendered or a ruling, regulation, or official statement (final, temporary, or proposed) by or on behalf of the Treasury Department of the United States, the Internal Revenue Service, or other federal agency shall be made, which would result in federal taxation of revenues or other income of the general character expected to be derived by the City or upon interest on securities of the general character of the Bonds or which would have the effect of changing, directly or indirectly, the federal income tax consequences of receipt of interest on securities of the general character of the Bonds in the
hands of the holders thereof, and which in either case, makes it, in the reasonable judgment of the Underwriter, impracticable or inadvisable to proceed with the offer, sale, or delivery of the Bonds on the terms and in the manner described in the Limited Offering Memorandum; or

(2) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as described herein or by the Limited Offering Memorandum, is in violation or would be in violation of, or that obligations of the general character of the Bonds, or the Bonds, are not exempt from registration under, any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect (the “Securities Act”), or that the Indenture need to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect (the “Trust Indenture Act”); or

(3) a general suspension of trading in securities on the New York Stock Exchange, the establishment of minimum prices on such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so; or

(4) there shall have occurred any outbreak of hostilities (including, without limitation, an act of terrorism) or other national or international calamity or crisis, including, but not limited to, an escalation of hostilities that existed prior to the date hereof, and the effect of any such event on the financial markets of the United States shall be such as would make it impracticable, in the reasonable judgment of the Underwriter, for it to sell the Bonds on the terms and in the manner contemplated by the Limited Offering Memorandum; or

(5) there shall have occurred since the date of this Agreement any materially adverse change in the affairs or financial condition of the City, except as disclosed in or contemplated by the Limited Offering Memorandum; or

(6) any state blue sky or securities commission or other governmental agency or body in any state in which more than 10% of the Bonds have been offered and sold shall have withheld registration,
exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto; or

(7) any amendment to the federal or state Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the City, its property, income, securities (or interest thereon), or the validity or enforceability of the Assessments to pay principal of and interest on the Bonds; or

(ii) the New York Stock Exchange or other national securities exchange or any governmental authority shall impose, as to the Bonds or as to obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter; or

(iii) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Limited Offering Memorandum, or has the effect that the Limited Offering Memorandum contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, which change shall occur subsequent to the date of this Agreement and shall not be due to the malfeasance, misfeasance or nonfeasance of the Underwriter; or

(iv) any fact or event shall exist or have existed that, in the Underwriter’s reasonable judgment, requires or has required an amendment of or supplement to Limited Offering Memorandum; or

(v) a general banking moratorium shall have been declared by federal or State authorities having jurisdiction and be in force; or

(vi) a material disruption in securities settlement, payment or clearance services shall have occurred; or

(vii) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Bonds, including the underlying obligations as contemplated by this Agreement or by the Limited Offering Memorandum, or any document relating to the issuance, offering or sale of the Bonds, is or would be in violation of any provision of the federal securities laws on the Closing Date, including the Securities Act, the Securities Exchange Act of 1934 (the “Securities Exchange Act”) and the Trust Indenture Act; or
(viii) the purchase of and payment for the Bonds by the Underwriter, or the resale of the Bonds by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission, which prohibition shall occur subsequent to the date hereof and shall not be due to the malfeasance, misfeasance, or nonfeasance of the Underwriter.

With respect to the conditions described in subparagraphs (ii), (vii) and (viii) above, the Underwriter is not aware of any current, pending or proposed law or government inquiry or investigation as of the date of execution of this Agreement which would permit the Underwriter to invoke its termination rights hereunder.

10. Closing Documents. At or prior to the Closing, the Underwriter shall receive the following documents:

a. Bond Opinion. The approving opinion of Bond Counsel, dated the Closing Date and substantially in the form included as Appendix D to the Limited Offering Memorandum, together with a reliance letter from Bond Counsel, dated the Closing Date and addressed to the Underwriter, which may be included in the supplemental opinion required by Section 10(b), to the effect that the foregoing opinion may be relied upon by the Underwriter to the same extent as if such opinion were addressed to it.

b. Supplemental Opinion. A supplemental opinion of Bond Counsel dated the Closing Date and addressed to the City and the Underwriter, in form and substance acceptable to counsel for the Underwriter, to the following effect:

(i) Except to the extent noted therein, Bond Counsel has not verified and is not passing upon, and does not assume any responsibility for, the accuracy, completeness or fairness of the statements and information contained in the Limited Offering Memorandum but that Bond Counsel has reviewed the statements and information appearing under the captions and subcaptions “PLAN OF FINANCE — The Bonds,” “DESCRIPTION OF THE BONDS,” “SECURITY FOR THE BONDS,” “ASSESSMENT PROCEDURES” (except for the subcaptions “Assessment Methodology” and “Assessment Amounts”), “THE DISTRICT” (except for the subcaption “Collection History of the Initial Assessments”), “TAX MATTERS,” “LEGAL MATTERS — Legal Proceedings” (except for the final paragraph thereof) and “— Legal Opinions” (except for the final paragraph thereof), “CONTINUING DISCLOSURE — The City,” “REGISTRATION AND QUALIFICATION OF BONDS FOR SALE,” “LEGAL INVESTMENTS AND ELIGIBILITY TO SECURE PUBLIC FUNDS IN TEXAS,” “INVESTMENTS” and “APPENDIX B” and Bond Counsel is of the opinion that the information relating to the Bonds and legal issues contained under such captions and subcaptions is an accurate and fair description of the laws and legal issues addressed therein and, with respect to the Bonds, such information conforms to the Bond Ordinance, the Assessment Ordinance, the Service and Assessment Plan and the Indenture;
(ii) The Bonds are not subject to the registration requirements of the Securities Act, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act;

(iii) The City has or at the time of the adoption thereof had full power and authority to adopt the Creation Resolution, the Assessment Ordinance, the Service and Assessment Plan and the Bond Ordinance (collectively, the foregoing documents are referred to herein as the “City Actions”) and perform its obligations thereunder and the City Actions have been duly adopted, are in full force and effect and have not been modified, amended or rescinded; and

(iv) The Indenture, the Reimbursement Agreement, the Financing Agreement, the Fire Station Agreement, the Redemption Waiver Agreement, the Continuing Disclosure Agreement of Issuer, and this Agreement have been duly authorized, executed and delivered by the City and, assuming the due authorization, execution and delivery of such instruments, documents, and agreements by the other parties thereto, constitute the legal, valid, and binding agreements of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors’ rights, or by the application of equitable principles if equitable remedies are sought and to the application of Texas law relating to governmental immunity applicable to governmental entities.

c. City Legal Opinion. An opinion of an attorney for the City, dated the Closing Date and addressed to the Underwriter, the City and the Trustee, with respect to matters relating to the City, substantially in the form of Appendix C hereto or in form otherwise agreed upon by the Underwriter.

d. Opinions of Developer’s Counsel. Opinions of Developer’s Counsel, substantially in the form of Appendix D-1 and Appendix D-2 hereto, each dated the Closing Date and addressed to the City, Bond Counsel, the Attorney for the City, the Underwriter and the Trustee.

e. Developer Certificate. The certificate of the Developer dated as of the Closing Date, signed by authorized officers of the Developer in substantially the form of Appendix E hereto.

f. City Certificate. A certificate of the City, dated the Closing Date, to the effect that:

(i) the representations and warranties of the City contained herein and in the City Documents are true and correct in all material respects on and as of the Closing Date as if made on the date thereof;

(ii) the Authorizing Documents and City Documents are in full force and effect and have not been amended, modified, or supplemented;
(iii) except as disclosed in the Limited Offering Memorandum, no litigation or proceeding against the City is pending or, to the best of the knowledge of such person, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officials of the City to hold and exercise their respective positions, (b) contest the due organization and valid existence of the City or the establishment of the District, (c) contest the validity, due authorization and execution of the Bonds or the City Documents, or (d) attempt to limit, enjoin or otherwise restrict or prevent the City from levying and collecting the Assessments pledged to pay the principal of and interest on the Bonds, or the pledge thereof; and

(iv) the City has, to the best of such person’s knowledge, complied with all agreements and covenants and satisfied all conditions set forth in the City Documents, on its part to be complied with or satisfied hereunder at or prior to the Closing.

g. Trustee’s Counsel Opinion. An opinion, dated the Closing Date and addressed to the Underwriter, the City and Bond Counsel, in form and substance acceptable to counsel for the Underwriter, the City and Bond Counsel to the following effect:

(i) The Trustee is organized, validly existing and in good standing as a national banking association organized under the laws of the United States of America, and is duly qualified to serve as Trustee in accordance with the qualifications set forth for the Trustee in the Indenture;

(ii) The Trustee has full right, power, and authority to enter into the Indenture, to perform its obligations under, and to carry out and consummate all of the transactions involving the Trustee contemplated by, the Indenture; and

(iii) The Indenture has been duly authorized, executed and delivered by the Trustee and is valid and enforceable against the Trustee in accordance with its terms;

h. Trustee’s Certificate. A customary authorization and incumbency certificate dated the Closing Date, signed by authorized officers of the Trustee in form and substance acceptable to the Underwriter and Underwriter’s Counsel.

i. Underwriter Counsel’s Opinion. An opinion, dated the Closing Date and addressed to the Underwriter, of Orrick, Herrington & Sutcliffe LLP, (“Underwriter’s Counsel”), to the effect that:

(i) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(ii) Such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of any of the statements
contained in the Limited Offering Memorandum and makes no representation that it has independently verified the accuracy, completeness or fairness of any such statements. In its capacity as counsel to the Underwriter, to assist the Underwriter in part of its responsibility with respect to the Limited Offering Memorandum, such counsel has participated in conferences with representatives of the Underwriter, representatives of the City, and its counsel, McCall, Parkhurst & Horton L.L.P., as bond counsel, Specialized Public Finance Inc., as financial advisor, the public improvement district administrator, the Developer, and its engineers and others, during which the contents of the Limited Offering Memorandum and related matters were discussed. Based on such counsel’s participation in the above-mentioned conferences (which did not extend beyond the date of the Limited Offering Memorandum), and in reliance thereon, on oral and written statements and representations of the City, the Developer and others and on the records, documents, certificates, opinions and matters herein mentioned, such counsel advises the Underwriter as a matter of fact and not opinion that, during the course of such counsel’s representation of the Underwriter on this matter, no facts had come to the attention of the attorneys in such counsel’s firm rendering legal service to the Underwriter in connection with the Limited Offering Memorandum which caused such counsel to believe that the Limited Offering Memorandum, as of the date of the Limited Offering Memorandum and as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, such counsel expressly excludes from the scope of this paragraph and expresses no view or opinion about any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any information about verification, feasibility, valuation, appraisals, absorption, real estate or environmental matters, relationship among the parties, or any information about book-entry, DTC, Tax Matters, included or referred to therein or omitted therefrom. No responsibility is undertaken or view expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Limited Offering Memorandum; and

(iii) The Continuing Disclosure Agreement of Issuer satisfies the requirements contained in S.E.C. Rule 15c2-12(b)(5) for an undertaking for the benefit of the holders of the Bonds to provide the information at the times and in the manner required by said Rule; provided that, for purposes of this opinion, such counsel is not expressing any view regarding the content of the Limited Offering Memorandum that is not expressly stated in numbered paragraph ii, above.

j. Limited Offering Memorandum. The Limited Offering Memorandum and each supplement or amendment, if any, thereto.
k. **Delivery of City Documents and Developer Documents.** The City Documents and Developer Documents shall have been executed and delivered in form and content satisfactory to the Underwriter.

l. **Form 8038-G.** Evidence that the federal tax information form 8038-G has been prepared by Bond Counsel for filing.

m. **Federal Tax Certificate.** A certificate of the City in form and substance satisfactory to Bond Counsel and counsel to the Underwriter setting forth the facts, estimates and circumstances in existence on the Closing Date, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code.

n. **Attorney General Opinion and Comptroller Registration.** The approving opinion of the Attorney General of the State regarding the Bonds and the Comptroller of the State’s Certificate of Registration for the Initial Bond.

o. **Continuing Disclosure Agreements.** The Continuing Disclosure Agreement of Issuer and the Continuing Disclosure Agreement of Developer shall have been executed by the parties thereto in substantially the forms attached to the Preliminary Limited Offering Memorandum as Appendix E-1 and Appendix E-2.

p. **Letter of Representation of the Appraiser.** (i) Letter of Representation of the Appraiser, substantially in the form of Appendix F hereto, addressed to the City, Bond Counsel, the Underwriter, and the Trustee, or in form otherwise agreed upon by the Underwriter, and (ii) a copy of the real estate appraisal of the property in the District dated November 21, 2018.

q. **Letter of Representation of PID Administrator.** Letter of Representation of PID Administrator, substantially in the form of Appendix G hereto, addressed to the City, Bond Counsel, the Underwriter, and the Trustee, or in form otherwise agreed upon by the Underwriter.

r. **Letter of Representation of Special Assessment Consultant.** Letter of Representation of Development Planning & Financing Group, Inc., as Special Assessment Consultant, substantially in the form of Appendix H hereto, addressed to the City, Bond Counsel, the Underwriter, and the Trustee, or in form otherwise agreed upon by the Underwriter.

s. **Evidence of Filing of Creation Resolution, Initial Assessment Ordinance, Amended and Restated Additional Assessment Ordinance and Landowner Agreement.** Evidence that (i) the Creation Resolution, including legal description of the District by metes and bounds, (ii) the Initial Assessment Ordinance and the Amended and Restated Additional Assessment Ordinance, including the assessment rolls and a statement indicating the contact for and address of where a copy of the Service and Assessment Plan, and any updates thereto may be obtained or viewed and (iii) the Landowner...
Agreement, including any appendices thereto, have been filed of record in the real property records of Hays County, Texas.

t. **Lender Consent Certificate.** Lender Consent Certificate of Trez Capital (2015) Corporation, in recordable form, acknowledging the creation of the District and consenting to and acknowledging the adoption of the Assessment Ordinance, the levy of the Assessments, and the subordination of their respective liens to the lien created by the Assessments, in form and substance acceptable to the Underwriter, Underwriter’s Counsel and Bond Counsel.

u. **Rule 15c2-12 Certification.** A resolution, an ordinance or certificate of the City whereby the City has deemed the Preliminary Limited Offering Memorandum final as of its date, except for permitted omissions, as contemplated by Rule 15c2-12 in connection with the offering of the Bonds, which certification, if made in the form of a certificate, may be included in the City Certificate required by Section 10(h) hereof.

v. **Dissemination Agent.** Evidence acceptable to the Underwriter in its sole discretion that the City has engaged a dissemination agent acceptable to the Underwriter for the Bonds, with the execution of the Continuing Disclosure Agreement of Issuer and the Continuing Disclosure Agreement of Developer by other parties thereto being conclusive evidence of such acceptance by the Underwriter.

w. **BLOR.** A copy of the Blanket Letter of Representation to DTC relating to the Bonds and signed by the City.

x. **Additional Documents.** Such additional legal opinions, certificates, instruments, and other documents as the Underwriter or their counsel may reasonably deem necessary.

11. **City’s Closing Conditions.** The obligation of the City hereunder to deliver the Bonds shall be subject to receipt on or before the Closing Date of the purchase price set forth in Section 1 hereof, the Attorney General Opinion and the opinion of Bond Counsel described in Section 10(a) hereof.

12. **Consequences of Termination.** If the City shall be unable to satisfy the conditions contained in this Agreement or if the obligations of the Underwriter shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and the Underwriter and the City shall have no further obligation hereunder, except as further set forth in Sections 13, 15 and 16 hereof.

13. **Costs and Expenses.**

a. The Underwriter shall be under no obligation to pay, and the City shall cause to be paid from proceeds of the Bonds the following expenses incident to the issuance of the Bonds and performance of the City’s obligations hereunder: (i) the costs of the preparation and printing of the Bonds; (ii) the cost of preparation, printing, and mailing of the Preliminary Limited Offering Memorandum, the final Limited Offering Memorandum and any supplements and amendments thereto; (iii) the fees and
disbursements of the City’s Financial Advisor, the Trustee’s counsel, Bond Counsel, Developer’s General Counsel, Developer’s Special Counsel, and the Trustee relating to the issuance of the Bonds; (iv) the Attorney General’s review fees; (v) the fees and disbursements of accountants, advisers and any other experts or consultants retained by the City or the Developer, including but not limited to the fees and expenses of the Appraiser, the Special Assessment Consultant and the PID Administrator; and (vi) the expenses incurred by or on behalf of City employees and representatives that are incidental to the issuance of the Bonds and the performance by the City of its obligations under this Agreement.

b. The Underwriter shall pay the following expenses: (i) all advertising expenses in connection with the limited offering of the Bonds; (ii) fees of Underwriter’s Counsel; and (iii) all other expenses, including CUSIP fees (including out-of-pocket expenses and related regulatory expenses), incurred by it in connection with its public offering and distribution of the Bonds, except as noted in Subsection 13(a) above.

c. The City acknowledges that the Underwriter will pay from the Underwriter’s expense allocation of the underwriting discount the applicable per bond assessment charged by the Municipal Advisory Council of Texas, a nonprofit corporation (“Texas MAC”) whose purpose is to collect, maintain and distribute information relating to issuing entities of municipal securities. The estimated Texas MAC fee for this financing is $______

14. Notice. Any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to: City of San Marcos, Texas, City of San Marcos, Texas, 630 East Hopkins, San Marcos, Texas 78666, Attention: Director of Finance.

Any notice or other communication to be given to the Underwriter under this Agreement may be given by delivering the same in writing to: FMSbonds, Inc., 100 Crescent Court, Suite 700, Dallas, Texas 75201, Attention: Tripp Davenport, Director.

15. Entire Agreement. This Agreement is made solely for the benefit of the City and the Underwriter (including their respective successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. All of the City’s representations, warranties, and agreements contained in this Agreement shall remain operative and in full force and effect regardless of: (i) any investigations made by or on behalf of the Underwriter, provided the City shall have no liability with respect to any matter of which the Underwriter has actual knowledge prior to the purchase of the Bonds; or (ii) delivery of any payment for the Bonds pursuant to this Agreement. The agreements contained in this Section and in Section 16 shall survive any termination of this Agreement.

16. Survival of Representations and Warranties. All representations and warranties of the parties made in, pursuant to or in connection with this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigation by the parties. All statements contained in any certificate, instrument, or other writing delivered by a party to this Agreement or in connection with the transactions described in or by this Agreement constitute
representations and warranties by such party under this Agreement to the extent such statement is set forth as a representation and warranty in the instrument in question.

17. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

18. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

19. **State Law Governs.** The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

20. **No Assignment.** The rights and obligations created by this Agreement shall not be subject to assignment by the Underwriter or the City without the prior written consent of the other parties hereto.

21. **No Personal Liability.** None of the members of the City Council, nor any officer, representative, agent, or employee of the City, shall be charged personally by the Underwriter with any liability, or be held liable to the Underwriter under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach of this Agreement.

22. **Anti-Boycott Verification.** The Underwriter hereby verify that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Underwriter understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

23. **Iran, Sudan and Foreign Terrorist Organizations.** The Underwriter represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Underwriter and each of its parent
company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Underwriter understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

24. **Form 1295.** Submitted herewith is a completed Form 1295 in connection with the Underwriter’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Underwriter, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Underwriter and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Underwriter; and, neither the City nor its consultants have verified such information.

[Signature pages follow.]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

FMSbonds, Inc.,
as Underwriter

By: ______________________________
    Name: Theodore A. Swinarski
    Title: Senior Vice President - Trading
Accepted at _____ a.m./p.m. central time on the date first stated above.

City of San Marcos, Texas

By: ______________________________________
   Mayor
SCHEDULE I

$[PRINCIPAL]
CITY OF SAN MARCOS, TEXAS
(a municipal corporation of the State of Texas located in
Hays, Caldwell and Guadalupe Counties)
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

Interest Accrues From: Date of Delivery

$________ ____% Term Bonds, Due ____________ 1, 20__, Priced to Yield ____% (a) (c)

$________ ____% Term Bonds, Due ____________ 1, 20__, Priced to Yield ____% (a) (b) (c)

$________ ____% Term Bonds, Due ____________ 1, 20__, Priced to Yield ____% (a) (b) (c)

(a) The initial reoffering prices or yields of the Bonds have been determined in accordance with the 10% test.

(b) The Bonds maturing ____________, 20__ are subject to optional redemption, in whole or in part, prior to stated maturity, at the option of the City, on any date on or after ____________, 20__ at the redemption price equal to the percentage of their principal amount set forth below plus accrued interest to date of redemption:

<table>
<thead>
<tr>
<th>Redemption Date</th>
<th>Redemption Price</th>
</tr>
</thead>
</table>

(c) The Bonds are also subject to extraordinary optional redemption as described in the Limited Offering Memorandum under “DESCRIPTION OF THE BONDS — Redemption Provisions.”

The Term Bonds maturing ____________, 20__, are also subject to mandatory sinking fund redemption on the dates and in the respective Sinking Fund Installments as set forth in the following schedule.

<table>
<thead>
<tr>
<th>$________ Term Bonds Maturing __________<strong>, 20</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Redemtion Date</td>
</tr>
</tbody>
</table>

†
† Stated Maturity

Schedule I-1
APPENDIX A

FORM OF DEVELOPER LETTER OF REPRESENTATIONS

$[PRINCIPAL]

CITY OF SAN MARCOS, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

DEVELOPER LETTER OF REPRESENTATIONS

January 15, 2019

City of San Marcos, Texas
630 East Hopkins
San Marcos, Texas 78666

FMSbonds, Inc.
100 Crescent Court, Suite 700
Dallas, Texas 75201

Ladies and Gentlemen:

This letter is being delivered to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”), in consideration for your entering into the Bond Purchase Agreement dated the date hereof (the “Bond Purchase Agreement”) for the sale and purchase of the $[PRINCIPAL] “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)” (the “Bonds”). Pursuant to the Bond Purchase Agreement, the Underwriter has agreed to purchase from the City, and the City has agreed to sell to the Underwriter the Bonds. In order to induce the City to enter into the Bond Purchase Agreement and as consideration for the execution, delivery, and sale of the Bonds by the City and the purchase of them by the Underwriter, the undersigned, Highpointe Trace, LLC, a California limited liability company (the “Developer”), makes the representations, warranties, and covenants contained in this Developer Letter of Representations. Unless the context clearly indicates otherwise, each capitalized term used in this Developer Letter of Representations will have the meaning set forth in the Bond Purchase Agreement.

1. Purchase and Sale of Bonds. Inasmuch as the purchase and sale of the Bonds represents a negotiated transaction, the Developer understands, and hereby confirms, that the Underwriter is not acting as a fiduciary of the Developer, but rather is acting solely in its capacity as Underwriter of the Bonds for its own account.

2. Updating of the Limited Offering Memorandum. If, after the date of this Developer Letter of Representations, up to and including the date the Underwriter is no longer
required to provide a Limited Offering Memorandum to potential customers who request the
same pursuant to Rule 15c2-12 (the earlier of (i) ninety (90) days from the “end of the
underwriting period” (as defined in Rule 15c2-12) and (ii) the time when the Limited Offering
Memorandum is available to any person from the MSRB, but in no case less than twenty-five
(25) days after the “end of the underwriting period” for the Bonds), the Developer becomes
aware of any fact or event which might or would cause the Limited Offering Memorandum, as
then supplemented or amended, to contain any untrue statement of a material fact or to omit to
state a material fact required to be stated therein or necessary to make the statements therein, in
light of the circumstances under which they were made, not misleading, or if it is necessary to
amend or supplement the Limited Offering Memorandum to comply with law, the Developer
will notify the Underwriter (and for the purposes of this clause provide the Underwriter with
such information as it may from time to time request); however, that for the purposes of this
Developer Letter of Representations and any certificate delivered by the Developer in
accordance with the Bond Purchase Agreement, the Developer makes no representations with
respect to the information appearing in the Preliminary Limited Offering Memorandum or the
Limited Offering Memorandum except for the information set forth in the maps on pages (v),
(vi) and (vii) and under the captions and subcaptions “PLAN OF FINANCE — Development
Plan,” “ — Status of Public Improvements and Lot Development,” “ — Homebuilders and Status
of Home Construction” and “ — Status of Multi-family, Retail and Office/Business Park Sites,”
“THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER” and,
to the Developer’s knowledge after due inquiry, under the captions “BONDHOLDERS’ RISKS”
(only as it pertains to the Developer, the Public Improvements and the Development, as defined
in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,”
“CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with
Prior Undertakings,” “SOURCES OF INFORMATION — Developer” and “APPENDIX E-2”
in accordance with subsection 4(f) herein.

3. Developer Documents. The Developer has executed and delivered each of the
below listed documents (individually, a “Developer Document” and collectively, the “Developer
Documents”) in the capacity provided for in each such Developer Document, and each such
Developer Document constitutes a valid and binding obligation of the Developer, enforceable
against the Developer in accordance with its terms:

   a. this Developer Letter of Representation;

   b. that certain Amended and Restated Trace Public Improvement District
      Reimbursement Agreement, effective September 18, 2018 (the “Reimbursement
      Agreement”), executed and delivered by the City and (the Developer;

   c. the Trace Public Improvement District Financing Agreement, dated
      October 20, 2015, which was amended and restated on September 18, 2018 (the
      “Financing Agreement”), executed and delivered by the City and the Developer, and, as
      consenting parties, Pacesetter Homes, LLC and Buffington Texas Classic Homes, LLC;

   d. that certain Landowner Agreement, effective as of October 18, 2016 (the
      “Landowner Agreement”), executed and delivered by the City and the Developer;
that certain Agreement Regarding Fire Station, effective November 2, 2015 (the “Fire Station Agreement”), executed and delivered by the City and the Developer;

f. that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (TRACE PID) dated as of January 15, 2019, executed and delivered by the City, the Developer and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”);

g. that certain Land Contribution Agreement, effective April 17, 2018, executed and delivered by the Developer and the San Marcos Consolidated Independent School District (“the Elementary School Agreement”); and

h. that certain Continuing Disclosure Agreement of Developer with respect to the Bonds, effective January 15, 2019 (the “Continuing Disclosure Agreement of Developer”), executed and delivered by the City, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

The Developer has complied in all material respects with all of the Developer’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by the Developer under the Developer Documents on or prior to the date hereof.

4. Developer Representations, Warranties and Covenants. The Developer represents, warrants, and covenants to the City and the Underwriter that:

a. Due Organization and Existence. The Developer is duly formed and validly existing as a limited liability company under the laws of the State of California, and is authorized to do business in the State of Texas.

b. Organizational Documents. The copies of the organizational documents of the Developer provided by the Developer (the “Developer Organizational Documents”) to the City and the Underwriter are fully executed, true, correct, and complete copies of such documents and such documents have not been amended or supplemented and are in full force and effect as of the date hereof.

c. No Breach. The execution and delivery of the Developer Documents by Developer does not violate any judgment, order, writ, injunction or decree binding on Developer or any indenture, agreement, or other instrument to which Developer is a party.

d. No Litigation. Other than as described in the Preliminary Limited Offering Memorandum, there are no proceedings pending or threatened in writing before any court or administrative agency against Developer that is either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of Developer to perform its obligations under the Developer Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the District in accordance with the description thereof in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum.
e. Information. The information prepared and submitted by the Developer to the City or the Underwriter in connection with the preparation of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum was, and is, as of this date, true and correct in all material respects.

f. Preliminary Limited Offering Memorandum and Limited Offering Memorandum. The Developer represents and warrants that the information set forth in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Public Improvements and Lot Development,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Retail and Office/Business Park Sites,” “THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER” and, to the Developer’s knowledge after due inquiry, under the captions “BONDBOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer” and “APPENDIX E-2” is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Developer agrees to provide a certificate dated the Closing Date affirming, as of such date, the representations contained in this subsection (f) with respect to the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum.

g. Events of Default. No “Event of Default” or “event of default” by the Developer under any of the Developer Documents, any documents to which the Developer is a party described in the Limited Offering Memorandum, or any material documents relating to the financing and construction of the Public Improvements to which the Developer is a party, or event that, with the passage of time or the giving of notice or both, would constitute such “Event of Default” or “event of default,” by the Developer has occurred and is continuing.

5. Indemnification.

a. The Developer will indemnify and hold harmless the City and the Underwriter and each of their officers, directors, employees and agents against any losses, claims, damages or liabilities to which any of them may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Public Improvements and Lot Development,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Retail and Office/Business Park Sites,” “THE PUBLIC
IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER” and, to the Developer’s knowledge after due inquiry, under the captions “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “— The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer” and “APPENDIX E-2,” or any amendment or supplement to the Limited Offering Memorandum amending or supplementing the information contained under the aforementioned captions (as qualified above), or arise out of or are based upon the omission, untrue statement or alleged untrue statement or omission to state therein a material fact necessary to make the statements under the aforementioned captions (as qualified above) not misleading under the circumstances under which they were made and will reimburse any indemnified party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred.

b. Promptly after receipt by an indemnified party under subsection (a) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party otherwise than under such subsection, unless such indemnifying party was prejudiced by such delay or lack of notice. In case any such action shall be brought against an indemnified party, it shall promptly notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. The indemnifying party shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the indemnifying party or if there is a final judgment for the plaintiff in any such action, the indemnifying party will indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. The indemnity herein shall survive delivery of the Bonds and shall survive any investigation made by or on behalf of the City, the Developer or the Underwriter.

6. Survival of Representations, Warranties and Covenants. All representations, warranties, and agreements in this Developer Letter of Representations will survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Underwriter, (b) delivery of any payment by the Underwriter for the Bonds hereunder, and (c) any termination of the Bond Purchase Agreement.
7. **Binding on Successors and Assigns.** This Developer Letter of Representations will be binding upon the Developer and its successors and assigns and inure solely to the benefit of the Underwriter and the City, and no other person or firm or entity will acquire or have any right under or by virtue of this Developer Letter of Representations.

[Signature page follows.]
HIGHPOINTE TRACE, LLC,
a California limited liability company
(as Developer)

By: Highpointe Posey, L.P., a California
limited partnership, Its Managing
Member

By: Highpointe Investments, Inc.,
a California corporation, Its
General Partner

By: ___________________________
    Timothy D. England, SVP
APPENDIX B

$[PRINCIPAL]
CITY OF SAN MARCOS, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

ISSUE PRICE CERTIFICATE

The undersigned, as the duly authorized representative of FMSBonds, Inc., (“Purchaser”), with respect to the City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 issued by the City of San Marcos, Texas (“Issuer”) in the principal amount of $__________ (“Bonds”), hereby certifies, based on its records and information, as follows:

(a) [Other than the Bonds maturing in ____________ (“Hold-the-Price Maturities”), the][The first price at which at least ten percent (“Substantial Amount”) of the principal amount of each maturity of the Bonds having the same credit and payment terms (a “Maturity”) was sold to a person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter (the “Public”) is set forth in the final Official Statement relating to the Bonds.

(Add (b) and (c) only if there are Hold-the-Price maturities)

(b) On or before the first day on which the Bond Purchase Agreement is entered into (the “Sale Date”), the Purchaser offered to the Public each Maturity of the Hold-the-Price Maturities at their respective initial offering prices (the “Initial Offering Prices”), as listed in the final Official Statement relating to the Bonds.

(c) As set forth in the Bond Purchase Agreement, the Purchaser agreed in writing to neither offer nor sell any of the Hold-the-Price Maturities to any person at any higher price than the respective Initial Offering Price for such Maturity until a date that is the earlier of the close of the fifth business day after the Sale Date or the date on which the Purchaser sells a Substantial Amount of a Maturity of the Bonds to the Public at no higher price than the Initial Offering Price for such Maturity.

A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule A.

For purposes of this Issue Price Certificate, the term “Underwriter” means (1) (i) a person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, or (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (1)(i) of this paragraph (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public) to participate in the initial sale of the Bonds to the Public, and (2) any person who has more than 50% common ownership, directly or indirectly, with a person described in clause (1) of this paragraph.

[Signature Page Follows]

B-1
The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Federal Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by McCall, Parkhurst & Horton L.L.P. in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds. Notwithstanding anything set forth herein, the Purchaser is not engaged in the practice of law and makes no representation as to the legal sufficiency of the factual matters set forth herein.

EXECUTED and DELIVERED as of this [ISSUE DATE].

FMS Bonds, Inc.,
as Underwriter

By: ________________________________

Name: Theodore A. Swinarski
Title: Senior Vice President - Trading
SCHEDULE A

PRICING WIRE OR EQUIVALENT COMMUNICATION

(Attached)
APPENDIX C

[LETTERHEAD OF CITY ATTORNEY]

January 31, 2019

FMSbonds, Inc.  UMB Bank, N.A.
100 Crescent Court, Suite 700  6034 W. Courtyard Drive, Suite 370
Dallas, Texas 75201  Austin, Texas 78730

City of San Marcos, Texas  
630 East Hopkins  
San Marcos, Texas 78666

$[PRINCIPAL]  
CITY OF SAN MARCOS, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019  
(TRACE PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

The undersigned serves as the City Attorney for the City of San Marcos, Texas (the “City”), and has, in that capacity, provided legal review in connection with the issuance and sale of $[PRINCIPAL] “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)” (the “Bonds”), by the City, a political subdivision of the State of Texas.

The Bonds are authorized pursuant to Ordinance No. ______ and enacted by the City Council of the City (the “City Council”) on January 15, 2019 (the “Bond Ordinance”) and shall be issued pursuant to the provisions of Subchapter A of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the “Act”) and the Indenture of Trust dated as of January 15, 2019 (the “Indenture”) by and between the City and UMB Bank, N.A., Austin, Texas (the “Trustee”). Capitalized terms not defined herein shall have the same meanings as in the Indenture, unless otherwise stated herein.

In connection with rendering this opinion, we have reviewed the:

(a) The Resolution No. 2015-145R (the “Creation Resolution”) enacted by the City Council on October 20, 2015;

(b) The Ordinance No. 2016-42 accepted and approved by City Council on October 18, 2016 (the “Initial Assessment Ordinance”), and the service and assessment plan (the “Initial Service and Assessment Plan”) attached as an exhibit thereto;

(c) The Ordinance No. 2018-38 accepted and approved by City Council on October 16, 2018 (the “Additional Assessment Ordinance”), and the amended and restated service and
assessment plan (the “Amended and Restated Service and Assessment Plan”) attached as an exhibit thereto;

(d) The Ordinance No. 2018-51 accepted and approved by City Council on December 12, 2018 (the “Amended and Restated Additional Assessment Ordinance” and, together with the Initial Assessment Ordinance and the Additional Assessment Ordinance, the “Assessment Ordinance”), and the amended and restated service and assessment plan (as amended and supplemented, the “Service and Assessment Plan”) attached as an exhibit thereto, as such Service and Assessment Plan was updated by the Bond Ordinance;

(e) The Bond Ordinance;

(f) The Indenture;

(g) the Amended and Restated Trace Public Improvement District Reimbursement Agreement, effective September 18, 2018 (the “Reimbursement Agreement”), executed and delivered by the City and Highpointe Trace, LLC, a California limited liability company (the “Developer”);

(h) the Trace Public Improvement District Financing Agreement, dated October 20, 2015, which was amended and restated on September 18, 2018 (the “Financing Agreement”), executed and delivered by the City and the Developer, and, as consenting parties, Pacesetter Homes, LLC and Buffington Texas Classic Homes, LLC;

(i) the Landowner Agreement, effective as of October 18, 2016 (the “Landowner Agreement”), executed and delivered by the City and the Developer;

(j) the Agreement Regarding Fire Station, effective November 2, 2015 (the “Fire Station Agreement”), executed and delivered by the City and the Developer;

(k) the Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (TRACE PID) dated as of January 15, 2019, executed and delivered by the City, the Developer and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(l) the Continuing Disclosure Agreement of Issuer with respect to the Bonds, dated as of January 15, 2019 (the “Continuing Disclosure Agreement of Issuer”), executed and delivered by the City and UMB Bank, N.A., as Dissemination Agent.

The Creation Resolution, the Assessment Ordinance and Bond Ordinance shall herein after be referred to as the “Authorizing Documents” and the remaining documents shall herein after be collectively referred to as the “City Documents.”

In all such examinations, we have assumed that all signatures on documents and instruments executed by the City are genuine and that all documents submitted to me as copies conform to the originals. In addition, for purposes of this opinion, we have assumed the due authorization, execution and delivery of the City Documents by all parties other than the City.
Based upon and subject to the foregoing and the additional qualifications and assumptions set forth herein, we are of the opinion that:

1. The City is a home rule municipal corporation of the State of Texas and has all necessary power and authority to enter into and perform its obligations under the Authorizing Documents and the City Documents. The City has taken or obtained all actions, approvals, consents and authorizations required of it by applicable laws in connection with the execution of the Authorizing Documents and the City Documents and the performance of its obligations thereunder.

2. There is no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, public board or body, pending, or, to the best of our knowledge, threatened against the City: (a) affecting the existence of the City or the titles of its officers to their respective offices, (b) in any way questioning the formation or existence of the District, (c) affecting, contesting or seeking to prohibit, restrain or enjoin the delivery of any of the Bonds, or the payment, collection or application of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, including the Assessments in the District pursuant to the provisions of the Assessment Ordinance and the Service and Assessment Plan referenced therein, (d) contesting or affecting the validity or enforceability or the City’s performance of the City Documents, (e) contesting the exclusion of the interest on the Bonds from federal income taxation, or (f) which may result in any material adverse change relating to the financial condition of the City.

3. The Authorizing Documents were duly enacted by the City and remain in full force and effect on the date hereof.

4. The City Documents have been duly authorized, executed and delivered by the City and remain legal, valid and binding obligations of the City enforceable against the City in accordance with their terms. However, the enforceability of the obligations of the City under such City Documents may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, and (c) the application of Texas law relating to action by future councils and relating to governmental immunity applicable to governmental entities.

5. The performance by the City of the obligations under the Authorizing Documents and the City Documents will not violate any provision of any Federal or Texas constitutional or statutory provision.

6. No further consent, approval, authorization, or order of any court or governmental agency or body or official is required to be obtained by the City as a condition precedent to the performance by the City of its obligations under the Authorizing Documents and the City Documents.

7. The City has duly authorized, executed and delivered the Preliminary Limited Offering Memorandum.
8. Based upon our limited participation in the preparation of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum (collectively, the “Limited Offering Memorandum”), the statements and information contained in the Limited Offering Memorandum with respect to the City under the captions and subcaptions “ASSESSMENT PROCEDURES — Assessment Methodology” and “ — Assessment Amounts,” “THE CITY,” “THE DISTRICT,” “LEGAL MATTERS — Litigation — The City” and “APPENDIX A” is a fair and accurate summary of the law and the documents and facts summarized therein.

9. The adoption of the Authorizing Documents and the execution and delivery of the City Documents and the compliance with the provisions of the Authorizing Documents and the City Documents under the circumstances contemplated thereby, to the best of our knowledge: (a) do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement to which the City is a party or by which it is bound, and (b) do not and will not in any material respect conflict with or constitute on the part of the City a violation, breach of or default under any existing law, regulation, court order or consent decree to which the City is subject.

This opinion may not be relied upon by any other person except those specifically addressed in this letter. This opinion is made to the best of the undersigned's knowledge and belief and is not a substitute for the addressees' due diligence or independent review. The undersigned cannot and does not, by giving this opinion, represent the addressees and is not in any way providing legal advice or services to the addressees. It is not intended to serve as a substitute for the addressees' independent legal counsel; however, this opinion may be relied upon by the addressees hereof and other interested parties, but only with respect to those matters expressly set forth herein. This opinion does not and shall not be construed as any form of guaranty or warranty of the District, the Bonds referenced herein, the Authorizing Documents, or the City's obligations thereunder.

Sincerely,

Michael Cosentino

By: ________________________________
January 31, 2019

City of San Marcos, Texas
630 E. Hopkins
San Marcos, Texas 78666

FMSbonds, Inc.
100 Crescent Court, Suite 700
Dallas, Texas 75201

McCall, Parkhurst & Horton L.L.P.
600 Congress Ave., Suite 1800
Austin, Texas 78701

UMB Bank, N.A.
6034 W. Courtyard Drive, Suite 370
Austin, Texas 78730

Michael Cosentino
City Attorney’s Office
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

Ladies and Gentlemen:

We have served as special counsel for Highpointe Trace, LLC, a California limited liability company (the “Developer”) in connection with the issuance and sale by the City of San Marcos, Texas (the “City”), of $____________ City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District Project) (the “Bonds”), pursuant to an Indenture of Trust dated as of January 15, 2019 (the “Indenture”), by and between the City and UMB, N.A., as trustee (together with its successors, the “Trustee”). Proceeds from the sale of the Bonds will be used, in part, to fund certain public infrastructure improvements in the development known as “Trace Public Improvement District” (the “Development”) located in the City.

The Bonds are being sold to FMSbonds, Inc. (the “Underwriter”), pursuant to that certain Bond Purchase Agreement dated January 15, 2019 (the “Bond Purchase Agreement”), by and between the City and the Underwriter. This opinion is being delivered pursuant to Section 10(d) of the Bond Purchase Agreement.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Bond Purchase Agreement.
Assumptions and Bases for Opinions and Assurances

In our capacity as special counsel to the Developer, and for purposes of rendering the opinions set forth herein, we have examined originals or copies, certified or otherwise identified to our satisfaction, of:

(a) The following documents being executed, entered into and/or issued, as the case may be, in connection with the issuance of the Bonds (collectively, the “Material Documents”):

(1) The Bond Purchase Agreement;

(2) The Amended and Restated Trace Public Improvement District Reimbursement Agreement, effective September 18, 2018, executed and delivered by the City and the Developer (as amended, the “Reimbursement Agreement”);

(3) The Trace Public Improvement District Financing Agreement, dated October 20, 2015, which was amended and restated on September 18, 2018, executed and delivered by the City and the Developer, and, as consenting parties, Pacesetter Homes, LLC and Buffington Texas Classic Homes, LLC (the “Financing Agreement”);

(4) The Landowner Agreement, effective as of October 18, 2016, executed and delivered by the City and the Developer (the “Landowner Agreement”);

(5) The Agreement Regarding Fire Station, effective November 2, 2015, executed and delivered by the City and the Developer (the “Fire Station Agreement”);

(6) The Land Contribution Agreement, dated as of April 17, 2018, executed and delivered by the Developer and the San Marcos Consolidated Independent School District (the “Elementary School Agreement”);

(7) The Continuing Disclosure Agreement of Developer with respect to the Bonds, dated as of January 15, 2019, executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A, as Dissemination Agent (the “Continuing Disclosure Agreement of Developer”);

(8) Developer Letter of Representations dated January 15, 2019 and the Closing Certificate of the Developer, dated as of the date hereof (together, the “Developer Certificate”); and

(9) The Agreement Regarding Conveyance of Right and Redemption and Waiver of Agricultural Valuation (Trace PID) dated as of January 15, 2019, executed and delivered by the City, the Trustee, and the Developer (the “Redemption Waiver Agreement”);
(b) The Preliminary Limited Offering Memorandum, dated January 7, 2019, relating to the issuance of the Bonds (the “Preliminary Limited Offering Memorandum”);

(c) The Final Limited Offering Memorandum, dated January 15, 2019, relating to the issuance of the Bonds (collectively with the Preliminary Limited Offering Memorandum, the “Limited Offering Memorandum”); and

(d) Such other documents, records, agreements, and certificates of the Developer as we have deemed necessary or appropriate to enable us to render the opinions expressed below.

In basing the opinions and other matters set forth herein on “our knowledge,” the words “our knowledge” signify that, in the course of our representation of the Developer, the principal attorneys of this firm involved in the current actual transaction do not have actual knowledge or actual notice that any such opinions or other matters are not accurate or that any of the documents, certificates, reports and information on which we have relied are not accurate and complete. Except as otherwise stated herein, we have undertaken no independent investigation or certification of such matters. The words “our knowledge” and similar language used herein are intended to be limited to the knowledge of the attorneys within our firm who have worked on the matters contemplated by our representation as special counsel.

In rendering the opinions set forth herein, we have assumed, without independent investigation, that: (i) the due authorization, execution, and delivery of each of the documents referred to in this opinion letter by all parties thereto (other than the authorization, execution, and delivery by the Developer) and that each such document constitutes a valid, binding, and enforceable obligation of each party (other than the Developer) thereto, (ii) all of the parties to the documents referred to in this opinion letter are duly organized, validly existing, in good standing and have the requisite power, authority (corporate, limited liability company, partnership or other) and legal right to execute, deliver, and perform its obligations under such documents (except to the extent set forth in our opinions set forth herein regarding valid existence and power and authority of the Developer to execute, deliver, and perform its obligations under the Material Documents), (iii) each certificate from governmental officials reviewed by us is accurate, complete, and authentic, and all official public records are accurate and complete, (iv) the legal capacity of all natural persons, (v) the genuineness of all signatures (other than those of the Developer in respect of the Material Documents), (vi) the authenticity and accuracy of all documents submitted to us as originals, (vii) the conformity to original documents of all documents submitted to us as photostatic or certified copies, (viii) that no laws or judicial, administrative, or other action of any Governmental Authority (as defined in Schedule I attached hereto) of any jurisdiction not expressly opined to herein would adversely affect the opinions set forth herein, and (ix) that the execution and delivery by each party of, and performance of its agreements in, the Material Documents do not breach or result in a default under any existing obligation of such party under any agreements, contracts or instruments to which such party is a party to or otherwise subject to or any order, writ, injunction or decree of any court applicable to such party.
Opinions and Assurances

Based solely upon the foregoing, and subject to the assumptions and limitations set forth herein, we are of the opinion that:

(a) The execution and delivery by the Developer of the Material Documents to which it is a party will not (i) violate any applicable law; or (ii) conflict with or result in the breach of any existing court decree or order of any governmental body identified in the Developer Certificate or otherwise actually known to the lawyers who have provided substantive attention to the representation reflected in this opinion binding upon or affecting the Developer, the conflict with which or breach of which would have a material, adverse effect on the ability of the Developer to perform its obligations under the Material Documents to which it is a party.

(b) To our knowledge, no Governmental Approval (as defined in Schedule I attached hereto) which has not been obtained or taken is required to be obtained or taken by the Developer on or before the date hereof as a condition to the execution and delivery by the Developer of the Material Documents to which it is a party, except for Governmental Approvals that may be required to comply with certain covenants contained in the Material Documents (including, without limitation, covenants to comply with applicable laws).

(c) The Developer has duly executed and delivered each of the Material Documents to which it is a party, and each of the Material Documents constitute the legal, valid, and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms, subject to the following qualifications: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and (ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity), and (iii) the effect that enforceability of the indemnification provisions therein may be limited, in whole or in part. The execution, delivery, and performance by the Developer of its obligations under the Material Documents do not violate any existing laws of the State of Texas applicable to the Developer.

(d) There are no actions, suits or proceedings pending or, to our knowledge, threatened against the Developer identified in the Developer Certificate or otherwise actually known to the lawyers who have provided substantive attention to the representation reflected in this opinion in any court of law or equity, or before or by any governmental instrumentality with respect to (i) its organization or existence or qualification to do business in the State of Texas; (ii) its authority to execute or deliver the Material Documents to which it is a party; (iii) the titles of the parties executing the Material Documents; (iv) the execution, delivery, validity or enforceability of the Material Documents on behalf of the Developer; (v) the operations or financial condition of the Developer that would materially adversely affect those operations or the financial condition of the Developer; or (vi) the acquisition and construction of the property and improvements identified in the Limited Offering Memorandum the cost of which is to be funded or reimbursed, in whole or in part, by proceeds of the Bonds.

(e) To the best of our present knowledge, the information set forth in the Preliminary Limited Offering Memorandum and Limited Offering Memorandum in the maps on pages (v), (vi), and (vii) and under the captions and subcaptions “PLAN OF FINANCE — Development
Plan” “— Status of Public Improvements and Lot Development”, “— Homebuilders and Status of Home Construction”, and “— Status of Multi-family, Retail and Office/Business Park Sites”; “THE PUBLIC IMPROVEMENTS”; “THE DEVELOPMENT”; and “THE DEVELOPER” and, to the Developer’s knowledge after due inquiry, under the captions “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum); “LEGAL MATTERS — Litigation — The Developer”; “CONTINUING DISCLOSURE — The Developer” and “— The Developer’s Compliance with Prior Undertakings”; “SOURCES OF INFORMATION — Developer”, and “APPENDIX E-2” adequately and fairly describe the information summarized under such captions.

(f) In addition, based upon our conversations with representatives of the Developer at which the Preliminary Limited Offering and the Limited Offering Memorandum and related matters were discussed, and although we have not independently verified the information in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum and are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum and any amendment or supplement thereto, no facts have come to our attention that lead us to believe that the information set forth under the captions referenced in the preceding paragraph as of the date of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum and the date hereof, contained or contains any untrue statement of a material fact, or omitted or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

We express no opinion as to the laws of any jurisdiction other than the laws of Texas and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of Texas and the United States of America as currently in effect. This opinion is rendered solely as the date hereof, and we assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

This opinion may not be relied upon by any other person except those specifically addressed in this letter.

Qualifications

In addition to any assumptions, qualifications and other matters set forth elsewhere herein, the opinions set forth above are subject to the following assumptions and qualifications:

(a) We have not examined any court dockets, agency files or other public records regarding the entry of any judgments, writs, decrees or orders or the pendency of any actions, proceedings, investigations or litigation.

(b) We have relied upon the Developer Certificate as well as the representations of the Developer contained in the Material Documents with respect to certain facts material to our
opinion. Except as otherwise specifically indicated herein, we have made no independent
investigation regarding any of the foregoing documents or the representations contained therein.

(c) Our opinion delivered pursuant to Section 2 above is subject to the effect of any
applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other
laws affecting creditors’ rights generally and to the effect of general principles of equity,
including (without limitation) remedies of specific performance and injunctive relief and
concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether
considered in a proceeding in equity or at law).

(d) Except for the Material Documents, we have not reviewed, and express no
opinion as to, any other contracts or agreements to which the Developer is a party or by which
the Developer is or may be bound.

(e) This letter is strictly limited to the matters expressly set forth herein and no
statements or opinions should be inferred beyond such matters.

(f) Notwithstanding anything contained herein to the contrary, we express no opinion
whatsoever concerning the status of title to any real or personal property.

(g) We express no opinion as to the laws of any jurisdiction other than the laws of
Texas and the laws of the United States of America. The opinions expressed above concern only
the effect of the laws (excluding the principles of conflict of laws) of Texas and the United States
of America as currently in effect. This opinion is rendered solely as the date hereof, and we
assume no obligation to supplement this opinion if any applicable laws change after the date of
this opinion, or if we become aware of any facts that might change the opinions expressed above
after the date of this opinion.

(h) The opinions expressed herein regarding the enforceability of the Material
Documents is subject to the qualification that certain of the remedial, waiver or other provisions
thereof may not be enforceable; but such unenforceability will not, in our judgment, render the
Material Documents invalid as a whole or substantially interfere with the practical realization of
the principal legal benefits provided in the Material Documents, except to the extent of any
economic consequences of any procedural delays which may result therefrom.

(i) The opinion expressed herein as to the enforceability of the Material Documents
is specifically subject to the qualification that enforceability of the Material Documents is limited
by the following: (i) the rights of the United States under the Federal Tax Lien Act of 1966, as
amended; (ii) principles of equity, public policy and unconscionability which may limit the
availability of certain remedies; (iii) bankruptcy, insolvency, reorganization, fraudulent
conveyance, moratorium, liquidation, probate, conservatorship and other laws applicable to
creditors’ rights or the collection of debtors’ obligations generally; and (iv) requirements of due
process under the United States Constitution, the Constitution of the State of Texas and other
laws or court decisions limiting the rights of creditors to repossess, foreclose or otherwise realize
upon the property of a debtor without appropriate notice or hearing or both.

(j) We express no opinion as to whether a court would grant specific performance or
any other equitable remedy with respect to the enforcement of the Material Documents.
(k) We express no opinion as to the validity, binding effect, or enforceability of: (i) provisions which purport to waive rights or notices, including rights to trial by jury, counterclaims or defenses, jurisdiction or venue; (ii) provisions relating to consent judgments, waivers of defenses or the benefits of statutes of limitations, marshaling of assets, the transferability of any assets which by their nature are nontransferable, sales in inverse order of alienation, or severance; (iii) provisions purporting to waive the benefits of present or of future laws relating to exemptions, appraisement, valuation, stay of execution, redemption, extension of time for payment, setoff and similar debtor protection laws; or (iv) provisions requiring a party to pay fees and expenses regardless of the circumstances giving rise to such fees or expenses or the reasonableness thereof.

(l) The opinions expressed herein are subject to the effect of generally applicable rules of law that provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected.

(m) We express no opinion as to the enforceability of any provisions in the Material Documents purporting to entitle a party to indemnification in respect of any matters arising in whole or in part by reason of any negligent, illegal or wrongful act or omission of such party.

This opinion may not be relied upon by any other person except those specifically addressed in this letter.

Very truly yours,

METCALFE WOLFF STUART & WILLIAMS, LLP

By: ________________________________
Talley J. Williams, Partner
SCHEDULE I

As used herein, “Applicable Law” means the laws, rules, and regulations of the State of Texas and the United States of America and the rules and regulations adopted thereunder; for the avoidance of doubt, the foregoing shall not include any local or municipal laws, environmental laws or regulations, development laws or regulations, land ordinances, or water management laws or regulations.

As used herein, “Governmental Approval” means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any Governmental Authority of the State of Texas or any governmental authority or instrumentality of the United States of America pursuant to any Applicable Law.

As used herein, “Governmental Authority” means the government of the State of Texas, and any agency, authority, statewide subdivision instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to such government.
APPENDIX D-2

[LETTERHEAD OF METCALFE, WOLFF, STUART & WILLIAMS, LLP]

January 31, 2019

City of San Marcos, Texas
630 E. Hopkins
San Marcos, Texas 78666

FMSbonds, Inc.
100 Crescent Court, Suite 700
Dallas, Texas 75201

McCall, Parkhurst & Horton L.L.P.
600 Congress Ave., Suite 1800
Austin, Texas 78701

UMB Bank, N.A.
6034 W. Courtyard Drive, Suite 370
Austin, Texas 78730

Michael Cosentino
City Attorney’s Office
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

$[PRINCIPAL]
CITY OF SAN MARCOS, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

We have served as special counsel for Highpointe Trace, LLC, a California limited liability company (the “Developer”) in connection with the issuance and sale by the City of San Marcos, Texas (the “City”), of $________ City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District Project) (the “Bonds”), pursuant to Indenture of Trust dated as of January 15, 2019 (the “Indenture”), by and between the City and UMB Bank, N.A., as trustee (together with its successors, the “Trustee”). Proceeds from the sale of the Bonds will be used, in part, to fund certain public infrastructure improvements in the development known as “Trace Public Improvement District” (the “Development”) located in the City.

The Bonds are being sold to FMSbonds, Inc. (the “Underwriter”), pursuant to that certain Bond Purchase Agreement dated January 15, 2019 (the “Bond Purchase Agreement”), by and among the City and the Underwriter. This opinion letter (“Opinion Letter”) is being delivered pursuant to Section 10(d) of the Bond Purchase Agreement.

In our capacity as special counsel to the Developer, and for purposes of rendering the opinions set forth herein, we have examined originals or copies, certified or otherwise identified to our satisfaction, of:

D-2-1
(a) The following documents being executed, entered into and/or issued, as the case may be, in connection with the issuance of the Bonds (collectively, the “Material Documents”):

1. The Bond Purchase Agreement;
2. The Amended and Restated Trace Public Improvement District Reimbursement Agreement, effective September 18, 2018, executed and delivered by the City and the Developer (as amended, the “Reimbursement Agreement”);
3. The Trace Public Improvement District Financing Agreement, dated October 20, 2015, which was amended and restated on September 18, 2018, executed and delivered by the City and the Developer, and, as consenting parties, Pacesetter Homes, LLC and Buffington Texas Classic Homes, LLC (the “Financing Agreement”);
4. The Landowner Agreement, effective as of October 18, 2016, executed and delivered by the City and the Developer (the “Landowner Agreement”);
5. The Agreement Regarding Fire Station, effective November 2, 2015, executed and delivered by the City and the Developer (the “Fire Station Agreement”);
6. The Land Contribution Agreement, dated as of April 17, 2018, executed and delivered by the Developer and the San Marcos Consolidated Independent School District (the “Elementary School Agreement”);
7. The Continuing Disclosure Agreement of Developer with respect to the Bonds, dated as of January 15, 2019, executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A, as Dissemination Agent (the “Continuing Disclosure Agreement of Developer”);
8. Developer Letter of Representations dated January 15, 2019 and the Closing Certificate of the Developer, dated as of the date hereof (together, the “Developer Certificate”); and
9. The Agreement Regarding Conveyance of Right and Redemption and Waiver of Agricultural Valuation (Trace PID) dated as of January 15, 2019, executed and delivered by the City, the Trustee, and the Developer (the “Redemption Waiver Agreement”);

(b) Articles of Incorporation of Highpointe Investments, Inc., a California corporation, general partner to the Developer, filed with the California Secretary of State on February 19, 1998 (the “Articles of Incorporation”);

(c) Articles of Organization of the Developer filed with the California Secretary of State on January 19, 2016 (the “Articles of Organization”);
(d) Agreement of Limited Partnership of Highpointe Posey Road, L.P., a California limited partnership and managing member of the Developer, made and entered into on January 30, 2015 (the “Agreement of Limited Partnership”);

(e) Operating Agreement for the Developer made and entered into as of March 28, 2016 (together with the Articles of Incorporation, Articles of Organization, and Agreement of Limited Partnership, the “Developer Governance Documents”);

(f) Signing Authorization of Highpointe Investments, Inc. dated as of January 1, 2016 (the “Signing Authorization”);

(g) Certificate of Status for the Developer issued by the California Secretary of State on December 3, 2018, and Entity Status Letter for the Developer issued by the California Franchise Tax Board dated November 28, 2018 (collectively, the “California Good Standing Certificate”, attached hereto);

(h) Certificate of Fact for the Developer issued by the Texas Secretary of State on November 28, 2018 and Certificate of Account Status issued by the Texas Comptroller of Public Accounts on December 19, 2018 (collectively, the “Texas Good Standing Certificate”); and

(i) Developer’s Opinion Certificate executed by an officer of the Developer, dated as of the date hereof (the “Developer’s Opinion Certificate”, attached hereto).

In rendering the opinions set forth herein, we have assumed, without independent investigation, that: (i) each certificate from governmental officials reviewed by us is accurate, complete, and authentic, the absence of change in the information contained therein from the effective date of any such certificate and all official public records are accurate and complete, (ii) the legal capacity of all natural persons, (iii) the authenticity and accuracy of all documents submitted to us as originals, (iv) the conformity to original documents of all documents submitted to us as photostatic or certified copies, (v) no laws or judicial, administrative, or other action of any governmental authority of any jurisdiction not expressly opined to herein would adversely affect the opinions set forth herein, and (vi) there have been no undisclosed modifications of any document reviewed by us in connection with the rendering of this Opinion Letter.

As to any facts material to our opinions expressed herein, we have relied upon the representations and warranties of the Developer contained in the Material Documents and upon the Developer’s Opinion Certificate (attached hereto) with respect to certain factual matters. Except as otherwise specifically indicated herein, we have made no independent investigation regarding any of the foregoing documents or the representations contained therein.

This Opinion Letter is limited in all respects to the laws of the United States, the Business Organizations Code of the State of Texas and the Corporations Code of the State of California, and we express no opinion as to the laws of any other jurisdiction, including any other laws of the State of Texas.
Based upon and subject to the foregoing and the qualifications hereinafter set forth, we are of the opinion that:

1. Based solely on the California Good Standing Certificate, the Developer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of California. Based solely on the Texas Good Standing Certificate, the Developer is qualified to transact business as a foreign limited liability company in the State of Texas.

2. The Developer has the limited liability company power and authority to execute and deliver the Material Documents to which it is a party and to perform its obligations thereunder.

3. The execution and delivery by the Developer of the Material Documents to which it is a party, and the performance by the Developer of its obligations under such Material Documents have been duly authorized by all necessary limited liability company action of the Developer.

4. The execution and delivery by the Developer of the Material Documents to which it is a party and the performance of the obligations of the Developer thereunder do not violate any of the terms, conditions or provisions of the Developer Governance Documents.

Our opinions expressed above are subject to the following additional qualifications:

(a) Except for the Material Documents and the documents listed as items (b) through (i) above, we have not reviewed, and express no opinion as to, any other contracts or agreements to which the Developer is a party or by which the Developer is or may be bound.

(b) Our opinion is based upon and relies upon the current status of law, and in all respects is subject to and may be limited by future legislation or case law.

The opinions expressed herein represent our reasonable professional judgment as to the matters of law addressed herein, based upon the facts presented or assumed, and are not guarantees that a court will reach any particular result.

This Opinion Letter is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated. This Opinion Letter is given as of the date hereof, and we expressly disclaim any obligation to update or supplement our opinions contained herein to reflect any facts or circumstances that may hereafter come to our attention or any changes in laws that may hereafter occur.

This Opinion Letter and the opinions contained herein may be relied upon only by those persons specifically addressed in this Opinion Letter but may not be relied upon by any other person or entity without our prior written consent and may not be used, circulated, furnished, quoted or otherwise referred to for any other purpose without our prior written consent.
Sincerely,

METCALFE WOLFF STUART & WILLIAMS, LLP

By: ___________________________________
   Talley J. Williams, Partner

___________________________________
D. Alexander Smith
California Bar No. ____________
[EXHIBITS]
DEVELOPER’S OPINION CERTIFICATE

The undersigned, Timothy D. England, the Senior Vice President for Highpoints Trace, LLC, a California limited liability company (the “Developer”), to enable the law firm of Metcalfe Wolff Stuart & Williams, LLP (“MWSW”) to render certain legal opinions (the “Opinion Letters”) to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”), pursuant to that certain Bond Purchase Agreement dated January 15, 2019, by and among the Underwriter and the City, hereby certifies to MWSW that to the best of my knowledge, information and belief:

1. For the purposes of this Certificate, (a) the “Material Documents” are listed under item (a) of the Opinion Letters and are more specifically defined in the Opinion Letters; and (b) the “Developer Governance Documents” are listed as items (b) through (e) of the Opinion Letters, are more specifically defined therein, and have not been amended or modified.

2. I have made due inquiry of all persons deemed necessary or appropriate to verify or confirm the statements contained herein.

3. The execution and delivery by the Developer of the Material Documents to which the Developer is a party and the performance of the obligations of the Developer thereunder do not violate any of the terms, conditions or provisions of the Developer Governance Documents.

4. The public improvement district financing as more fully set forth in item (a) 1 through 9 of the Opinion Letters are contemplated by the Business Plan and Proforma Budget as such terms are defined in the Developer Governance Documents.

5. A true and correct copy of each of the Developer Governance Documents, as amended to date, and a true and correct copy of the Signing Authorization of Highpointe Investments, Inc., the general partner of the managing member of the Developer (the “Signing Authorization”, listed as item (f) of the Opinion Letter), are in the possession of MWSW. The Signing Authorization has not been amended or modified and remains in full force and effect.

6. The representations and warranties made by the Developer in the Material Documents are accurate and complete and MWSW may rely upon such representations and warranties.

[SIGNATURE PAGE Follows]
In Witness Whereof, the undersigned have executed this Certificate as of ________________, 2019.

Highpointe Trace, LLC,
a California limited liability company

By: Highpointe Posey, LP, a California limited partnership, its managing member

By: Highpointe Investments, Inc., a California corporation, its general partner

By: __________________________
    Timothy D. England, SVP
EXHIBIT E

CLOSING CERTIFICATE OF DEVELOPER

Highpointe Trace, LLC, a California limited liability company (the “Developer”), DOES HEREBY CERTIFY the following as of the date hereof. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Limited Offering Memorandum.

1. The Developer is a limited liability company organized, validly existing and in good standing under the laws of the State of California, authorized to do business in the State of Texas.

2. Representatives of the Developer have provided information pertaining to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”) to be used in connection with the offering by the City of its $[PRINCIPAL] aggregate principal amount of Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District) (the “Bonds”), pursuant to the District’s Preliminary Limited Offering Memorandum, dated January 7, 2019, and Limited Offering Memorandum dated January 15, 2019 (together, the “Limited Offering Memorandum”).

3. The Developer has delivered to the Underwriter and the City true, correct, complete and fully executed copies of (i) the Developer’s organizational documents, including its Articles of Organization filed with the California Secretary of State, and (ii) a certificate of registration of a foreign company from the Texas Secretary of State, evidencing that the Developer is certified to conduct business in the State of Texas, and such documents have not been amended or supplemented and are in full force and effect as of the date hereof.

4. The Developer has delivered to the Underwriter and the City (i) a Certificate of Status from the Texas Secretary of State, (ii) verification of franchise tax account status from the Texas Comptroller of Public Accounts for the Developer and (iii) a Certificate of Status and an Entity Status Letter both from the California Secretary of State.

5. The Developer has executed and delivered each of the below listed documents (individually, a “Developer Document” and collectively, the “Developer Documents”) in the capacity provided for in each such Developer Document, and each such Developer Document constitutes a valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms:

   (a) that certain Developer Letter of Representations dated January 15, 2019;

   (b) the Amended and Restated Trace Public Improvement District Reimbursement Agreement, effective September 18, 2018 (the “Reimbursement Agreement”), executed and delivered by the City and the Developer;

   (c) the Trace Public Improvement District Financing Agreement, dated October 20, 2015, which was amended and restated on September 18, 2018 (the
(d) the Landowner Agreement, effective as of October 18, 2016 (the “Landowner Agreement”), executed and delivered by the City and the Developer;

(e) the Agreement Regarding Fire Station, effective November 2, 2015 (the “Fire Station Agreement”), executed and delivered by the City and the Developer;

(f) that certain Land Contribution Agreement, effective April 17, 2018, executed and delivered by the Developer and the San Marcos Consolidated Independent School District (“the Elementary School Agreement”);

(g) that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (TRACE PID) dated as of January 15, 2019, executed and delivered by the City, the Developer and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(h) that certain Continuing Disclosure Agreement of Developer with respect to the Bonds, effective January 15, 2019 (the “Continuing Disclosure Agreement of Developer”), executed and delivered by the City, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

6. The Developer has complied in all material respects with all of the Developer’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by the Developer under the Developer Documents on or prior to the date hereof.

7. The execution and delivery of the Developer Documents by the Developer does not violate any judgment, order, writ, injunction or decree binding on the Developer or any indenture, agreement, or other instrument to which the Developer is a party. There are no proceedings pending or threatened in writing before any court or administrative agency against the Developer that is either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of the Developer to perform its obligations under the Developer Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the District in accordance with the description thereof in the Limited Offering Memorandum.

8. The Developer has reviewed and approved the information contained in the Limited Offering Memorandum in the maps on pages (v), (vi) and (vii) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Public Improvements and Lot Development,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Retail and Office/Business Park Sites,” “THE PUBLIC IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER” and, to the Developer’s knowledge after due inquiry, under the captions “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Public Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer” and “APPENDIX E-2,”
and certifies that the same does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading, as of the date of the Limited Offering Memorandum and as of the date hereof, respecting the Developer and the portion of the Development owned by the Developer, provided, however, that the foregoing certification is not a certification as to the accuracy, completeness or fairness of any of the other statements contained in the Limited Offering Memorandum.

9. To the Developer’s knowledge, the Developer is in compliance in all material respects with all provisions of applicable law in all material respects relating to the Developer in connection with the Development. Except as otherwise described in the Limited Offering Memorandum: (a) to the Developer’s knowledge, there is no default of any zoning condition, land use permit or development agreement binding upon the Developer or any portion of the Development that would materially and adversely affect the Developer’s ability to complete or cause to be completed the development of the District as described in the Limited Offering Memorandum; and (b) the Developer has no reason to believe that any additional permits, consents and licenses required to complete the Development as and in the manner described in the Limited Offering Memorandum will not be reasonably obtainable in due course.

10. The Developer is not insolvent and has not made an assignment for the benefit of creditors, filed or consented to a petition in bankruptcy, petitioned or applied (or consented to any third party petition or application) to any tribunal for the appointment of a custodian, receiver or any trustee or commenced any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction.

11. The levy of the Assessments on property in the District owned by the Developer will not conflict with or constitute a breach of or default under any agreement, mortgage, deed of trust, indenture or other instrument to which the Developer is a party or to which the Developer or any of its property or assets is subject.

12. The Developer is not in default under any mortgage, trust indenture, lease or other instrument to which it or any of its assets is subject, which default would have a material and adverse effect on the Bonds or the Developer’s ability to perform its obligations under the Developer Documents.

13. The Developer has no knowledge of any physical condition of the Development owned or to be developed by the Developer that currently requires, or currently is reasonably expected to require in the process of development investigation or remediation under any applicable federal, state or local governmental laws or regulations relating to the environment in any material and adverse respect.

Dated: January 31, 2019

[Signature page follows.]
DEVELOPER:

HIGHPOINTE TRACE, LLC,
a California limited liability company
(as Developer)

By: Highpointe Posey, L.P., a California limited partnership, Its Managing Member

By: Highpointe Investments, Inc.,
a California corporation, Its General Partner

By: ___________________________
    Timothy D. England, SVP
APPENDIX F

[LETTERHEAD OF INTEGRA REALTY RESOURCES - DFW]

January 31, 2019

City of San Marcos, Texas  
630 E. Hopkins  
San Marcos, Texas 78666

FMSbonds, Inc.  
100 Crescent Court, Suite 700  
Dallas, Texas 75201

McCall, Parkhurst & Horton L.L.P.  
600 Congress Ave., Suite 1800  
Austin, Texas 78701

UMB Bank, N.A.  
6034 W. Courtyard Drive, Suite 370  
Austin, Texas 78730

Re: City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019  
(Trace Public Improvement District) (the “Bonds”)

Ladies and Gentlemen:

The undersigned, ____________, representative of Integra Realty Resources - DFW  
(“Integra Realty”), the appraiser of the undeveloped property contained in Trace Public  
Improvement District (the “District”), does hereby represent the following:

1. Integra Realty has supplied certain information contained in the Preliminary  
Limited Offering Memorandum for the Bonds, dated January 7, 2019, and the Limited Offering  
Memorandum for the Bonds, dated January 15, 2019 (together, the “Limited Offering  
Memorandum”), relating to the issuance of the Bonds by the City of San Marcos, Texas, as  
described above. The information Integra Realty has provided is the real estate appraisal of the  
property in the District, located in APPENDIX F to the Limited Offering Memorandum, and the  
description thereof, set forth under the caption “APPRAISAL OF PROPERTY WITHIN THE  
DISTRICT — The Appraisal Report.”

2. To the best of my professional knowledge and belief, as of the date of my  
appraisal report, the portion of the Limited Offering Memorandum described above does not  
contain an untrue statement of a material fact as to the information and data set forth therein, and  
does not omit to state a material fact necessary to make the statements made therein, in the light  
of the circumstances under which they were made, not misleading.

3. Integra Realty agrees to the inclusion of the Appraisal in the Limited Offering  
Memorandum and the use of its name in the Limited Offering Memorandum for the Bonds.

4. Integra Realty agrees that, to the best of its ability, it will inform you immediately  
should it learn of any event(s) or information of which you are not aware subsequent to the date
of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or about January 31, 2019) which would render any such information in the Limited Offering Memorandum untrue, incomplete, or incorrect, in any material fact or render any statement in the appraisal materially misleading.

5. The undersigned hereby represents that he has been duly authorized to execute this letter of representations.

Sincerely yours,

_________________________

Integra Realty Resources - DFW

By: ________________________
   Its: ________________________
Re: City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019
(Trace Public Improvement District) (the “Bonds”)

Ladies and Gentlemen:

The undersigned, ____________, representative of P3Works LLC (“P3Works”), consultant in connection with the creation by the City of San Marcos, Texas (the “City”), of Trace Public Improvement District (the “District”), does hereby represent the following:

1. P3Works has supplied certain information contained in the Preliminary Limited Offering Memorandum, dated January 7, 2019 (the “Preliminary Limited Offering Memorandum”), and the final Limited Offering Memorandum, dated January 15, 2019 (the “Limited Offering Memorandum”), both in connection with the Bonds, relating to the issuance of the Bonds by the City, as described above. The information P3Works provided for the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum is located (a) under the caption “ASSESSMENT PROCEDURES,” (b) under the caption “THE DISTRICT — Collection History of the Initial Assessments,” (c) under the caption “THE PID ADMINISTRATOR” and (d) in the Service and Assessment Plan (the “SAP”) for the City located in APPENDIX C to the Limited Offering Memorandum.

2. To the best of my professional knowledge and belief, the portions of the Limited Offering Memorandum described above do not contain an untrue statement of a material fact as to the information and data set forth therein, and does not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

3. P3Works agrees to the inclusion of the SAP in the Limited Offering Memorandum and to the use of its name in the Limited Offering Memorandum for the Bonds.

4. P3Works agrees that, to the best of its ability, it will inform you immediately should it learn of any event(s) or information of which you are not aware subsequent to the date

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of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or about January 31, 2019) which would render any such information in the Limited Offering Memorandum untrue, incomplete, or incorrect, in any material fact or render any such information materially misleading.

5. The undersigned hereby represents that he has been duly authorized to execute this letter of representation.

Sincerely yours,

P3Works, LLC

By: _________________________________
Its: _________________________________
APPENDIX H

[LETTERHEAD OF DEVELOPMENT PLANNING & FINANCING GROUP, INC.]

January 31, 2019

City of San Marcos, Texas FMSbonds, Inc.
630 E. Hopkins 100 Crescent Court, Suite 700
San Marcos, Texas 78666 Dallas, Texas 75201

McCall, Parkhurst & Horton L.L.P. UMB Bank, N.A.
600 Congress Ave., Suite 1800 6034 W. Courtyard Drive, Suite 370
Austin, Texas 78701 Austin, Texas 78730

Re: City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019
(Trace Public Improvement District) (the “Bonds”)

Ladies and Gentlemen:

The undersigned, ___________________, representative of Development Planning &
Financing Group, Inc. (“DPFG”), consultant in connection with the creation by the City of San
Marcos, Texas (the “City”), of Trace Public Improvement District (the “District”), does hereby
represent the following:

1. DPFG has supplied certain information contained in the Preliminary Limited
Offering Memorandum, dated January 7, 2019 (the “Preliminary Limited Offering
Memorandum”), and the final Limited Offering Memorandum, dated January 15, 2019 (the
“Limited Offering Memorandum”), both in connection with the Bonds, relating to the issuance
of the Bonds by the City, as described above. The information DPFG has provided for the
Preliminary Limited Offering Memorandum and the Limited Offering Memorandum is located
under the captions “PLAN OF FINANCE — Development Plan,” “ — Status of Public
Improvements and Lot Development,” “ — Homebuilders and Status of Home Construction”
and “ — Status of Multi-family, Retail and Office/Business Park Sites,” “THE PUBLIC
IMPROVEMENTS,” “THE DEVELOPMENT” and “THE SPECIAL ASSESSMENT
CONSULTANT.”

2. To the best of my professional knowledge and belief, the portions of the Limited
Offering Memorandum described above do not contain an untrue statement of a material fact as
to the information and data set forth therein, and do not omit to state a material fact necessary to
make the statements made therein, in light of the circumstances under which they were made, not
misleading.

3. DPFG agrees to the inclusion of the SAP in the Limited Offering Memorandum
and to the use of its name in the Limited Offering Memorandum for the Bonds.

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4. DPFG agrees that, to the best of its ability, it will inform you immediately should it learn of any event(s) or information of which you are not aware subsequent to the date of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or about January 31, 2019) which would render any such information in the Limited Offering Memorandum untrue, incomplete, or incorrect, in any material fact or render any such information materially misleading.

5. The undersigned hereby represents that he has been duly authorized to execute this letter of representation.

Sincerely yours,

DEVELOPMENT PLANNING & FINANCING GROUP, INC.

____________________________
By: __________________________
Its: __________________________
Trace
Public Improvement District

2019 Annual Service Plan Update

January 15, 2019
Section I

PLAN DESCRIPTION AND DEFINED TERMS

A. **Introduction**

On October 20, 2015, (the “Creation Date”), the City Council (the "City Council") of the City of San Marcos, Texas (the "City") approved Resolution No. 2015-145R, which authorized the creation of the Trace Public Improvement District (the “PID”) to finance the Actual Costs of the Public Improvements for the benefit of certain property in the PID, all of which is located within the city limits of the City.

On October 18, 2016, the City Council approved and adopted Ordinance No. 2016-42, which approved a Service and Assessment Plan (the “Original SAP”) for the PID and levied $11,175,000 in assessments on property within the PID.

On October 16, 2018, the City Council approved and adopted Ordinance No. 2018-38, which approved an Amended and Restated Service and Assessment Plan (the “2018 SAP”) for the PID and levied $10,925,000 in additional assessments on property within the PID, which was amended and restated by Ordinance 2018-51 dated December 12, 2018. This 2019 Annual Service Plan Update provides updated Annual Installments resulting from the issuance of the Initial PID Bonds.

Chapter 372 of the Texas Local Government Code (as amended, the “PID Act”), governs the creation and operation of public improvement districts within the State of Texas. The Original SAP, as amended and restated by 2018 SAP, and as may be further updated, supplemented and amended from time to time, is the “SAP”. The PID Act requires that a service plan cover a period of at least five years and must also define the annual indebtedness and the projected costs for improvements. The PID Act also requires a service plan be reviewed and updated annually for the purpose of determining the annual budget for improvements. The service plan for the PID is described in more detail in Section V herein.

The Assessment Roll for the PID is attached hereto as Appendix A, and is addressed in Section VII. The Assessments as shown on the Assessment Roll are based on the method for establishing and levying the Assessments described in Sections IV and VI of this SAP.

B. **Definitions**

“2018 SAP” means the 2018 Amended and Restated Trace Public Improvement District Service and Assessment Plan approved by the City Council by an Assessment Ordinance 2018-38 dated October 16, 2018.

“Acquisition and Reimbursement Agreement” means the Amended and Restated Trace Public Improvement District Reimbursement Agreement executed between the City and Highpointe Trace, LLC, a California limited liability company (including its successors and assigns) effective as of September 18, 2018.
“Actual Cost(s)” means, with respect to the Public Improvements, the Landowner's demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement, as specified in a payment request in a form that has been reviewed and approved by the City and in an amount not to exceed the amount for each Public Improvement as set forth in the 2018 SAP. Actual Costs may include (a) the costs incurred by or on behalf of the Landowner (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvements, (c) construction management fee, (d) the costs incurred by or on behalf of the Landowner for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, advertising, marketing and research studies, appraisals, legal, accounting and similar professional services, (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (f) all related permitting and public approval expenses, architectural, engineering, and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and all payments for Annual Collection Costs after the date of a resolution authorizing such reimbursement.

“Additional Interest” means the amounts collected by application of the Additional Interest Rate.

“Additional Interest Rate” means the 0.50% additional interest charged on Assessments pursuant to Section 372.018 of the PID Act.

“Additional PID Bonds” means the bonds issued to fund Public Improvements (or a portion thereof) that were not funded with the Initial PID Bonds and are secured by Assessments levied on Assessed Property.

“Additional Assessments” means the $10,925,000 of Assessment levied on all Assessed Property within the PID pursuant to the Assessment Ordinance 2018-38 dated October 16, 2018, as amended and restated by Ordinance 2018-51 dated December 12, 2018 and levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Administrator” means an employee of the City or third party designee of the City who shall have the responsibilities provided for herein, in an Indenture relating to PID Bonds or in any other agreement approved by the City Council.

“Amenity Center Site” means that certain Trace Park/Presido Amenity Center as depicted on Appendix C.

“Annual Collection Costs” means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the PID, including, but not limited to, the costs
of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the PID and preparing the Assessment Roll, (iii) computing, levying, collecting and transmitting the Assessments or the Annual Installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Assessments, (v) issuing, paying and redeeming the PID Bonds, (vi) investing or depositing the Assessments or other monies, (vii) complying with the PID Act with respect to the PID Bonds, (viii) paying the paying agent/registrar’s and trustee’s fees and expenses (including the fees and expenses of its legal counsel) related to the PID Bonds, and (ix) administering the construction of the Public Improvements.

“Annual Installment” means, with respect to each Parcel, each annual payment of: (i) the Assessment (including the principal of and interest on), as shown on the Assessment Roll attached hereto as Appendix A, as applicable, and calculated as provided in Section VI, (ii) Annual Collection Costs, and (iii) the Additional Interest.

“Annual Service Plan Update” means any update to this SAP.

“Assessed Property” or “Assessed Properties” means property on which Assessments have been levied as shown on the Assessment Roll (as the same may be updated each year by an Annual Service Plan Update) and which includes any and all Parcels within the PID other than Non-Benefited Property and the Elementary School Site.

“Assessment(s)” means the assessments levied against Assessed Property in the PID, as provided for in the applicable Assessment Ordinance, including the Initial Assessments, the Additional Special Assessments, and any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Assessment Ordinance” means each ordinance adopted by the City Council levying the Assessments, including Ordinance 2016-42 levying the Initial Assessments, and Ordinance 2018-38, as amended and restated by Ordinance 2018-51, levying the Additional Assessments, and any future ordinance levying Assessments.

“Assessment Roll” means the Assessment Roll included in this SAP as Appendix A, which may be updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the issuance of PID Bonds or in connection with any Annual Service Plan Update.

“Bond Issuance Costs” mean the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, first year Annual Collection Costs, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

“City” means the City of San Marcos, Texas.

“City Council” means the City Council of City of San Marcos, Texas.
“County” means Hays County, Texas.

“Creation Date” means the date, October 20, 2015, the City Council approved Resolution No. 2015-145R which authorized the creation of the PID.

“Delinquent Collection Costs” means interest, penalties and expenses incurred or imposed with respect to any delinquent Assessment, or an Annual Installment thereof, in accordance with the PID Act which includes the costs related to pursuing collection of such delinquent Assessment, or an Annual Installment thereof, and the costs related to foreclosing the lien against the Assessed Property, including attorney’s fees.

“Elementary School Site” means that approximately 12 acres will be dedicated as an elementary school site to the Hays Consolidated Independent School District as shown on Appendix C.

“Fire Station Agreement” means that certain agreement entered into between the City and the Landowner on November 2, 2015.

“Indenture” means the applicable Indenture of Trust between the City and a trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

“Initial PID Bonds” means those certain “City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)” that are secured by Assessments levied on Assessed Property.

“Initial Assessment(s)” means the $11,175,000 of Assessment, of which $11,075,000 remains outstanding, levied on all Assessed Property within the PID upon the adoption of the Assessment Ordinance 2016-42 dated October 18, 2016 and levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Landowner(s)” means Highpointe Trace, LLC, a California limited liability corporation, or other entity affiliated with Highpointe Communities, Inc., Buffington Classic Texas Homes LLC, and Pacesetter Homes LLC.

“Lot” means (i) for any portion of the Property for which a subdivision plat has been recorded in the official public records of the County, a tract of land described as a “lot” in such subdivision plat, and (ii) for any portion of the Property for which a subdivision plat has not been recorded in the official public records of the County, a tract of land anticipated to be described as a “lot” in a final recorded subdivision plat.

“Lot Type” means a classification of final building Lots with similar characteristics (e.g. commercial, light industrial, multifamily residential, single family residential, etc.), as determined by the Administrator and confirmed by the City Council. In the case of single family residential Lots, the Lot Type shall be further defined by classifying the residential
Lots based on the estimated buildout value of the Lot, as determined by the Administrator and confirmed by the City Council.

“Lot Type 1” means a Lot within Phase 1 designated as a 32’/34’ alley lot.

“Lot Type 2” means a Lot within Phase 1 designated as a 41’ alley lot.

“Lot Type 3” means a Lot within Phase 1 designated as a 50’ lot.

“Non-Benefited Property” means Parcels within the boundaries of the Property that accrue no special benefit from the Public Improvements. Property identified as Non-Benefited Property at the time the Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed. Assessed Property converted to Non-Benefited Property, if the Assessments may not be reallocated pursuant to Section VI.C or Section VI.D, remains subject to the Assessments and requires the Assessments to be prepaid as provided for in Section VI.E.

“Original SAP” means the Trace Public Improvement District Service and Assessment Plan approved by the City Council by an Assessment Ordinance 2016-42 dated October 18, 2016.

“Parcel” means a property identified by either a tax map identification number assigned by the Hays County Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of the County, or by any other means determined by the City.

“Phase 1” means the platted property contained within the Trace Subdivision Section A, PA 1A Phase A-1 Final Plat attached hereto as Appendix H and the property contained within the Trace Subdivision Section A, PA 2A Phase A Final Plat attached hereto as Appendix I.

“PID” means the Trace Public Improvement District created by the City pursuant to Resolution No. 2015-145R approved on October 20, 2015.

“PID Act” means Chapter 372 of the Texas Local Government Code, as amended.

“PID Bonds” means the Assessment revenue bonds to be issued by the City, in one or more series, to finance the Public Improvements that confer special benefit on the Assessed Property within the PID, which may include funds for any required reserves and amounts necessary to pay the PID Bonds issuance cost, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Assessments, pursuant to the authority granted in the PID Act, for the purposes of (i) financing the costs of Public Improvements and related costs and (ii) reimbursing the Landowner for Actual Costs paid prior to the issuance of the PID Bonds. This term is also used to collectively refer to the Initial PID Bonds and any Additional PID Bonds throughout this SAP.

5
“PID Financing Agreement” means that certain Amended and Restated Trace Public Improvement District Financing Agreement between the Landowners and the City approved on October 20, 2015, which was amended and restated on September 18, 2018, as may be amended from time to time.

“Prepayment Costs” mean interest and Annual Collection Costs to the date of prepayment and in no event may amounts be recovered for costs incurred after the date of prepayment.

“Property” means the approximately 417.63 acres of property depicted and described by metes and bounds on Exhibit A to Resolution No. 2015-146R as adopted by City Council on October 29, 2015. The Property is located within the City and is legally described in Appendix B and is depicted in Table II.A of this SAP.

“Public Improvements” mean the improvements permitted by the PID Act and designed, constructed, and installed in accordance with this SAP for which Assessments are levied against the Assessed Property that receives a special benefit from such improvement and depicted in Appendix D.

“Reimbursement Obligation” means the obligation of the City to pay certain costs of Public Improvements from Assessments levied on Assessed Property pursuant to the Acquisition and Reimbursement Agreement.

“Trustee” means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

“Unplatted Parcel” means the Parcel described in Appendix F and shown on Appendix G.

[Remainder of page intentionally left blank]
Section II

PROPERTY INCLUDED IN THE PID

A. Property Included in the PID

The PID is comprised of the Property. The PID is located entirely within the corporate boundaries of the City. It contains a total of approximately 417.63 acres planned for development to include a combination of residential and commercial development as well as the associated rights of way, landscaping, and infrastructure necessary to provide roadways, drainage, and utilities to the PID.

A map of the Property is shown in Table II-A. A legal description for the Property is included in Appendix E.
Section III
DESCRIPTION OF THE PUBLIC IMPROVEMENTS

A. Description and Estimated Cost of the Public Improvements

The Public Improvements are described below and generally depicted in Appendix D. Table III-A shows the estimated cost of the Public Improvements. The estimated cost to construct the Public Improvements is $22,386,420. The costs shown in Table III-A may be revised in Annual Service Plan Updates; however, any increase in Actual Costs will be subject to notice and hearing requirements pursuant to the PID Act.

A description of the Public Improvements is provided below:

- **Street Improvements**
  The street improvement portion of the Public Improvements consists of the construction of perimeter road and thoroughfare improvements, including related paving, sidewalks, retaining walls, signage, and traffic control devices, and the acquisition of related rights-of-way which benefit the Assessed Property. The City has determined that the acquisition of rights-of-way related to road improvements meets the requirements of its current policy on the financing of roadway rights-of-way through public improvement district assessments. The road improvements will be constructed according to City standards.

- **Drainage Improvements**
  The storm drainage improvement portion of the Public Improvements consists of the construction of one detention pond, storm drain pipes, culverts, catch basins and appurtenances thereto to appropriately control and convey storm water. The storm drainage improvements will be constructed according to City standards.

- **Erosion & Sedimentation Control/Mobilization & General Conditions**
  The Erosion and Sedimentation Control Measures (temporary BMPs) of the Public Improvements will include stabilized construction entrances, silt fence located downstream of all disturbed area, rock berms, inlet protection, and protection of mature trees and vegetation.

- **Water Line Distribution**
  The water improvement portion of the Public Improvements consists of construction and installation of waterlines, mains, pipes, valves and appurtenances, necessary for the water distribution system that will service the Assessed Property. The water improvements will be constructed according to City standards.

- **Wastewater Improvements**
  The wastewater improvement portion of the Public Improvements consists of construction and installation of pipes, service lines, manholes, encasements
and appurtenances necessary to provide sanitary sewer service to the Assessed Property. The wastewater improvements will be constructed according to City standards.

- **Sewer Lift Stations**
  The sewer Lift Station portion of the Public Improvements consists of construction and installation for Lift Station A of manholes, wet wells, piping, pumps, electrical control equipment and appurtenances necessary to collect wastewater on one side of a geographical highpoint and transporting it across that highpoint to Lift Station B, construction and installation for Lift Station B of manholes, wet wells, piping, pumps, electrical control equipment and appurtenances necessary to collect wastewater on one side of a geographical highpoint and transporting it across that highpoint to a City designated discharge point. All sewer Lift Station improvements will be constructed according to City standards.

- **Landscaping – Arterial Roads, Open Space and Trails**
  The landscape portion of the Public Improvements consists of the installation of various landscape improvements along arterial roads. The improvements include: street tree plantings, enhanced landscaping on perimeters and medians, bio-swales in medians (where functionally possible), associated irrigation, street lighting, and hardscape improvements at key locations for wayfinding. The open space and trails system consist of selective clearing and removal of trees or other select (invasive) vegetative cover to enhance the quality and function of the natural drainage areas and open spaces. Other improvements shall include a variety of trails with either; concrete, decomposed granite or natural earth surfacing, throughout the open spaces to provide access to the natural features of the site. Landscaping will include native grasses, wildflowers, trees and shrubs, associated irrigation as required, lighting, fencing or walls if necessary and hardscape improvements.

- **Public Safety Facilities**
  The Public Improvements include an amount not to exceed $500,000, associated with the construction of a new Fire Station per the Fire Station Agreement entered into by the City and Highpointe Trace LLC on November 2, 2015, the fire station will be constructed by the City.

**B. Description and Estimated Cost of Bond Issuance Costs**

- **Debt Service Reserve Fund**
  Equals the amount required under an Indenture in connection with the issuance of PID Bonds.

- **Capitalized Interest**
  Equals the capitalized interest payments on PID Bonds as reflected in an applicable Indenture.
• **Underwriting Discount**  
  Equals a percentage of the par amount of a series of PID Bonds plus a fee for underwriter’s counsel.

• **Cost of Issuance**  
  Includes costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

• **1st Year Collection Costs**  
  Includes costs associated with administering the PID, including but not limited to costs associated with the PID Administrator, Trustee, County Tax Collector, City auditor, dissemination agent, and any other costs required to administer the PID.

---

**TABLE III-A**  
**Estimated Cost of Public Improvements and Bond Issuance Costs**

<table>
<thead>
<tr>
<th>Public Improvements</th>
<th>Hard Cost</th>
<th>Soft Costs</th>
<th>Construction Management</th>
<th>Contingency</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvements</td>
<td>$ 5,788,090</td>
<td>$ 1,244,628</td>
<td>$ 251,949</td>
<td>$ 470,186</td>
<td>$ 7,754,853</td>
</tr>
<tr>
<td>Drainage Improvements</td>
<td>1,272,692</td>
<td>273,670</td>
<td>55,399</td>
<td>103,385</td>
<td>1,705,146</td>
</tr>
<tr>
<td>Erosion Control/Mobilization &amp; General Conditions</td>
<td>563,672</td>
<td>121,208</td>
<td>24,536</td>
<td>45,789</td>
<td>755,205</td>
</tr>
<tr>
<td>Water Line Distribution</td>
<td>728,070</td>
<td>156,559</td>
<td>31,692</td>
<td>59,144</td>
<td>975,464</td>
</tr>
<tr>
<td>Wastewater</td>
<td>1,026,228</td>
<td>220,672</td>
<td>44,671</td>
<td>83,364</td>
<td>1,374,935</td>
</tr>
<tr>
<td>Sewer Lift Station</td>
<td>3,967,557</td>
<td>853,154</td>
<td>172,703</td>
<td>322,298</td>
<td>5,315,712</td>
</tr>
<tr>
<td>Landscaping - Arterial Roads, Open Space, and Trails</td>
<td>2,989,342</td>
<td>642,806</td>
<td>130,123</td>
<td>242,834</td>
<td>4,005,105</td>
</tr>
<tr>
<td>Public Safety Facilities</td>
<td>500,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>500,000</td>
</tr>
</tbody>
</table>

*Total*  
$16,835,651 $3,512,697 $711,072 $1,327,000 $22,836,420

<table>
<thead>
<tr>
<th>Bond Issuance Costs</th>
<th>Hard Cost</th>
<th>Soft Costs</th>
<th>Construction Management</th>
<th>Contingency</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service Reserve Fund</td>
<td>$ 848,035</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$ 848,035</td>
</tr>
<tr>
<td>Capitalized Interest</td>
<td>397,321</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>397,321</td>
</tr>
<tr>
<td>Underwriters Discount</td>
<td>354,300</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>354,300</td>
</tr>
<tr>
<td>Cost of Issuance</td>
<td>499,404</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>499,404</td>
</tr>
<tr>
<td>1st Year Collection Costs</td>
<td>40,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>40,000</td>
</tr>
</tbody>
</table>

*Total*  
$2,139,061 $- $- $- $2,139,061

*Total*  
$18,974,712 $3,512,697 $711,072 $1,327,000 $24,525,481
Section IV

ASSESSMENT PLAN

A. Introduction

The PID Act requires the City Council to apportion the cost of the Public Improvements based on the special benefits conferred to each Parcel or Lot from the Public Improvements. The PID Act provides that the Actual Costs may be assessed: (i) equally per front foot or square foot; (ii) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or (iii) in any other manner that results in imposing equal shares of the cost on property similarly benefited. The PID Act further provides that the City Council may establish the methods of assessing the special benefits for various classes of improvements.

The determination by the City Council of the assessment methodology set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Landowners and all future owners and developers of any Assessed Property.

B. Assessment Methodology

The City Council has determined that the costs of the Public Improvements shall be allocated to the Assessed Property by spreading the entire Assessment across all Assessed Property based on the ratio of the estimated build out value of each Lot to the total build out value for all Parcels. Table IV-A summarizes the allocation of the Initial Assessments and Additional Assessments.

[Remainder of page intentionally left blank]
### TABLE IV-A
Allocation of Initial Assessments and Additional Assessments

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Lot Size</th>
<th>Land Use</th>
<th>Estimated Buildout Values</th>
<th>Gross AV</th>
<th>% of Total Buildout Value</th>
<th>Outstanding Initial Special Assessment</th>
<th>Additional Special Assessment</th>
<th>Total Special Assessment</th>
<th>Initial Special Assessment</th>
<th>Additional Special Assessment</th>
<th>Total Special Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PLATTED LOTS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phase A</td>
<td>1</td>
<td>Single Family</td>
<td>192,131</td>
<td>30</td>
<td>5,763,930</td>
<td>1.19%</td>
<td>131,914</td>
<td>130,128</td>
<td>262,042</td>
<td>4,397</td>
<td>4,338</td>
</tr>
<tr>
<td>Phase A</td>
<td>2</td>
<td>Single Family</td>
<td>235,400</td>
<td>26</td>
<td>6,120,400</td>
<td>1.36%</td>
<td>140,072</td>
<td>138,176</td>
<td>278,248</td>
<td>5,387</td>
<td>5,314</td>
</tr>
<tr>
<td>Phase A</td>
<td>3</td>
<td>Single Family</td>
<td>259,657</td>
<td>23</td>
<td>5,972,115</td>
<td>1.23%</td>
<td>136,679</td>
<td>134,828</td>
<td>271,506</td>
<td>5,943</td>
<td>5,862</td>
</tr>
</tbody>
</table>

**UNPLATTED PARCEL**

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Lot Size</th>
<th>Land Use</th>
<th>Estimated Buildout Values</th>
<th>Gross AV</th>
<th>% of Total Buildout Value</th>
<th>Outstanding Initial Special Assessment</th>
<th>Additional Special Assessment</th>
<th>Total Special Assessment</th>
<th>Initial Special Assessment</th>
<th>Additional Special Assessment</th>
<th>Total Special Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase A</td>
<td>1</td>
<td>Single Family</td>
<td>192,131</td>
<td>54</td>
<td>10,375,074</td>
<td>2.14%</td>
<td>237,446</td>
<td>234,230</td>
<td>471,675</td>
<td>4,397</td>
<td>4,338</td>
</tr>
<tr>
<td>Phase B</td>
<td>40</td>
<td>Single Family</td>
<td>235,400</td>
<td>33</td>
<td>7,768,200</td>
<td>1.61%</td>
<td>177,784</td>
<td>175,376</td>
<td>353,161</td>
<td>5,387</td>
<td>5,314</td>
</tr>
<tr>
<td>Phase B</td>
<td>50</td>
<td>Single Family</td>
<td>259,657</td>
<td>143</td>
<td>37,130,975</td>
<td>7.67%</td>
<td>849,785</td>
<td>838,276</td>
<td>1,688,061</td>
<td>5,943</td>
<td>5,862</td>
</tr>
<tr>
<td>Phase C</td>
<td>34</td>
<td>Single Family</td>
<td>192,131</td>
<td>68</td>
<td>13,064,908</td>
<td>2.70%</td>
<td>299,006</td>
<td>294,956</td>
<td>593,961</td>
<td>4,397</td>
<td>4,338</td>
</tr>
<tr>
<td>Phase C</td>
<td>34</td>
<td>Single Family</td>
<td>235,400</td>
<td>14</td>
<td>3,295,600</td>
<td>0.68%</td>
<td>75,424</td>
<td>74,402</td>
<td>149,826</td>
<td>5,387</td>
<td>5,314</td>
</tr>
<tr>
<td>Phase C</td>
<td>50</td>
<td>Single Family</td>
<td>259,657</td>
<td>128</td>
<td>33,236,117</td>
<td>6.87%</td>
<td>760,647</td>
<td>750,345</td>
<td>1,510,992</td>
<td>5,943</td>
<td>5,862</td>
</tr>
<tr>
<td>Phase D</td>
<td>40</td>
<td>Single Family</td>
<td>235,400</td>
<td>48</td>
<td>11,299,200</td>
<td>2.33%</td>
<td>258,595</td>
<td>255,093</td>
<td>513,688</td>
<td>5,387</td>
<td>5,314</td>
</tr>
<tr>
<td>Phase D</td>
<td>50</td>
<td>Single Family</td>
<td>259,657</td>
<td>160</td>
<td>41,545,147</td>
<td>8.59%</td>
<td>950,809</td>
<td>937,931</td>
<td>1,888,740</td>
<td>5,943</td>
<td>5,862</td>
</tr>
<tr>
<td>Phase E</td>
<td>40</td>
<td>Single Family</td>
<td>235,400</td>
<td>28</td>
<td>6,591,200</td>
<td>1.36%</td>
<td>150,847</td>
<td>148,804</td>
<td>299,651</td>
<td>5,387</td>
<td>5,314</td>
</tr>
<tr>
<td>Phase E</td>
<td>50</td>
<td>Single Family</td>
<td>259,657</td>
<td>62</td>
<td>16,098,744</td>
<td>3.33%</td>
<td>368,438</td>
<td>363,448</td>
<td>731,887</td>
<td>5,943</td>
<td>5,862</td>
</tr>
<tr>
<td>Phase F</td>
<td>1</td>
<td>Amenity Center</td>
<td></td>
<td></td>
<td>1.00%</td>
<td>110,750</td>
<td>109,250</td>
<td>220,000</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Phase F</td>
<td>50</td>
<td>Single Family</td>
<td>259,657</td>
<td>121</td>
<td>31,418,517</td>
<td>6.49%</td>
<td>719,049</td>
<td>709,310</td>
<td>1,428,360</td>
<td>5,943</td>
<td>5,862</td>
</tr>
<tr>
<td>Phase F</td>
<td>Multi</td>
<td>Family</td>
<td>135,000</td>
<td>375</td>
<td>50,625,000</td>
<td>10.46%</td>
<td>1,158,612</td>
<td>1,142,920</td>
<td>2,301,532</td>
<td>3,090</td>
<td>3,048</td>
</tr>
</tbody>
</table>

**TOTAL**

- **Lot Type**: Phase A, Phase B, Phase C, Phase D, Phase E, Phase F
- **Lot Size**: 1, 2, 3, 40, 50, Multi
- **Land Use**: Single Family, Multi Family, Retail, Business Park
- **Estimated Buildout Values**: 192,131, 235,400, 259,657, etc.
- **Gross AV**: 5,763,930, 6,120,400, 5,972,115, etc.
- **% of Total Buildout Value**: 1.19%, 1.36%, 1.23%, etc.
- **Outstanding Initial Special Assessment**: 131,914, 140,072, 136,679, etc.
- **Additional Special Assessment**: 130,128, 138,176, 134,828, etc.
- **Total Special Assessment**: 262,042, 278,248, 271,506, etc.
- **Initial Special Assessment**: 4,397, 5,387, 5,943, etc.
- **Additional Special Assessment**: 4,338, 5,314, 5,862, etc.
- **Total Special Assessment**: 8,735, 10,702, 11,805, etc.

Note: Estimates based on information available as of the date the 2018 SAP was adopted by the City Council. The unit counts and estimated buildout values for the Unplatted Parcel will be updated in future Annual Service Plan Updates, but the changes will not result in any changes to the platted lots or the overall assessment level on the Unplatted Parcel. The elementary school is allocated 1% of the cost of the Public Improvements ($223,864), but the Landowner will pay for the cost allocated to the elementary school rather than levying an Assessment on the elementary school. The amenity center is allocated 1% of the total Assessments for cost of the Public Improvements and an Assessment will be levied on the amenity center.
The Assessments for each Parcel or Lot is shown on the Assessment Roll, attached as Appendix A, and no Assessment shall be changed except as authorized by this SAP or the PID Act.

C. **Findings of Special Benefit**

The City Council, acting in its legislative capacity based on information provided by the Landowner and its engineer and reviewed by the City staff and by third-party consultants retained by the City, has found and determined:

1. The estimated costs of the Public Improvements and Bond Issuance Costs equal $24,525,481, as shown on Table III-A; and

2. The Elementary School Site is allocated $223,864 of the Public Improvement costs, resulting in $24,301,616 in Public Improvements and Bond Issuance Costs being allocated to the Assessed Property; and

3. The Assessed Property receives special benefit from the Public Improvements equal to or greater than the Actual Cost of Assessed Property's allocable share of the Public Improvements; and

4. The special benefit ($\geq 24,301,616) received by the Assessed Property from the Public Improvements is greater than the combined amount of the Initial Assessments and Additional Assessments ($22,000,000) levied for the Public Improvements.

5. The Landowners have acknowledged by execution of the PID Financing Agreement that the Public Improvements confer a special benefit on the Assessed Property and have consented to the imposition of the Assessments to pay for the Actual Costs associated therewith. The Landowners have ratified, confirmed, accepted, agreed to and approved: (i) the determinations and findings by the City Council as to the special benefits described herein and the Assessment Ordinances; and (ii) the levying of Assessments on the Assessed Property.

D. **Annual Collection Costs**

The cost of administering the PID and collecting the Annual Installments shall be paid for on a pro rata basis by each Parcel or Lot based on the amount of outstanding assessment remaining on the Parcel or Lot. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments, which is subject to revision through Annual Service Plan Updates.

E. **Additional Interest**

The interest rate on Assessments levied on the Assessed Property may exceed the interest rate on the PID Bonds by the Additional Interest Rate. The Additional Interest shall be collected as part of each Annual Installment. The Additional Interest shall be deposited and used as described in the Indenture for any PID Bonds.
Section V

SERVICE PLAN

The PID Act requires a service plan to (i) cover a period of at least five years, and (ii) define the annual projected costs and indebtedness for the Public Improvements undertaken within the PID during the five year period.

The estimated cost for the Public Improvements and Bond Issuance Costs is $24,525,481 as shown in Table V-A. The service plan shall be reviewed and updated at least annually for purposes of determining the annual budget for Annual Collection Costs, updating the costs of the Public Improvements, and updating Assessment Roll shown on Appendix A.

Table V-A summarizes the sources and uses of funds required to construct the Public Improvements. The sources and uses of funds shown in Table V-A shall be updated each year in the Annual Service Plan Update.

<table>
<thead>
<tr>
<th>TABLE V-A</th>
<th>Sources and Uses of Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SOURCES</strong></td>
<td></td>
</tr>
<tr>
<td>Initial PID Bond Par (a)</td>
<td>$11,810,000</td>
</tr>
<tr>
<td>Reimbursement Obligation (a)</td>
<td>10,190,000</td>
</tr>
<tr>
<td>Unreimbursed Principal Received from 1/31/18 Payment</td>
<td>100,000</td>
</tr>
<tr>
<td>Landowner Contribution for Elementary School (b)</td>
<td>223,864</td>
</tr>
<tr>
<td>Landowner Contribution (c)</td>
<td>2,201,616</td>
</tr>
<tr>
<td><strong>USES</strong></td>
<td></td>
</tr>
<tr>
<td>Public Improvements</td>
<td>$22,386,420</td>
</tr>
<tr>
<td>Debt Service Reserve Fund</td>
<td>848,035</td>
</tr>
<tr>
<td>Capitalized Interest</td>
<td>397,321</td>
</tr>
<tr>
<td>Underwriter Discount</td>
<td>354,300</td>
</tr>
<tr>
<td>Cost of Issuance</td>
<td>499,404</td>
</tr>
<tr>
<td>1st Year Collection Costs</td>
<td>40,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$24,525,481</td>
</tr>
</tbody>
</table>

(a) Will be used to pay the City’s obligations under any PID Bonds and the Acquisition and Reimbursement Agreement.
(b) Not subject to Acquisition and Reimbursement Agreement. The Landowner will pay for the Elementary School Site’s allocable share of the Public Improvements rather than having an Assessment levied on the Elementary School Site.
(c) Not subject to Acquisition and Reimbursement Agreement.
The projected Annual Installments for the first five years after the approval of this SAP are presented in Table V-B. The projected Annual Installments are subject to revision and shall be updated in the Annual Service Plan Update.

<table>
<thead>
<tr>
<th>Installment Due 1/31</th>
<th>PID Bonds</th>
<th>Reimbursement Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principal</td>
<td>Interest</td>
</tr>
<tr>
<td>2019</td>
<td>$</td>
<td>$397,321</td>
</tr>
<tr>
<td>2020</td>
<td>$170,000</td>
<td>$677,894</td>
</tr>
<tr>
<td>2021</td>
<td>$175,000</td>
<td>$668,136</td>
</tr>
<tr>
<td>2022</td>
<td>$185,000</td>
<td>$658,091</td>
</tr>
<tr>
<td>2023</td>
<td>$200,000</td>
<td>$647,472</td>
</tr>
</tbody>
</table>

[Remainder of page intentionally left blank]
Section VI
TERMS OF THE ASSESSMENTS

A. Amount of Assessments and Annual Installments for Parcels

The Assessments for the Assessed Property are shown on the Assessment Roll in Appendix A. The Assessment shall not be changed except as authorized under the terms of this SAP and the PID Act.

B. Reallocation of Assessments

1. Upon Division Prior to Recording of Subdivision Plat

Upon the division of any Assessed Property (without the recording of a subdivision plat), the Administrator shall reallocate the Assessment for the Assessed Property prior to the division among the newly divided Assessed Properties according to the following formula:

\[ A = B \times \left( \frac{C}{D} \right) \]

Where the terms have the following meanings:

- \( A \) = the Assessment for the newly divided Assessed Property
- \( B \) = the Assessment for the Assessed Property prior to division
- \( C \) = the estimated buildout value of the newly divided Assessed Property
- \( D \) = the sum of the estimated buildout value for all of the newly divided Assessed Properties

The calculation of the buildout value of an Assessed Property shall be performed by the Administrator based on information from the Landowners, homebuilders, market studies, appraisals, official public records of the County, and any other relevant information regarding the Assessed Property. The calculation as confirmed by the City Council shall be conclusive.

The sum of the Assessments for all newly divided Assessed Properties shall equal the Assessment for the Assessed Property prior to subdivision. The calculation shall be made separately for each newly divided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an Annual Service Plan Update approved by the City Council.

2. Upon Subdivision by a Recorded Subdivision Plat

Upon the subdivision of any Assessed Property based on a recorded Subdivision Plat, the Administrator shall reallocate the Assessment for the Assessed Property prior to the subdivision among the newly subdivided Lots based on buildout value according to the following formula:
A = \[B \times (C \div D)\]/E

Where the terms have the following meanings:
A = the Assessment for the newly subdivided Lot
B = the Assessment for the Parcel prior to subdivision
C = the sum of the estimated average buildout value of all newly subdivided Lots with same Lot Type
D = the sum of the estimated average buildout value for all of the newly subdivided Lots excluding Non-Benefitted Property
E = the number of Lots with same Lot Type

Prior to the recording of a subdivision plat, the Landowner shall provide the City an estimated buildout value as of the date of the recorded subdivision plat for each Lot created by the recorded subdivision plat considering factors such as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, discussions with homebuilders, and any other factors that may impact value. The calculation of the estimated average buildout value for a Lot shall be performed by the Administrator and confirmed by the City Council based on information provided by the Landowner, homebuilders, third party consultants, and/or the official public records of the County regarding the Lot.

The sum of the Assessments for all newly subdivided Lots shall not exceed the Assessment for the portion of the Assessed Property subdivided prior to subdivision. The calculation shall be made separately for each newly subdivided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an Annual Service Plan Update approved by the City Council.

3. **Upon Consolidation**

Upon the consolidation of two or more Assessed Properties, the Assessment for the consolidated Assessed Property shall be the sum of the Assessments for the Assessed Properties prior to consolidation. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be calculated by the Administrator and reflected in an Annual Service Plan Update approved by the City Council. The consolidation of any Assessed Property as described herein shall be considered an administrative action and will not require any notice or public hearing (as defined in the PID Act) by the City Council.

C. **Mandatory Prepayment of Assessments**

If Assessed Property or a portion thereof is transferred to a party that is exempt from the payment of the Assessment under applicable law, or if an owner causes a Lot, Parcel or portion thereof to become Non-Benefitted Property, the owner of such Lot, Parcel or portion thereof shall pay to the City the full amount of the Assessment, plus all Prepayment Costs, and Delinquent Collection Costs, for such Lot, Parcel or portion thereof prior to any such transfer or act.
D. **Mandatory Reduction of Assessments**

Pursuant to the PID Financing Agreement, the Landowner is required to prepay $2,600,000 in Assessments levied against the business park and retail parcels by the earlier of i) the issuance of Additional PID Bonds, and ii) August 31, 2022. If the $2,600,000 prepayment described above has not been received on or before August 31, 2022, then the Assessment levied against all property in the PID shall be reduced by $2,600,000, allocating such reduction to each Parcel pro rata based on the amount of outstanding Assessment levied against each Parcel.

E. **Reduction of Assessments**

If after all Public Improvements to be funded with PID Bonds have been completed and the Actual Costs for the Public Improvements are less than the costs used to calculate the Assessments, then the City may reduce the Assessment for each Assessed Property pro rata such that the sum of the resulting reduced Assessments for all Assessed Properties equals the reduced Actual Costs. The Assessments shall not be reduced to an amount less than the outstanding principal amount of the PID Bonds.

Similarly, if the City does not undertake some of the Public Improvements, then the City may, at its discretion, reduce the Assessment for each Assessed Property pro-rata to reflect only the Actual Costs that were expended. The Assessments shall not be reduced to an amount less than the outstanding principal amount of the PID Bonds.

F. **Payment of Assessments**

1. **Prepayment in Full or in Part**

   The Assessment for any Parcel or Lot may be paid in full, plus interest through the date of prepayment, at any time in accordance the PID Act.

   If an Annual Installment has been billed prior to payment in full of an Assessment, the Annual Installment shall be due and payable and shall be credited against the payment-in-full amount upon payment.

   Upon payment in full of an Assessment, the City shall deposit the payment in accordance with the related Indenture; whereupon, the Assessment for the Parcel or Lot shall be reduced to zero, and the Parcel or Lot owner’s obligation to pay the Assessment and Annual Installments thereof shall automatically terminate. The City shall provide the owner of the affected Assessed Property a recordable “Notice of PID Assessment Termination.”

   At the option of a Parcel or Lot owner, the Assessment on any Parcel or Lot may be prepaid in part in an amount equal to the amount of prepaid Assessments plus interest through the date of prepayment, if any, with respect thereto. Unless otherwise directed to a specific Assessment by the Parcel or Lot owner, any
prepayment or partial prepayment for an Assessed Property within the District will be allocated between the Initial Assessments and the Additional Assessments proportionally based on the amount of Initial Assessments and Additional Assessments outstanding on such Assessed Property at the time of such prepayment or partial prepayment. Upon the payment of such amount for a Parcel or Lot, the Assessment for the Parcel or Lot shall be reduced by the amount of such prepayment, the Assessment Roll shall be updated to reflect such prepayment, and the obligation to pay the Annual Installment for such Parcel or Lot shall be reduced to the extent the prepayment is made.

2. Payment of Annual Installments

The PID Act provides that an Assessment for a Parcel or Lot may be paid in full at any time. If not paid in full, the PID Act authorizes the City to collect interest and collection costs on the outstanding Assessment. An Assessment for a Parcel or Lot that is not paid in full will be collected in Annual Installments each year in the amounts shown in the Assessment Roll, which includes interest on the outstanding Assessment and Annual Collection Costs. Any partial payment of an Annual Installment for a Parcel or Lot that is not paid in full will be allocated between the Initial Assessments and Additional Assessments proportionally based on the amount of Initial Assessments and Additional Assessments outstanding on such Assessed Property at the time of such partial payment.

The Annual Installments for the Assessments have been calculated utilizing an interest rate of 5.74% for the portion of the Assessments used to pay the Initial PID Bond debt service, and 5.5% for the portion of the Assessments used to pay the Reimbursement Obligation debt service. Upon the issuance of Additional PID Bonds, the interest rate will be adjusted to the blended average of all outstanding PID Bonds.

The City reserves and shall have the right and option to refund PID Bonds in accordance with Section 372.027 of the PID Act, and such refunding bonds shall constitute “PID Bonds” for purposes of this SAP.

Any sale of Assessed Property for nonpayment of the delinquent Annual Installments shall be subject to the lien established for the remaining unpaid Annual Installments against such Assessed Property and such Assessed Property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the non-delinquent Annual Installments against such Assessed Property as they become due and payable.

Each Annual Installment, including the interest on the unpaid amount of an Assessment, shall be assessed annually. Each Annual Installment together with interest thereon shall be delinquent if not paid prior to February 1 of the following year.
The Assessment Roll is attached as Appendix A. The Administrator shall prepare, and submit to the City Council for review and approval, proposed revisions to the Assessment Roll as well as the Annual Installments as part of each Annual Service Plan Update.
Section VIII
ADDITIONAL PROVISIONS

A. Calculation Errors
If the owner of a Parcel claims that an error has been made in any calculation required by this SAP, including, but not limited to, any calculation made as part of any Annual Service Plan Update, the owner’s sole and exclusive remedy shall be to submit a written notice of error to the City within 30 days of the mailing of a bill for the Annual Installment resulting from the this SAP or any Annual Service Plan Update; otherwise, the owner shall be deemed to have unconditionally approved the calculation. Upon receipt of a written notice of error from an owner, the City shall refer the notice to the Administrator who shall provide a written response to the City and the owner within 30 days of such referral. The City Council shall consider the owner’s notice of error and the Administrator’s response, and within 30 days the City Council shall make a final determination as to whether or not an error has been made. If the City Council determines that an error has been made, the City Council shall take such corrective action as is authorized by the Act, this SAP, the Assessment Ordinance, or the Indenture, or is otherwise authorized by the discretionary power of the City Council. The determination by the City Council as to whether an error has been made, and any corrective action taken by the City Council, shall be final and binding on the owner and the Administrator.

B. Amendments
Amendments to this SAP must be made by the City Council in accordance with the Act. To the extent permitted by the Act, this SAP may be amended without notice to owners of the Assessed Property: (1) to correct mistakes and clerical errors; (2) to clarify ambiguities; and (3) to provide procedures to collect Assessments, Annual Installments, and other charges imposed by this SAP.

C. Administration and Interpretation
The Administrator shall: (1) perform the obligations of the Administrator as set forth in this SAP; (2) administer the District for and on behalf of and at the direction of the City Council; and (3) interpret the provisions of this SAP. Interpretations of this SAP by the Administrator shall be in writing and shall be appealable to the City Council by owners or developers adversely affected by the interpretation. Appeals shall be decided by the City Council after holding a public hearing at which all interested parties have an opportunity to be heard. Decisions by the City Council shall be final and binding on the owners and developers and their successors and assigns.

D. Severability
If any provision of this SAP is determined by a governmental agency or court to be unenforceable, the unenforceable provision shall be deleted and, to the maximum extent possible, shall be rewritten to be enforceable. Every effort shall be made to enforce the remaining provisions.
Appendices

The following appendices are attached to and made a part of the SAP for all purposes:

Appendix A  Assessment Roll
Appendix B  Estimated Annual Installments
Appendix B-1  Estimated Annual Installments (Lot Type 1)
Appendix B-2  Estimated Annual Installments (Lot Type 2)
Appendix B-3  Estimated Annual Installments (Lot Type 3)
Appendix B-4  Estimated Annual Installments (Unplatted Parcel)
Appendix C  Land Use Map (Conceptual)
Appendix D  Map of Public Improvements
Appendix E  Legal Description of PID
Appendix F  Legal Description of Unplatted Parcel
Appendix G  Unplatted Parcel Boundary Map
Appendix H  Trace Subdivision Section A, PA 1A Phase A-1 Final Plat
Appendix I  Trace Subdivision Section A, PA 2A Phase A Final Plat
Appendix J  Trace Subdivision PID Phase 1A Esplanade Parkway Final Plat
Appendix A
Assessment Roll

Outstanding Special Assessment
Property ID
R155692
R155693
R155694
R155695
R155696
R155697
R155698
R155699
R155700
R155701
R155704
R155705
R155706
R155707
R155708
R155709
R155710
R155711
R155712
R155713
R155714
R155715
R155716
R155717
R155719
R155720
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R155722
R155723
R155724
R155728
R155729
R155730
R155731
R155732
R155733
R155734

Legal Description
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 1, ACRES 0.107
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 2, ACRES 0.092
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 3, ACRES 0.091
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 4, ACRES 0.097
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 5, ACRES 0.096
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 6, ACRES 0.096
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 7, ACRES 0.09
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 8, ACRES 0.089
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 9, ACRES 0.094
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 10, ACRES 0.096
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 14, ACRES 0.104
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 15, ACRES 0.086
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 16, ACRES 0.086
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 17, ACRES 0.086
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 18, ACRES 0.082
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 19, ACRES 0.094
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 20, ACRES 0.103
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 21, ACRES 0.129
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 22, ACRES 0.113
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 23, ACRES 0.104
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 24, ACRES 0.099
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 25, ACRES 0.094
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 26, ACRES 0.104
TRACE SUB SEC A, PA 1A PH A-1, BLOCK G, Lot 27, ACRES 0.157
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 1, ACRES 0.098
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 2, ACRES 0.085
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 3, ACRES 0.085
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 4, ACRES 0.08
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 5, ACRES 0.08
TRACE SUB SEC A, PA 1A PH A-1, BLOCK N, Lot 6, ACRES 0.08
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 1, ACRES 0.2
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 2, ACRES 0.149
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 3, ACRES 0.149
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 4, ACRES 0.149
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 5, ACRES 0.149
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 6, ACRES 0.152
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 7, ACRES 0.156

Address
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1068 ESPLANADE
1072 ESPLANADE
169 BOSQUE
165 BOSQUE
161 BOSQUE
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448 SPINY LIZARD
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468 SPINY LIZARD
472 SPINY LIZARD
164 BOSQUE
168 BOSQUE
172 BOSQUE
176 BOSQUE
180 BOSQUE
184 BOSQUE
248 HORSEMINT
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236 HORSEMINT
232 HORSEMINT
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224 HORSEMINT
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Lot Type
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Initial Special
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Outstanding Special Assessment
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Legal Description
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 8, ACRES 0.169
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 9, ACRES 0.162
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 10, ACRES 0.166
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 11, ACRES 0.179
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 12, ACRES 0.181
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 13, ACRES 0.169
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 14, ACRES 0.168
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 15, ACRES 0.16
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 16, ACRES 0.142
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 17, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 18, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 19, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 20, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 21, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 22, ACRES 0.138
TRACE SUB SEC A, PA 2A PH A, BLOCK A, Lot 23, ACRES 0.157
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 1, ACRES 0.118
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 2, ACRES 0.121
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 3, ACRES 0.12
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 4, ACRES 0.12
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 5, ACRES 0.12
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TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 8, ACRES 0.118
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TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 16, ACRES 0.125
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TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 18, ACRES 0.115
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 19, ACRES 0.114
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 20, ACRES 0.11
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 21, ACRES 0.108
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 22, ACRES 0.109
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 23, ACRES 0.112
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 24, ACRES 0.115
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 25, ACRES 0.133
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 26, ACRES 0.129
TRACE SUB SEC A, PA 2A PH A, BLOCK B, Lot 27, ACRES 0.12
Unplatted Parcel

Address
216 HORSEMINT
212 HORSEMINT
208 HORSEMINT
204 HORSEMINT
152 SAGE MEADOWS
148 SAGE MEADOWS
144 SAGE MEADOWS
140 SAGE MEADOWS
136 SAGE MEADOWS
132 SAGE MEADOWS
128 SAGE MEADOWS
124 SAGE MEADOWS
120 SAGE MEADOWS
116 SAGE MEADOWS
112 SAGE MEADOWS
108 SAGE MEADOWS
1025 ESPLANDE
1029 ESPLANDE
1033 ESPLANDE
1037 ESPLANDE
1041 ESPLANDE
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1053 ESPLANDE
1057 ESPLANDE
1061 ESPLANDE
213 BOSQUE
217 BOSQUE
221 BOSQUE
225 BOSQUE
229 BOSQUE
213 HORSEMINT
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Initial Special
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Additional Special
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## Appendix B

### Estimated Annual Installments

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Total                          | 11,810,000 | 13,103,098 | 10,190,000 | 10,433,225 | 1,106,775 | (397,321) | (848,035) | 1,582,723 | 46,980,465 |
# Appendix B-1
## Estimated Annual Installments (Lot Type 1)

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<th>PID Bonds Interest</th>
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<th>Reimbursement Obligation Interest</th>
<th>Additional Interest</th>
<th>Capitalized Interest</th>
<th>Reserve Fund</th>
<th>Administrative Expenses</th>
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<td>-</td>
<td>-</td>
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### Appendix B-2

**Estimated Annual Installments (Lot Type 2)**

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</tr>
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Estimated Annual Installments (Lot Type 3)

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**PID Bonds Reimbursement Obligation**
## Appendix B-4

**Estimated Annual Installments (Unplatted Parcel)**

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**Total**
Appendix C
Land Use Map (Conceptual)
Appendix D
Map of Public Improvements
Appendix E
Legal Description of PID

FIELD NOTES

BEING A 417.630 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY,
ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THOSE
CERTAIN 100.22 ACRE, 67.53 ACRE, 248.77 ACRE, AND 5.01 ACRE TRACTS CONVEYED
TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE
715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 417.630
ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS
FOLLOWS:

BEGINNING, at a 1-inch iron pipe found in the east right-of-way line of Interstate
Highway 35 (300' R.O.W.), being the called northeast corner of that certain 85.00 acre tract
conveyed to San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page
562, of said Official Public Records, also being the northwest corner of said 248.77 acre
tract, for the northwesterly corner hereof;

THENCE, N43°34'33"E, along said east right-of-way line of Interstate Highway 35,
being the north line of said 248.77 acre tract, a distance of 2222.49 feet to a 1/2-inch iron
rod found near the base of a fence post at the called northeast corner of said 248.77 acre
tract, being the northwest corner of that certain 14.86 acre tract conveyed to Kimberley
Gunnarson, by Deed of record in Volume 3281, Page 47, of said Official Public Records, for
the northeasterly corner hereof;

THENCE, S45°57'08"E, leaving said east right-of-way line, along the west line of said
14.86 acre tract, being an east line of said 248.77 acre tract, generally with the remnants
of an old barbed-wire fence (a new barbed-wire fence meanders parallel and several feet to
the west), a distance of 976.48 feet to a calculated point at the called southwest corner of
said 14.86 acre tract, being an angle point of said 248.77 acre tract, for an angle point
hereof, from which an 8-inch cedar fence post found bears S45°57'08"E, a distance of 0.87
feet;

THENCE, N44°02'46"E, along the south line of said 14.86 acre tract, generally with a
barbed-wire fence, at 14.92 feet passing a 1/2-inch iron rod found at the base of an 8-inch
cedar fence post, being approximately at an angle point in the east line of said 248.77 acre
tract and the approximate northwest corner of said 67.53 acre tract, and continuing along
the north line of said 67.53 acre tract for a total distance of 673.37 feet to a 1/2-inch iron
rod found at the base of a leaning 10-inch cedar fence post at the called southeast corner of
said 14.86 acre tract, being the northeast corner of said 67.53 acre tract, also being in the
west line of Lot 2, Final Plat of San Marcos Toyota Subdivision, of record in Book 9, Pages 155-156, of the Plat Records of Hays County, Texas, for an angle point hereof;

**THENCE**, S46°27'25"E, in part along the west line of said Lot 2 and in part along the remainder of that certain 56.288 acre tract conveyed to JMC Realty, LP, by Deed of record in Volume 1662, Page 628, of said Official Public Records, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and Volume 1820, Page 715, a distance of 181.47 feet to a 3-inch cedar fence post found, for an angle point hereof;

**THENCE**, continuing along the west line of said 56.288 acre tract, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and said Volume 1820, Page 715, the following four (4) courses and distances:

1) S46°59'15"E, a distance of 232.69 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S49°30'26"E, deviating from a re-established fence line over a creek, a distance of 126.95 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) S47°20'32"E, rejoining and continuing generally with a barbed-wire fence line, a distance of 387.84 feet to a 1/2-inch iron rod found in the base of a hackberry tree, as called in said Volume 1662, Page 628, for an angle point hereof;

4) S47°39'57"E, a distance of 528.76 feet to a 1/2-inch iron rod found at the called southwest corner of said 56.288 acre tract, being at the base of a 10-inch cedar fence post at a called angle point in the east line of said 67.53 acre tract, for an angle point hereof;

**THENCE**, N44°31'00"E, along the south line of said 56.288 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 646.04 feet to a 1/2-inch iron rod found at an angle point in the east line of said 67.53 acre tract, being the northwest corner of that certain 1.000 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 536, Page 849, of the Real Property Records of Hays County, Texas, for an angle point hereof;

**THENCE**, S46°59'32"E, leaving the south line of said 56.288 acre tract, along the west line of said 1.000 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 280.51 feet to a 1/2-inch iron rod found at the base of a fence post at the called southwest corner of said 1.000 acre tract, for an angle point hereof;

**THENCE**, N47°03'15"E, along the south line of said 1.000 acre tract and that certain 1.335 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 401, Page 769, of said Real Property Records, being an east line of said 67.53 feet, generally with a barbed-wire fence, a distance of 335.24 feet to a 1/2-inch iron rod with "Capital Surveying Company" cap found at the northwest corner of that certain 0.8521 acre tract.
conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 2927, Page 699, of said Official Public Records, being the southwest right-of-way line of Posey Road (R.O.W. varies), for an angle point hereof;

**THENCE**, leaving the south line of said 1.335 acre tract, over and across said 67.53 acre tract and said 100.22 acre tract, along said southwest right-of-way line of Posey Road, being the west line of said 0.8521 acre tract, and those certain 0.5415 acre and 2.4004 acre tracts conveyed to Hays County, Texas for right-of-way purposes, by said Deed of record in Volume 2927, Page 699, the following eight (8) courses and distances:

1) S41°53'43"E, a distance of 78.28 feet to a disturbed 1/2-inch iron rod found at the point of curvature of a curve to the left;

2) Along said curve, having a radius of 6075.00 feet, a central angle of 04°47'50"", an arc length of 508.66 feet, and a chord which bears S44°20'45"E, a distance of 508.51 feet to a 1/2-inch iron rod with "Capital Surveying Company" cap found at the point of tangency of said curve;

3) S46°43'43"E, at 327.46 feet passing a 1/2-inch iron rod found on the south line of said 67.53 acre tract, being the north line of said 100.22 acre tract, and continuing for a total distance of 865.99 feet to a calculated point at the point of curvature of a curve to the right;

4) Along said curve, having a radius of 15031.48 feet, a central angle of 00°34'12", an arc length of 149.56 feet, and a chord which bears S46°08'19"E, a distance of 149.56 feet to a 1/2-inch iron rod with "Capital Surveying Company" cap found at the point of tangency of said curve;

5) S46°08'26"E, a distance of 1770.49 feet to a calculated point at the point of curvature of a curve to the left;

6) Along said curve, having a radius of 14862.04 feet, a central angle of 00°34'49", an arc length of 150.53 feet, and a chord which bears S46°25'49"E, a distance of 150.53 feet to a 1/2-inch iron rod with "Capital Surveying Company" cap found at the point of tangency of said curve;

7) S46°41'07"E, a distance of 195.22 feet to a 1/2-inch iron rod with "Capital Surveying Company" stamp found near the base of a 2-inch steel fence post, for an angle point hereof;

8) S01°32'03"E, a distance of 28.03 feet to a calculated point at the southwest corner of said 2.4004 acre tract, being in the south line of said 100.22 acre tract, also being the intersection of said southwest right-of-way line of Posey Road and the northeast right-of-way line of County Road 266/Old Bastrop Highway/El Camino Real (R.O.W. varies), for the southeasterly corner hereof;
THENCE, along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following two (2) courses and distances:

1) S43°45'05"W, a distance of 70.45 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S44°04'56"W, a distance of 207.09 feet to a calculated point at the point of curvature of a curve to the right, being near the base of a 2-inch steel fence post, also being the east corner of that certain 0.0123 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 4600, Page 118, of said Official Public Records;

THENCE, continuing along said northeast right-of-way line, over and across said 100.22 acre tract, along said curve to the right, having a radius of 950.00 feet, a central angle of 08°05'19"., an arc length of 134.11 feet, and a chord which bears S62°20'44"W, a distance of 134.00 feet to a calculated point near the base of a 2-inch steel fence post at the west corner of said 0.123 acre tract, being on the called south line of said 100.22 acre tract, for an angle point hereof;

THENCE, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following four (4) courses and distances:

1) S68°39'21"W, a distance of 769.76 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S69°15'47"W, a distance of 221.52 feet to a 60D nail found in an 8-inch cedar fence post, for an angle point hereof;

3) S70°25'00"W, a distance of 127.68 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) S69°14'26"W, a distance of 228.32 feet to a calculated point at the called southwest corner of said 100.22 acre tract, being the southeast corner of that certain 5.0000 acre tract conveyed to Pleasant F. Rexroat and wife, Elwanda J. Rexroat, by Deed of record in Volume 1898, Page 98, of said Official Public Records, for an angle point hereof;

THENCE, N45°06'19"W, leaving said northeast right-of-way line of County Road 266, along the called west line of said 100.22 acre tract, generally with the remnants of an old barbed-wire fence (new wire fence meanders approximately parallel and several feet southwest of old fence), a distance of 85.52 feet to a 6-inch cedar fence post found leaning, for an angle point;
THENCE, N46°36'04"W, continuing generally with the remnants of an old-barbed wire fence as called in said Volume 1820, Page 715, a distance of 642.34 feet to a 1/2-inch iron pipe found near the base of a fence post, being the called northeast corner of said Rexroat 5.0000 acre tract, also being an angle point in the occupied east line of said 248.77 acre tract, for an angle point hereof;

THENCE, S70°39'07"W, leaving the occupied west line of said 100.22 acre tract, along the called and occupied north line of said Rexroat 5.0000 acre tract, being the occupied east line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 329.36 feet to a 1/2-inch iron pipe found near the base of a fence post at the called northwest corner of said Rexroat 5.0000 acre tract, being the occupied northeast corner of said 5.01 acre tract, for an angle point hereof;

THENCE, S46°20'51"E, leaving the east line of said 248.77 acre tract, along the called and occupied west line of said Rexroat 5.0000 acre tract, being the occupied east line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 747.43 feet to a 1/2-inch iron pipe found near the base of a fence post at the called southwest corner of said Rexroat 5.0000 acre tract, being the southeast corner of said 5.01 acre tract, also being in said used and occupied northeast right-of-way line of County Road 266, for an angle point hereof;

THENCE, S72°25'29"W, along the used and occupied northeast right-of-way of County Road 266, being the called south line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 335.30 feet to a calculated point in a fence line, being the called southwest corner of said 5.01 acre tract, being the occupied southeast corner of said 248.77 acre tract, from which a 1/2-inch iron pipe found bears N46°20'31"W, a distance of 2.00 feet, for an angle point hereof;

THENCE, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 248.77 acre tract, generally with a barbed-wire fence, the following nine (9) courses and distances:

1) S71°40'15"W, a distance of 115.86 feet to a calculated point in a fence line, for an angle point hereof;

2) S76°06'10"W, a distance of 46.03 feet to an 8-inch cedar fence post found, for an angle point hereof;

3) S86°28'05"W, a distance of 428.20 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) N89°34'56"W, a distance of 321.83 feet to a T-post found, for an angle point hereof;

5) N89°02'24"W, a distance of 554.59 feet to a calculated point in a fence line, for an angle point hereof;
6) S89°48'27"W, a distance of 68.91 feet to an 8-inch creosoted fence post found, for an angle point hereof;

7) N81°53'25"W, a distance of 50.53 feet to an 8-inch creosoted fence post found, for an angle point hereof;

8) N88°55'45"W, at approximately 713 feet leaving said barbed-wire fence line, and continuing for a distance of 802.47 feet to a 1/2-inch iron rod with "Macias" cap found, for an angle point hereof;

9) N70°06'57"W, a distance of 39.04 feet to an 8-inch creosoted fence post found, for the southwesterly corner hereof;

THENCE, N46°27'14"W, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called west line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 79.93 feet to a 1/2-inch iron pipe found at the called southeast corner of said 85.00 acre tract, for an angle point hereof;

THENCE, leaving said northeast right-of-way line of County Road 266, along the occupied east line of said 85.00 acre tract, being the called and occupied west line of said 248.77 acre tract, generally with a barbed wire fence, the following eight (8) courses and distances:

1) N41°35'30"W, a distance of 51.65 feet to a 1/2-inch iron pipe found, for an angle point hereof;

2) N45°22'24"W, a distance of 1221.06 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) N45°15'48"W, a distance of 427.82 feet to a 6-inch cedar fence post found, for an angle point hereof;

4) N45°19'43"W, a distance of 673.22 feet to a 10-inch cedar fence post found, for an angle point hereof;

5) N46°33'40"W, a distance of 275.02 feet to a calculated point in a fence line, for an angle point hereof;

6) N47°51'30"W, a distance of 124.53 feet to a 6-inch cedar fence post found, for an angle point hereof;

7) N46°26'02"W, a distance of 218.87 feet to a T-post found, for an angle point hereof;

8) N46°25'10"W, at 158.03 feet passing a 1/2-inch iron pipe found, and continuing for a total distance of 769.08 feet to the POINT OF BEGINNING, and containing 417.630 acres (18,191,980 square feet) of land, more or less.
BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2011), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal March 4, 2014

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
Appendix F
Legal Description of Unplatted Parcel

Being approximately 417.630 acres of land as more particularly described in Appendix E,

SAVE AND EXCEPT the approximately 6.512 acre tract of land described comprising the Trace Subdivision Section A, PA 1A Phase A-1 Final Plat, as described in Appendix H attached to this SAP,

SAVE AND EXCEPT the approximately 11.181 acre tract of land described comprising the Trace Subdivision Section A, PA 2A Phase A Final Plat, as described in Appendix I attached to this SAP,

SAVE AND EXCEPT the approximately 5.459 acre tract of land described comprising the Trace Subdivision PID Phase 1A Esplanade Parkway Final Plat, as described in Appendix J attached to this SAP,

containing approximately 394.478 acres of land, more or less.
Appendix G
Unplatted Parcel Boundary Map
Appendix H
Trace Subdivision Section A, PA 1A Phase A-1 Final Plat
Appendix I
Trace Subdivision Section A, PA 2A Phase A Final Plat
Appendix J
Trace Subdivision PID Phase 1A Esplanade Parkway Final Plat
CITY OF SAN MARCOS, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER

This Continuing Disclosure Agreement of the Issuer dated as of January 15, 2019 (this “Disclosure Agreement”) is executed and delivered by and between the City of San Marcos, Texas (the “Issuer”) and UMB Bank, N.A. (the “Dissemination Agent”), with respect to the Issuer’s “Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District)” (the “Bonds”). The Issuer and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer and the Dissemination Agent for the benefit of the Owners (defined below) and beneficial owners of the Bonds. Unless and until a different filing location is designated by the MSRB (defined below) or the SEC (defined below), all filings made by the Dissemination Agent pursuant to this Agreement shall be filed with the MSRB through EMMA (defined below).

SECTION 2. Definitions. In addition to the definitions set forth above and in the Indenture of Trust dated as of January 15, 2019, relating to the Bonds (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement, including the Appendices hereto, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Additional Assessments” shall have the meaning assigned to such term in the Indenture.

“Administrator” shall mean initially P3Works, LLC, or thereafter any employee or designee of the Issuer who shall have the responsibilities provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the Issuer related to the duties and responsibilities of the administration of the District.

“Annual Collection Costs” shall have the meaning assigned to such term in the Indenture.

“Annual Financial Information” shall mean annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.

“Annual Installment(s)” shall have the meaning assigned to such term in the Indenture.

“Annual Issuer Report” shall mean any Annual Issuer Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Assessments” shall mean, collectively, the Additional Assessments and the Initial Assessments.

“Business Day” shall mean any day other than a Saturday, Sunday or legal holiday in the State of Texas observed as such by the Issuer or the Trustee.
“Developer” shall mean Highpointe Trace, LLC, a California limited liability company, and its successors and assigns.

“Disclosure Agreement of Developer” shall mean the Continuing Disclosure Agreement of the Developer dated as of January 15, 2019 executed and delivered by the Developer, the Administrator and the Dissemination Agent.

“Disclosure Representative” shall mean the Director of Finance of the Issuer or his or her designee, or such other officer or employee as the Issuer, may designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean UMB Bank, N.A., or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” shall mean Trace Public Improvement District.


“Fire Station” shall mean the fire station to be constructed by the Issuer, pursuant to the Fire Station Agreement.

“Fire Station Agreement” shall mean the Agreement Regarding Fire Station effective as of November 2, 2015, executed and delivered by the Issuer and the Developer.

“Fiscal Year” shall mean the calendar year from October 1 through September 30.

“Initial Assessments” shall have the meaning assigned to such term in the Indenture.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.


“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive continuing disclosure reporting pursuant to the Rule.

“Outstanding” shall mean, as of any particular date when used with reference to Bonds, all Bonds authenticated and delivered under the Indenture except (i) any Bond that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond for which the payment of the principal or Redemption Price of and interest on such Bond shall have been made as provided in the Indenture, (iii) any Bond in lieu of or in substitution for which a new Bond shall have been authenticated and delivered pursuant to the Indenture, and (iv) any Bond alleged to have
been mutilated, destroyed, lost, or stolen which have been paid, as provided in the Indenture.

“Owner” shall mean the registered owner of any Bonds.

“Participating Underwriter” shall mean FMSbonds, Inc., and its successors and assigns.

“Prepayment” shall mean the payment of all or a portion of an Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a principal, interest or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Assessment.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Service and Assessment Plan” shall have the meaning assigned to such term in the Indenture.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax liability.

“Trust Estate” shall have the meaning assigned to such term in the Indenture.

“Trustee” shall mean UMB Bank, N.A., or any successor trustee pursuant to the Indenture.

SECTION 3. Provision of Annual Issuer Reports.

(a) The Issuer shall cause and hereby directs the Dissemination Agent to provide or cause to be provided to the MSRB, in the electronic or other form required by the MSRB, commencing with the Fiscal Year ending September 30, 2018, an Annual Issuer Report provided to the Dissemination Agent which is consistent with the requirements of and within the time periods specified in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the Annual Issuer Report, and later than the date required in this paragraph for the filing of the Annual Issuer Report, if audited financial statements are not available by that date; provided, however, if the audited financial statements are not complete within such period, then the Issuer shall provide unaudited financial statements within such period. In each case, the Annual Issuer Report may be submitted as a single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement. If the Issuer’s Fiscal Year changes, it shall file notice of such change (and of the date of the new Fiscal Year) with the MSRB prior to the next date by which the Issuer otherwise would be required to provide the Annual Issuer Report pursuant to this paragraph. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.
Not later than ten (10) days prior to the date specified in Section 4 of this Disclosure Agreement for providing the Annual Issuer Report to the MSRB, the Issuer shall provide the Annual Issuer Report to the Dissemination Agent. The Dissemination Agent shall provide such Annual Issuer Report to the MSRB not later than ten (10) days from receipt of such Annual Issuer Report from the Issuer.

If by the fifth (5th) day before the filing date required under Section 4 of this Disclosure Agreement, the Dissemination Agent has not received a copy of the Annual Issuer Report, the Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide Annual Issuer Report pursuant to this subsection (a). Upon such reminder, the Disclosure Representative shall either (i) provide the Dissemination Agent with an electronic copy of the Annual Issuer Report no later than two (2) Business Days prior to the filing date required under Section 4 of this Disclosure Agreement; or (ii) instruct the Dissemination Agent in writing that the Issuer will not be able to provide the Annual Issuer Report within the time required under this Disclosure Agreement, state the date by which the Annual Issuer Report for such year will be provided and instruct the Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A; provided, however, that in the event the Disclosure Representative is required to act under either (i) or (ii) described above, the Dissemination Agent still must file the Annual Issuer Report or the notice of failure to file, as applicable, to the MSRB, no later than six months after the end of each Fiscal Year; provided further, however, that in the event the Disclosure Representative fails to act under either (i) or (ii) described above, the Dissemination Agent shall file a notice of failure to file no later than on the last Business Day of the six month period after the end of the Fiscal Year.

(b) The Issuer shall or shall cause the Dissemination Agent to:

(i) determine the filing address or other filing location of the MSRB each year prior to filing the Annual Issuer Report on the date required in subsection (a);

(ii) file the Annual Issuer Report containing or incorporating by reference the information set forth in Section 4 hereof; and

(iii) if the Issuer has provided the Dissemination Agent with the completed Annual Issuer Report and the Dissemination Agent has filed such Annual Issuer Report with the MSRB, then the Dissemination Agent shall file a report with the Issuer certifying that the Annual Issuer Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content and Timing of Annual Issuer Reports. The Annual Issuer Report for the Bonds shall contain or incorporate by reference, and the Issuer agrees to provide or cause to be provided to the Dissemination Agent to file, the following:

(a) Within six months after the end of each Fiscal Year the following Annual Financial Information (any or all of which may be unaudited):

(i) Tables setting forth the following information, as of the end of such Fiscal Year:

(A) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount and principal amount remaining Outstanding;
(B) The amounts in the funds and accounts securing the Bonds; and

(C) The assets and liabilities of the Trust Estate.

(ii) The principal and interest paid on the Bonds during the most recent Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year.

(iii) Any changes to the land use designation for the property in the District from the purposes identified in the Service and Assessment Plan.

(iv) Updates to the information in the Service and Assessment Plan as most recently amended or supplemented (a “SAP Update”), including any changes to the methodology for levying the Assessments in the District.

(v) The aggregate taxable assessed valuation for parcels or lots within the District based on the most recent certified tax roll available to the Issuer.

(vi) With respect to single-family residential lots, until building permits have been issued for parcels or lots representing, in the aggregate, 95% of the total Assessments levied within the District, such SAP Update shall include the following:

(A) the number of new homes completed in the District during such Fiscal Year; and

(B) the aggregate number of new homes completed within the District since filing the initial Annual Issuer Report for Fiscal Year ended September 30, 2018.

(vii) With respect to commercial and multifamily residential parcels, until such time as development thereof is complete, the following information:

(A) issuance of building permit(s);

(B) issuance of certificate(s) of occupancy; and

(C) for parcels where a certificate of occupancy was issued, the total covered square footage for such commercial and/or multifamily residential units on an annual and cumulative basis, if available.

(viii) With respect to the Fire Station:

(A) the name of the general contractor responsible for construction;

(B) total expected construction budget;

(C) status of construction; and

(D) expected or actual completion date.
(ix) Listing of any property or property owners in the District representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, all as of the October 1 billing date for the Fiscal Year.

(x) Collection and delinquency history of the Initial Assessments and the Additional Assessments within the District for the past five Fiscal Years, in the following format:

**Collection and Delinquent History of Initial Assessments**

<table>
<thead>
<tr>
<th>Fiscal Year Ending 9/30</th>
<th>Assessment Billed</th>
<th>Parcels Levied</th>
<th>Delinquent Amount as of 3/1</th>
<th>Delinquent Percentage as of 3/1</th>
<th>Delinquent Amount as of 9/1</th>
<th>Delinquent Percentage as of 9/1</th>
<th>Total Assessments Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

(1) Collected as of ___________, 20__. Includes $________ attributable to Prepayments.

**Collection and Delinquent History of Additional Assessments**

<table>
<thead>
<tr>
<th>Fiscal Year Ending 9/30</th>
<th>Assessment Billed</th>
<th>Parcels Levied</th>
<th>Delinquent Amount as of 3/1</th>
<th>Delinquent Percentage as of 3/1</th>
<th>Delinquent Amount as of 9/1</th>
<th>Delinquent Percentage as of 9/1</th>
<th>Total Assessments Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

(1) Collected as of ___________, 20__. Includes $________ attributable to Prepayments.

(xi) For each calendar year, if the total amount of Annual Installments that are delinquent as of September 1 in such calendar year is equal to or greater than ten (10%) of the total amount of Annual Installments due in such calendar year, a list of parcel numbers for which the Annual Installments are delinquent.

(xii) Total amount of Prepayments collected, as of the February 15 of the calendar year immediately succeeding such Fiscal Year, in each case with respect to the most recent billing period (generally, October 1 of the preceding calendar year through January 31 of the current calendar year).

(xiii) The amount of delinquent Assessments by Fiscal Year:

(A) which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted);

(B) which are currently subject to foreclosure proceedings which have not been concluded;

(C) which have been reduced to judgment but not collected;

(D) which have been reduced to judgment and collected; and

(E) the result of any foreclosure sales of assessed property within the District if the assessed property represents more than one percent (1%) of the total amount of Assessments.
(xiv) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer’s audited financial statements during such Fiscal Year.

(b) If not provided with the financial information provided under subsection 4(a) above, if prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If audited financial statements are not included with the financial information provided under subsection 4(a) above, unaudited financial statements shall be included with such financial information within the time period specified.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraphs. The Issuer has designated P3Works, LLC as the initial Administrator. The Administrator, and if no Administrator is designated, Issuer’s staff, shall prepare the Annual Financial Information.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
7. Modifications to rights of Owners, if material.
8. Bond calls, if material.
10. Release, substitution, or sale of property securing repayment of the bonds, if material.
11. Rating changes.

12. Bankruptcy, insolvency, receivership or similar event of the Issuer.

13. The consummation of a merger, consolidation, or acquisition of the Issuer, or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

14. Appointment of a successor trustee under the Indenture or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, the Issuer shall promptly notify the Dissemination Agent in writing and the Issuer shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. The Dissemination Agent shall file such notice no later than the Business Day immediately following the day on which it receives written notice of such occurrence from the Issuer. Any such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event or failure to file).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures. In addition, the Issuer shall have the sole responsibility to ensure that any notice required to be filed under this Section 5 is filed within ten (10) Business Days of the occurrence of the Listed Event.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative of such Listed Event. The Dissemination Agent shall not be required to file a notice of the occurrence of such Listed Event with the MSRB unless and until it receives written instructions from the Disclosure Representative to do so. It is agreed and understood that the duty to make or cause to be made the disclosures herein is that of the Issuer and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Dissemination Agent has agreed to give the foregoing notice to the Issuer as an accommodation to assist it in monitoring the occurrence of such event, but is under no
obligation to investigate whether any such event has occurred. As used above, “actual knowledge” means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Dissemination Agent be liable in damages or in tort to the Issuer, the Participating Underwriter, the Trustee, or any Owner or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a notice from the Dissemination Agent under subsection (b), the Issuer determines that the Listed Event under number 2, 7, 8, 10, 13, or 14 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly notify the Dissemination Agent and the Trustee (if the Dissemination Agent is not the Trustee) in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (d).

(d) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall immediately file a notice of such occurrence with the MSRB.

SECTION 6. Termination of Reporting Obligations. The obligations of the Issuer and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Issuer is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required. So long as any of the Bonds remain Outstanding, the Dissemination Agent may assume that the Issuer is an obligated person with respect to the Bonds until it receives written notice from the Disclosure Representative stating that the Issuer is no longer an obligated person with respect to the Bonds, and the Dissemination Agent may conclusively rely upon such written notice with no duty to make investigation or inquiry into any statements contained or matters referred to in such written notice. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to such series of Bonds under Section 5(a).

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be UMB Bank, N.A.

SECTION 8. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall not unreasonably withhold its consent to any amendment so requested by the Issuer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;
(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Issuer Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(a), and (ii) the Annual Issuer Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Dissemination Agent may be made without its prior written consent (which consent will not be unreasonably withheld or delayed).

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Issuer Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Issuer Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Issuer Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, upon being indemnified to its satisfaction as provided in the Indenture), or any Owner or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to cause the Issuer, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer to comply with this Disclosure Agreement shall be an action for mandamus or specific performance. A default under this Disclosure Agreement by the Issuer shall not be deemed a default under the Disclosure Agreement of Developer by the Developer, and a default under the Disclosure Agreement of Developer by the Developer shall not be deemed a default under this Disclosure Agreement by the Issuer.
SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent. To the extent permitted by law, the Issuer agrees to hold harmless the Dissemination Agent, its officers, directors, employees and agents, but only with funds to be provided by the Developer or from Assessments collected from the property owners in the District, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys’ fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent’s negligence or willful misconduct; provided, however, that nothing herein shall be construed to require the Issuer to indemnify the Dissemination Agent for losses, expenses or liabilities arising from information provided to the Dissemination Agent by the Developer or the failure of the Developer to provide information to the Dissemination Agent as and when required under the Disclosure Agreement of Developer. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Dissemination Agent is an “obligated person” under the Rule. The Dissemination Agent is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The fact that the Dissemination Agent may have a banking or other business relationship with the Issuer or any person with whom the Issuer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Dissemination Agent pursuant to this Disclosure Agreement.

The Dissemination Agent may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Dissemination Agent shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(b) UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER OR THE DISSEMINATION AGENT, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE DISSEMINATION AGENT IS UNDER NO OBLIGATION NOR IS IT REQUIRED TO BRING SUCH AN ACTION.

SECTION 12. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments.
SECTION 13. **No Personal Liability.** No covenant, stipulation, obligation or agreement of the Issuer or Dissemination Agent contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future council members, officer, agent or employee of the Issuer or Dissemination Agent in other than that person's official capacity.

SECTION 14. **Severability.** In case any section or provision of this Disclosure Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reasons held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 15. **Sovereign Immunity.** The Dissemination Agent agrees that nothing in this Disclosure Agreement shall constitute or be construed as a waiver of the Issuer’s sovereign or governmental immunities regarding liability or suit.

SECTION 16. **Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Administrator, the Dissemination Agent, the Participating Underwriter, and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 17. **Dissemination Agent Compensation.** The fees and expenses incurred by the Dissemination Agent for its services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the annual updates to the Service and Assessment Plan. The Dissemination Agent has entered into a separate agreement with the Issuer, which agreement provides for the payment of the fees and expenses of the Dissemination Agent for its services rendered in accordance with this Disclosure Agreement.

SECTION 18. **Anti-Boycott Verification.**

(a) Pursuant to Section 2270.002, Texas Government Code, the Dissemination Agent hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Disclosure Agreement is a contract for goods or services, will not boycott Israel during the term of this Disclosure Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Dissemination Agent understands “affiliate” to mean
SECTION 19. **Iran, Sudan and Foreign Terrorist Organizations.**

(a) Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Dissemination Agent represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal law and excludes the Dissemination Agent and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Dissemination Agent understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Dissemination Agent and exists to make a profit.

SECTION 20. **Disclosure of Interested Parties.** Pursuant to Section 2252.908(c)(4), Texas Government Code, as amended, the Dissemination Agent hereby certifies it is a publically traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Disclosure Agreement.

SECTION 21. **Governing Law.** This Disclosure Agreement shall be governed by the laws of the State of Texas.

SECTION 22. **Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature pages follow]
CITY OF SAN MARCOS, TEXAS

By: ______________________________
    City Manager

SIGNATURE PAGE OF CONTINUING DISCLOSURE AGREEMENT OF ISSUER

4162-3379-0488.5
UMB BANK, N.A.
(as Dissemination Agent)

By:  

__________________________
Authorized Officer
EXHIBIT A

NOTICE TO MSRB OF FAILURE TO FILE
ANNUAL ISSUER REPORT

Name of Issuer: City of San Marcos, Texas
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2019
(Trace Public Improvement District)
CUSIP Nos. [insert CUSIP NOs.]
Date of Delivery: ________________, 20__

NOTICE IS HEREBY GIVEN that the City of San Marcos, Texas, has not provided [an Annual Issuer Report][annual audited financial statements] with respect to the above-named bonds as required by the Continuing Disclosure Agreement of Issuer dated January 15, 2019, between the Issuer and UMB Bank, N.A., as “Dissemination Agent.” The Issuer anticipates that [the Annual Issuer Report][annual audited financial statements] will be filed by ________________.

Dated: ________________

UMB Bank, N.A.
on behalf of the City of San Marcos, Texas
(as Dissemination Agent)

By: ________________________________

Title: ________________________________

cc: City of San Marcos, Texas
EXHIBIT B
CITY OF SAN MARCOS, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019
(TRACE PUBLIC IMPROVEMENT DISTRICT)

ANNUAL ISSUER REPORT*

Delivery Date: __________, 20__
CUSIP NOSs: [insert CUSIP NOs.]

BONDS OUTSTANDING

<table>
<thead>
<tr>
<th>CUSIP Number</th>
<th>Maturity Date</th>
<th>Interest Rate</th>
<th>Original Principal Amount</th>
<th>Outstanding Principal Amount</th>
<th>Outstanding Interest Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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</tr>
</tbody>
</table>

INVESTMENTS

<table>
<thead>
<tr>
<th>Fund/Account Name</th>
<th>Investment Description</th>
<th>Par Value</th>
<th>Book Value</th>
<th>Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Excluding Audited Financial Statements of the Issuer

ASSETS AND LIABILITIES OF PLEDGED TRUST ESTATE

Bonds (Principal Balance) ___________________
Funds and Accounts [list] ___________________
TOTAL ASSETS ___________________

LIABILITIES

Outstanding Bond Principal ___________________
Outstanding Program Expenses (if any) _________
TOTAL LIABILITIES ___________________
EQUITY

Assets Less Liabilities

Value to Debt Ratio

Form of Accounting  □  Cash  □  Accrual  □  Modified Accrual

ITEMS REQUIRED BY SECTIONS 4(a)(ii) – (ix)
[Insert a line item]

SECTION 4(a)(x) COLLECTION AND DELINQUENCY HISTORY OF THE INITIAL ASSESSMENTS AND THE ADDITIONAL ASSESSMENTS WITHIN THE DISTRICT FOR THE PAST FIVE FISCAL YEARS, IN THE FOLLOWING FORMAT:

<table>
<thead>
<tr>
<th>Collection and Delinquent History of Initial Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collected in Fiscal Year Ending 9/30</td>
</tr>
<tr>
<td>--------------------------------------</td>
</tr>
<tr>
<td>2018</td>
</tr>
</tbody>
</table>

(1) Collected as of __________, 20__. Includes $___________ attributable to Prepayments.

<table>
<thead>
<tr>
<th>Collection and Delinquent History of Additional Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collected in Fiscal Year Ending 9/30</td>
</tr>
<tr>
<td>--------------------------------------</td>
</tr>
<tr>
<td>2019</td>
</tr>
</tbody>
</table>

(1) Collected as of __________, 20__. Includes $___________ attributable to Prepayments.

ITEMS REQUIRED BY SECTIONS 4(a)(xi) – (xiv) OF THE CONTINUING DISCLOSURE AGREEMENT OF ISSUER RELATING TO THE CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019, (TRACE PUBLIC IMPROVEMENT DISTRICT)
[Insert a line item for each applicable listing]
EXHIBIT C

BASIC EXPECTED TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES

<table>
<thead>
<tr>
<th>Date</th>
<th>Delinquency Clock (Days)</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 31</td>
<td></td>
<td>Annual Installments of Assessments are due.</td>
</tr>
<tr>
<td>February 1</td>
<td>1</td>
<td>Annual Installments of Assessments Delinquent if not received.</td>
</tr>
</tbody>
</table>
| February 15| 15                       | Issuer forwards payment to Trustee for all collections received as of February 15, along with detailed breakdown. Subsequent payments and relevant details will follow monthly thereafter. Issuer and/or Administrator should be aware of actual and specific delinquencies. Issuer and/or Administrator should be aware if Reserve Fund needs to be utilized for debt service payments on March 1. **If there is to be a shortfall, the Trustee and Dissemination Agent should be immediately notified in writing.** Issuer and/or Administrator should also be aware if, based on collections, there will be a shortfall for September payment. Issuer and/or Administrator should determine if previously collected surplus funds, if any, plus actual collections will be fully adequate for debt service in March and September. At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payments, no further action is anticipated for collection of Annual Installments of Assessments except that the Issuer or Administrator, working with the City Attorney or an appropriate designee, will begin process to cure deficiency. **For properties delinquent by more than one year or if the delinquency exceeds $10,000 the matter will be referred for commencement of foreclosure.** If there are over 5% delinquencies or if there is inadequate funding in the Pledged Revenue

---

1 Illustrates anticipated dates and procedures for pursuing the collection of delinquent Annual Installments of Assessments, which dates and procedures are subject to adjustment by the Issuer.
### March 15 43/44

**Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payments, the collection-foreclosure procedure will proceed against all delinquent properties.**

Trustee pays bond interest payments to bondholders.

Reserve Fund payment to Bond Fund may be required if Assessments are below approximately 50% collection rate.

Issuer, or the Trustee, on behalf of the Issuer, to notify Dissemination Agent of the occurrence of draw on the Reserve Fund and, following receipt of such notice, Dissemination Agent to notify MSRB of such draw on the Fund for debt service.

**Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.**

Issuer determines whether or not any Annual Installments of Assessments are delinquent and, if such delinquencies exist, the Issuer commences as soon as practicable appropriate and legally permissible actions to obtain such delinquent Annual Installments of Assessments.

**Issuer and/or Administrator to notify Dissemination Agent for disclosure to MSRB of all delinquencies.**

If any property owner with ownership of property responsible for more than $10,000 of the Annual Installments of Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the Disclosure Representative shall work with City Attorney's office, or the appropriate designee, to satisfy payment of all delinquent Annual Installments of Assessments.

### March 20 47/48

**Issuer and/or Administrator to notify Dissemination Agent for disclosure to MSRB of all delinquencies.**

### April 15 74/75

**Preliminary Foreclosure activity commences, and Issuer to notify Dissemination Agent of the commencement of preliminary foreclosure activity.**
If Dissemination Agent has not received Foreclosure Schedule and Plan of Collections, Dissemination Agent to request same from the Issuer.

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<tr>
<td>May 1</td>
<td>89/90</td>
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<td>May 15</td>
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<td>June 1</td>
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<td>June 15</td>
<td>134/135</td>
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<tr>
<td>July 1</td>
<td>150/151</td>
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</table>

If the Issuer has not provided the Dissemination Agent with Foreclosure Schedule and Plan of Collections, and if instructed by the bondholders under Section 11.2 of the Indenture, Dissemination Agent requests that the Issuer commence foreclosure or provide plan for collection.

The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Dissemination Agent for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 1 (day 120/121).

**Foreclosure action to be filed with the court.**

**Issuer notifies Trustee and Dissemination Agent of Foreclosure filing status in writing.** Dissemination Agent notifies bondholders.

If bondholders and Dissemination Agent have not been notified of a foreclosure action, Dissemination Agent will notify the Issuer that it is appropriate to file action.

A committee of not less than 25% of the Owners may request a meeting with the City Manager, Assistant City Manager or the Finance Director to discuss the Issuer’s actions in pursuing the repayment of any delinquencies. This would also occur after day 30 if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed 5%, Owners may also request a meeting with the Issuer at any time to discuss the Issuer’s plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the Owners may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Annual Installments of Assessments.
AGREEMENT REGARDING CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF AGRICULTURAL VALUATION

(TRACE PID)

This agreement regarding conveyance of right of redemption and waiver of agricultural valuation (the “Agreement”), dated as of _______, 2019 (the “Effective Date”), by and among Highpointe Trace, LLC, a California limited liability company (the “Landowner”), the City of San Marcos, Texas (the “City”), and UMB Bank, N.A. (the “Escrow Agent”), each acting by and through its duly authorized representative (the Landowner, City, and Escrow Agent collectively referred to as the “Parties”). Capitalized terms not defined herein shall have the meanings provided in Appendix “A” attached hereto.

RECITALS

WHEREAS, on October 20, 2015, the City authorized the formation of the Trace Public Improvement District (the “District”) on the Property (defined below) in accordance with Chapter 372 of the Texas Local Government Code. The “Property” shall mean the approximately 417.63 acres of land located in Hays County, Texas and more particularly described in Exhibit “A” attached hereto;

WHEREAS, Landowner intends to develop the Property as a master planned development and Landowner has constructed and/or proposes to construct certain public improvements to serve the Property and transfer certain of those improvements to the City in accordance with the terms and provisions of the Trace Public Improvement District Financing Agreement, dated as of October 20, 2015, between the Landowner and the City, as such was amended and restated on September 18, 2018 (the “PID Financing Agreement”);

WHEREAS, the City adopted ordinances (each an “Assessment Ordinance”) pursuant to which assessments were levied against all or a portion of the Property (“Assessed Property”), and intends to issue one or more series of bonds for payment of costs associated with construction and/or acquisition of the certain public improvements in connection with the Property (the “PID Bonds”);

WHEREAS, Landowner agrees to (a) convey to the Escrow Agent all rights to redeem any portion of the Non-Redeemable Property (defined below), following a (i) tax sale, (ii) foreclosure sale for failure to pay assessments levied by an Assessment Ordinance, or (iii) sale, transfer, or conveyance in lieu of foreclosure for failure to pay assessments under an Assessment Ordinance (each of items (i) - (iii), a “Forced Sale”), and (b) execute and deliver into escrow with the Escrow Agent a waiver of agricultural use valuation as described in Section 2 hereof; and
NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto hereby agree as follows:

SECTION 1. CONVEYANCE OF RIGHT OF REDEMPTION.

Landowner GRANTS to Escrow Agent, to its successors, and to its assigns forever, to have and to hold, all rights that Landowner and its successors and assigns now have or in the future may have in equity, at law, or otherwise to redeem, repurchase, or reacquire those portions of the Property that are Assessed Property and are designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Redeemable Property”) following a Forced Sale, including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code (collectively, the “Tax Redemption Rights”). As of the Effective Date, the Non-Redeemable Property is more particularly described in Exhibit “A-1” attached hereto and made a part hereof.

Landowner GRANTS to Escrow Agent, to its successors, and to its assigns forever, to have and to hold, the Tax Redemption Rights in the Non-Redeemable Property belonging in any way to Landowner so that neither Landowner nor Landowner’s successors and assigns, nor any other person claiming by, through, or under Landowner, shall at any time hereafter claim any right, title, or interest in or to the Tax Redemption Rights in the Non-Redeemable Property or any part thereof, except as expressly provided in this Agreement.

In the event that a court of competent jurisdiction enters a final judgment that the foregoing conveyance of Tax Redemption Rights is not effective, Landowner hereby irrevocably waives and surrenders forever all Tax Redemption Rights it has now or in the future may have, in equity, at law, or otherwise, to redeem, repurchase, or reacquire any portion of the Property that is Non-Redeemable Property following a Forced Sale, including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code.

SECTION 2. DEPOSIT OF FUNDS WITH ESCROW AGENT/WAIVER OF AGRICULTURAL USE VALUATION.

(a) Deposit. Concurrently with the closing of the PID Bonds, the Landowner will deposit $1,591.72 with the Escrow Agent to be held in the “Developer Property Tax Reserve Fund” relating to the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District) (the “Property Tax Fund”), which is estimated to be two years of ad valorem taxes levied by all taxing units on the Non-Redeemable Property for the calendar years 2018 and 2019. Escrow Agent is instructed to hold the Property Tax Fund in cash until such time as the Escrow Agent receives further instruction from the City to either (i) return the funds to the Landowner; or (ii) deliver the funds to the City if, and only if, the Agricultural
Use Waiver (defined herein) is released to the City under Section 2(b) below; provided however, if on the eighth anniversary of the execution of this Agreement (the “Anniversary Date”), the Escrow Agent has not received instruction from the City, then it shall return such funds to the Landowner within 30 days of the Anniversary Date and this Agreement shall terminate subject to the return of the Agricultural Use Waiver as described in Section 2(b) below.

(b) Delivery of Agricultural Use Waiver into Escrow. Concurrently with the execution and delivery of this Agreement, Landowner executed and delivered, or will promptly deliver, to the Escrow Agent to be held in escrow 5 originals of the form attached hereto as Exhibit “B” (each an “Agricultural Use Waiver”) waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to Non-Redeemable Property. The Agricultural Use Waiver shall be held in escrow, and shall only be released from escrow in accordance with the provisions of this Section 2.

The Escrow Agent shall hold the Agricultural Use Waiver in escrow until it receives further instruction from the City to (i) deliver the Agricultural Use Waiver to the City if, and only if, foreclosure or sale for failure to pay assessments levied by the Assessment Ordinance or foreclosure of a tax lien or sale, transfer or conveyance in connection with a sale for failing to pay assessments under the Assessment Ordinance or a tax sale has occurred with respect to Non-Redeemable Property; (ii) return the Agricultural Use Waiver to the Landowner; provided however, if on the Anniversary Date the Escrow Agent has not received such instruction from the City, then it shall return the Agricultural Use Waiver to the Landowner within 30 days of the Anniversary Date and this Agreement shall terminate subject to the Property Tax Fund being returned to the Landowner as described in Section 2(a) above; or (iii) provided this Agreement remains in effect and the City has previously informed the Escrow Agent in writing of a foreclosure sale of a tax lien or public improvement district lien that has been conducted in a legally sufficient manner with respect to Non-Redeemable Property and such sale has failed to occur for any reason other than the payment by the Landowner of the delinquent taxes and/or assessments, penalties and interest, then, upon the City’s instruction and certification to Escrow Agent and Landowner that such failed foreclosure sale has occurred, the Escrow Agent shall deliver the Agricultural Use Waiver to the City.

(c) Proportional Release. Notwithstanding anything in this Agreement to the contrary, if all or a portion of the Non-Redeemable Property ceases to be included in the Assessment Rolls with respect to the District, then the owner of such land shall have the right to assume ownership of the Tax Redemption Rights for said portion of the Non-Redeemable Property. In addition, if all or a portion of the Non-Redeemable Property ceases to be designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Agricultural Portion”), that Non-Agricultural Portion shall be entitled to release from this Agreement upon Landowner providing written notice to the Escrow Agent and the City with documentation that shows (i) the Non-Agricultural Portion no longer has an agricultural use
appraisal, and (ii) that the taxes for the final year in which an agricultural use appraisal applied to
the Non-Agricultural Portion have been paid in full. Upon written request by an owner of land
subject to an event described in this Section 2(c), the City and the Escrow Agent shall execute a
Release of Redemption from this Agreement in the form attached hereto as Exhibit “C”.

It is hereby acknowledged and agreed that the Hays County Appraisal District is the sole
entity authorized to make the determination of whether the Property is subject to an agricultural
use valuation and/or any right to special appraisal arising based on agricultural use.

SECTION 3. DEFAULT AND REMEDIES.

If Landowner or any Subsequent Landowner (defined herein) of Non-Redeemable
Property shall violate any of the terms and provisions set forth in this Agreement, then the
Escrow Agent, upon written notice from the City of a violation of this Agreement, shall have any
remedies available at law or in equity. Upon written direction from the City, the Escrow Agent
shall provide 30 days’ notice to any lender or mortgagee that holds a lien or security interest in
all or a portion of the Assessed Property prior to taking any enforcement action. Notwithstanding
anything to the contrary set forth in this Agreement, the obligations of Landowner under this
Agreement shall be several, not joint.

SECTION 4. REGARDING ESCROW AGENT.

(a) The duties and obligations of the Escrow Agent shall be determined by the
express provisions of this Agreement, and the Escrow Agent shall not be liable except for the
performance of such duties and obligations as are specifically set forth in this Agreement and no
implied obligations or duties are to be imposed upon Escrow Agent. The Escrow Agent shall not
be responsible for the enforceability of the transfer rights provided in Section 2 or the terms of
this Agreement.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it in the
performance of its duties under this Agreement, except for its own negligence or willful
misconduct.

(c) Any action against the Escrow Agent under this Agreement shall be limited to
specific performance.

(d) The Escrow Agent shall be under no obligation to institute any suit, or to
undertake any proceeding under this Agreement, or to enter any appearance or in any way defend
in any suit in which it may be made defendant, or to take any steps in the execution of its
responsibilities hereunder or in the enforcement of any rights and powers hereunder, until it shall
be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel
fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct.

SECTION 5. MISCELLANEOUS.

(a) Term of Agreement. This Agreement shall continue in full force and effect until the earlier of: (1) Escrow Agent receives instruction from the City under Section 2(a)-(b); (2) the Anniversary Date and the return of Property Tax Fund and Agricultural Use Waiver to the Landowner; or (3) the Landowner provides written notice to the Escrow Agent and the City with documentation that shows (i) the Assessed Property no longer has an agricultural use appraisal, and (ii) that the taxes for the final year in which an agricultural use appraisal applied to the Assessed Property have been paid in full.

(b) Covenants Run with the Land; Transfers of the Property. This Agreement shall be recorded in the deed records of Hays County, Texas, and shall run with the land and the ownership of any Non-Redeemable Property and shall be binding upon Subsequent Landowners having an interest in the Non-Redeemable Property. Upon the acquisition by any party of any interest in the Non-Redeemable Property, (a) such party shall automatically and without further action by such party or any other party be deemed to have assumed and agreed to be bound by this Agreement from and after the date of such transfer, and (b) Landowner shall be released of liability with respect to the transferred interest in the Non-Redeemable Property from and after the date of such transfer, but not prior thereto. Without limiting the foregoing, any party who acquires a fee interest in any portion of the Non-Redeemable Property (each, a “Subsequent Landowner”) shall, and hereby shall be deemed to have agreed to, (i) execute and record in the Official Public Records of Hays County, Texas, promptly following the recording of the conveyance instrument, an agreement in the form attached hereto as Exhibit “D” (the “Acknowledgment and Agreement”) to acknowledge that such party is subject to the terms of this Agreement, expressly agreeing to comply with the terms and provisions of this Agreement applicable to the portion of the Non-Redeemable Property acquired by such party, and waiving such party’s right to redeem such portion of the Non-Redeemable Property, and (ii) execute and deliver to the Escrow Agent, concurrently with the recording of the Acknowledgment and Agreement, 5 Agricultural Use Waivers in the form attached hereto as Exhibit “B” for that portion of the Non-Redeemable Property acquired by such party. In the event that the number of Agricultural Use Waivers signed by a Subsequent Landowner that are held by Escrow Agent is fewer than 2 and some portion of the Property owned by the Subsequent Landowner is Non-Redeemable Property, such Subsequent Landowner agrees to promptly execute and deliver to the Escrow Agent, to be held in and released from escrow as provided herein, another Agricultural Use Waiver for use with any remaining Non-Redeemable Property owned by such Subsequent Landowner; provided, however, that the Escrow Agent shall deliver to the Hays County Tax Assessor/Collector or its successor an Agricultural Use Waiver with respect to the remaining Non-Redeemable Property owned by a Subsequent Landowner that has not paid taxes or
assessments as required by this Agreement, if said Subsequent Landowner does not execute and deliver to the Escrow Agent such additional Agricultural Use Waivers within 30 days of a written request by the Escrow Agent.

(c) **Release of Obligations and Notice of Termination.** Immediately prior to the termination of this Agreement as contemplated in Subsection (a) of this Section 5, the City shall execute and cause the Escrow Agent to record the Release of Obligations and Notice of Termination of this Agreement in the form attached hereto as Exhibit “E” in the deed records of Hays County, Texas.

(d) **INDEMNIFICATION.** LANDOWNER AND SUBSEQUENT OWNERS, SEVERALLY SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ESCROW AGENT AND EACH DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY, AGENT AND AFFILIATE OF ESCROW AGENT AND CITY (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) AGAINST ANY AND ALL ACTIONS, CLAIMS (WHETHER OR NOT VALID), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, COSTS AND EXPENSES) INCURRED BY OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF OR ARISING FROM OR IN ANY WAY RELATING TO ANY CLAIM, DEMAND, SUIT, ACTION OR PROCEEDING BY ANY PERSON, INCLUDING WITHOUT LIMITATION SUCH LANDOWNER, ASSERTING A CLAIM FOR ANY LEGAL OR EQUITABLE REMEDY AGAINST ANY PERSON ARISING FROM OR IN CONNECTION WITH THE NEGOTIATING, EXECUTION, PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY LANDOWNER OR SUCH SUBSEQUENT OWNER, AS APPLICABLE, WHETHER OR NOT ANY SUCH INDEMNIFIED PARTY IS A PARTY TO ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED, HOWEVER, THAT NO INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED HEREUNDER FOR ANY LIABILITY TO HAVE RESULTED SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

(e) **Escrow Agent’s Fees.** The Escrow Agent shall not charge a fee for the performance of services hereunder. The Landowner and/or Subsequent Owner shall fully cover payment for any and all expenses incurred by the Escrow Agent, including legal expenses, relating to or arising from the Escrow Agent's duties under this Agreement.

(f) **Binding Effect.** This Agreement shall be binding upon Landowner and its successors, receivers, trustees, and assigns and shall inure to the benefit of the City, the Escrow Agent, and the successors and assigns of the City and Escrow Agent.
(g) **Amendments.** This Agreement may be modified or amended only by a written agreement executed by the Escrow Agent, the City, and each owner of Non-Redeemable Property and recorded in the Official Public Records of Hays County, Texas.

(h) **Severability; No Waiver.** If any provision of this Agreement is held invalid or unenforceable, no other provision of this Agreement will be affected by such holding and all other provisions of this Agreement will continue in full force and effect. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver of such requirement or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

(i) **Notices.** Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by (i) hand delivery, (ii) overnight courier, or (iii) by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the address set forth below or at such other address as may be specified in writing by any party hereto to the other Parties.

If to Landowner: Highpointe Trace, LLC  
Attn: Timothy D. England  
2 Venture, Suite 350  
Irvine, California 92618

With a copy to: Metcalfe Wolff Stuart & Williams, LLP  
Attn: Talley Williams  
221 W. 6th, Suite 1300  
Austin, Texas 78701

If to City: City of San Marcos  
Attn: City Manager  
630 E. Hopkins Street  
San Marcos, Texas 78666

With a copy to: San Marcos City Attorney  
Attn: Michael Cosentino  
630 E. Hopkins Street  
San Marcos, Texas 78666

If to Escrow Agent: UMB Bank, N.A.  
Attn: Jose Gaytan  
6034 W Courtyard Dr., Ste. 370  
Austin, Texas 78730
(j) Third Party Beneficiaries. The provisions of this Agreement are and will be for the benefit of the Parties, the Escrow Agent and the holders of the PID Bonds only and are not for the benefit of any other third party and, accordingly, no other third party shall have the right to enforce the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

(l) Governing Law. The law of the State of Texas shall govern this Agreement.

(m) Anti-Boycott Verification. Pursuant to Section 2270.002, Texas Government Code, the Landowner and the Escrow Agent hereby verify that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent, if any, boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Landowner and Escrow Agent understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

(n) Iran, Sudan and Foreign Terrorist Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Landowner and Escrow Agent represent that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Landowner, the Escrow Agent, and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal
sanctions regime relating to a foreign terrorist organization. The Landowner and the Escrow Agent understand ‘affiliate’ to mean any entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.
IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives on dates set forth in the acknowledgements below, to be effective as of the day and year first above written.

The City of San Marcos, Texas

By: _________________________________,
    Jane Hughson, Mayor

ATTEST:

By: _________________________________
    Jamie Lee Case, City Clerk

STATE OF TEXAS

§

COUNTY OF HAYS

§

BEFORE ME, a Notary Public, on this day personally appeared, Jane Hughson, Mayor, and Jamie Lee Case, City Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this ___ day of _________________, 2019.

(SEAL) ___________________________________

Notary Public, State of Texas
Highpointe Trace, LLC,
a California limited liability company

By: Highpointe Posey, LP, a California limited partnership, its managing member

By: Highpointe Investments, Inc., a California corporation, its general partner

By: __________________________
    Timothy D. England, SVP

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ____________________

On __________________, before me, ____________________________ (insert name and title of the officer)

personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________  (Seal)
UMB Bank, N.A., as Escrow Agent

By: ________________________________
Name: ______________________________
Title: ______________________________

THE STATE OF TEXAS §
COUNTY OF _________ §

This instrument was acknowledged before me on _____________, 2019, by ___________________, ____________________, on behalf of [ ___________ ]

[SEAL]

______________________________

Notary Public, State of Texas
Appendix “A”

Definitions

“Indenture” shall mean the Indenture of Trust between the City and UMB Bank, N.A. relating to the issuance of a series of PID Bonds for financing costs of authorized public improvements, as it may be amended from time to time.

“Assessment Roll” or “Assessment Rolls” shall mean the Assessment Roll prepared an approved in connection with the Service and Assessment Plan pertaining to the District, as such Service and Assessment Plan was initially approved by the City Council of the City pursuant to Ordinance No. 2016-42 on October 18, 2016, as such Service and Assessment Plan is amended or restated from time to time.
Exhibit “A”

Description of the Property

FIELD NOTES

BEING A 417.630 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THOSE CERTAIN 100.22 ACRE, 67.53 ACRE, 248.77 ACRE, AND 5.01 ACRE TRACTS CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 417.630 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1-inch iron pipe found in the east right-of-way line of Interstate Highway 35 (300’ R.O.W.), being the called northeast corner of that certain 85.00 acre tract conveyed to San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page 562, of said Official Public Records, also being the northwest corner of said 248.77 acre tract, for the northwesterly corner hereof;

THENCE, N43°34’33”E, along said east right-of-way line of Interstate Highway 35, being the north line of said 248.77 acre tract, a distance of 2222.49 feet to a 1/2-inch iron rod found near the base of a fence post at the called northeast corner of said 248.77 acre tract, being the northwest corner of that certain 14.86 acre tract conveyed to Kimberley Gunnarson, by Deed of record in Volume 3281, Page 47, of said Official Public Records, for the northeasterly corner hereof;

THENCE, S45°57’08”E, leaving said east right-of-way line, along the west line of said 14.86 acre tract, being an east line of said 248.77 acre tract, generally with the remnants of an old barbed-wire fence (a new barbed-wire fence meanders parallel and several feet to the west), a distance of 976.48 feet to a calculated point at the called southwest corner of said 14.86 acre tract, being an angle point of said 248.77 acre tract, for an angle point hereof, from which an 8-inch cedar fence post found bears S45°57’08”E, a distance of 0.87 feet;

THENCE, N44°02’46”E, along the south line of said 14.86 acre tract, generally with a barbed-wire fence, at 14.92 feet passing a 1/2-inch iron rod found at the base of an 8-inch cedar fence post, being approximately at an angle point in the east line of said 248.77 acre tract and the approximate northwest corner of said 67.53 acre tract, and continuing along the north line of said 67.53 acre tract for a total distance of 673.37 feet to a 1/2-inch iron rod found at the base of a leaning 10-inch cedar fence post at the called southeast corner of said 14.86 acre tract, being the northeast corner of said 67.53 acre tract, also being in the west line of Lot 2, Final Plat of San Marcos Toyota Subdivision, of record in Book 9, Pages 155-156, of the Plat Records of Hays County, Texas, for an angle point hereof;

THENCE, S46°27’25”E, in part along the west line of said Lot 2 and in part along the remainder of that certain 56.288 acre tract conveyed to JMC Realty, LP, by Deed of record in Volume 1662, Page 628, of said Official Public Records, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and Volume 1820, Page 715, a distance of 181.47 feet to a 3-inch cedar fence post found, for an angle point hereof;

THENCE, continuing along the west line of said 56.288 acre tract, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and said Volume 1820, Page 715, the following four (4) courses and distances:

1) S46°59’15”E, a distance of 232.69 feet to an 8-inch cedar fence post found, for an angle point
2) S49°30’26”E, deviating from a re-established fence line over a creek, a distance of 126.95 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) S47°20’32”E, rejoining and continuing generally with a barbed-wire fence line, a distance of 387.84 feet to a 1/2-inch iron rod found in the base of a hackberry tree, as called in said Volume 1662, Page 628, for an angle point hereof;

4) S47°39’57”E, a distance of 528.76 feet to a 1/2-inch iron rod found at the called southwest corner of said 56.288 acre tract, being at the base of a 10-inch cedar fence post at a called angle point in the east line of said 67.53 acre tract, for an angle point hereof;

THENCE, N44°31’00”E, along the south line of said 56.288 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 646.04 feet to a 1/2-inch iron rod found at an angle point in the east line of said 67.53 acre tract, being the northwest corner of that certain 1.000 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 536, Page 849, of the Real Property Records of Hays County, Texas, for an angle point hereof;

THENCE, S46°59’32”E, leaving the south line of said 56.288 acre tract, along the west line of said 1.000 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 280.51 feet to a 1/2-inch iron rod found at the base of a fence post at the called southwest corner of said 1.000 acre tract, for an angle point hereof;

THENCE, N47°03’15”E, along the south line of said 1.000 acre tract and that certain 1.335 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 401, Page 769, of said Real Property Records, being an east line of said 67.53 feet, generally with a barbed-wire fence, a distance of 335.24 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the northwest corner of that certain 0.8521 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 2927, Page 699, of said Official Public Records, being the southwest right-of-way line of Posey Road (R.O.W. varies), for an angle point hereof;

THENCE, leaving the south line of said 1.335 acre tract, over and across said 67.53 acre tract and said 100.22 acre tract, along said southwest right-of-way line of Posey Road, being the west line of said 0.8521 acre tract, and those certain 0.5415 acre and 2.4004 acre tracts conveyed to Hays County, Texas for right-of-way purposes, by said Deed of record in Volume 2927, Page 699, the following eight (8) courses and distances:

1) S41°53’43”E, a distance of 78.28 feet to a disturbed 1/2-inch iron rod found at the point of curvature of a curve to the left;

2) Along said curve, having a radius of 6075.00 feet, a central angle of 04°47’50”, an arc length of 508.66 feet, and a chord which bears S44°20’45”E, a distance of 508.51 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

3) S46°43’43”E, at 327.46 feet passing a 1/2-inch iron rod found on the south line of said 67.53 acre tract, being the north line of said 100.22 acre tract, and continuing for a total distance of 865.99 feet to a calculated point at the point of curvature of a curve to the right;

4) Along said curve, having a radius of 15031.48 feet, a central angle of 00°34’12”, an arc length of 149.56 feet, and a chord which bears S46°08’19”E, a distance of 149.56 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;
5) S46°08′26″E, a distance of 1770.49 feet to a calculated point at the point of curvature of a curve to the left;

6) Along said curve, having a radius of 14862.04 feet, a central angle of 00°34′49″, an arc length of 150.53 feet, and a chord which bears S46°25′49″E, a distance of 150.53 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

7) S46°41′07″E, a distance of 195.22 feet to a 1/2-inch iron rod with “Capital Surveying Company” stamp found near the base of a 2-inch steel fence post, for an angle point hereof;

8) S01°32′03″E, a distance of 28.03 feet to a calculated point at the southwest corner of said 2.4004 acre tract, being in the south line of said 100.22 acre tract, also being the intersection of said southwest right-of-way line of Posey Road and the northeast right-of-way line of County Road 266/Old Bastrop Highway/El Camino Real (R.O.W. varies), for the southeasterly corner hereof;

**THENCE**, along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following two (2) courses and distances:

1) S43°45′05″W, a distance of 70.45 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S44°04′56″W, a distance of 207.09 feet to a calculated point at the point of curvature of a curve to the right, being near the base of a 2-inch steel fence post, also being the east corner of that certain 0.0123 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 4600, Page 118, of said Official Public Records;

**THENCE**, continuing along said northeast right-of-way line, over and across said 100.22 acre tract, along said curve to the right, having a radius of 950.00 feet, a central angle of 08°05′19″, an arc length of 134.11 feet, and a chord which bears S62°20′44″W, a distance of 134.00 feet to a calculated point near the base of a 2-inch steel fence post at the west corner of said 0.123 acre tract, being on the called south line of said 100.22 acre tract, for an angle point hereof;

**THENCE**, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following four (4) courses and distances:

1) S68°39′21″W, a distance of 769.76 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S69°15′47″W, a distance of 221.52 feet to a 60D nail found in an 8-inch cedar fence post, for an angle point hereof;

3) S70°25′00″W, a distance of 127.68 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) S69°14′26″W, a distance of 228.32 feet to a calculated point at the called southwest corner of said 100.22 acre tract, being the southeast corner of that certain 5.0000 acre tract conveyed to Pleasant F. Rexroat and wife, Elwanda J. Rexroat, by Deed of record in Volume 1898, Page 98, of said Official Public Records, for an angle point hereof;

**THENCE**, N45°06′19″W, leaving said northeast right-of-way line of County Road 266, along the called west line of said 100.22 acre tract, generally with the remnants of an old barbed-wire fence
(new wire fence meanders approximately parallel and several feet southwest of old fence), a distance of 85.52 feet to a 6-inch cedar fence post found leaning, for an angle point;

**THENCE**, N46°36'04"W, continuing generally with the remnants of an old-barbed wire fence as called in said Volume 1820, Page 715, a distance of 642.34 feet to a 1/2-inch iron pipe found near the base of a fence post, being the called northeast corner of said Rexroat 5.0000 acre tract, also being an angle point in the occupied east line of said 248.77 acre tract, for an angle point hereof;

**THENCE**, S70°39'07"W, leaving the occupied west line of said 100.22 acre tract, along the called and occupied north line of said Rexroat 5.0000 acre tract, being the occupied east line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 329.36 feet to a 1/2-inch iron pipe found near the base of a fence post at the called northwest corner of said Rexroat 5.0000 acre tract, being the occupied northeast corner of said 5.01 acre tract, also being in said used and occupied northeast right-of-way line of County Road 266, for an angle point hereof;

**THENCE**, S46°20'51"E, leaving the east line of said 248.77 acre tract, along the called and occupied west line of said Rexroat 5.0000 acre tract, being the occupied east line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 747.43 feet to a 1/2-inch iron pipe found near the base of a fence post at the called southwest corner of said Rexroat 5.0000 acre tract, being the southeast corner of said 5.01 acre tract, also being in said used and occupied northeast right-of-way line of County Road 266, for an angle point hereof;

**THENCE**, S72°25'29"W, along the used and occupied northeast right-of-way of County Road 266, being the called south line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 335.30 feet to a calculated point in a fence line, being the called southwest corner of said 5.01 acre tract, from which a 1/2-inch iron pipe found bears N46°20'31"W, a distance of 2.00 feet, for an angle point hereof;

**THENCE**, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 248.77 acre tract, generally with a barbed-wire fence, the following nine (9) courses and distances:

1) S71°40'15"W, a distance of 115.86 feet to a calculated point in a fence line, for an angle point hereof;

2) S76°06'10"W, a distance of 46.03 feet to an 8-inch cedar fence post found, for an angle point hereof;

3) S86°28'05"W, a distance of 428.20 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) N89°34'56"W, a distance of 321.83 feet to a T-post found, for an angle point hereof;

5) N89°02'24"W, a distance of 554.59 feet to a calculated point in a fence line, for an angle point hereof;

6) S89°48'27"W, a distance of 68.91 feet to an 8-inch creosoted fence post found, for an angle point hereof;

7) N81°53'25"W, a distance of 50.53 feet to an 8-inch creosoted fence post found, for an angle point hereof;

8) N88°55'45"W, at approximately 713 feet leaving said barbed-wire fence line, and continuing for a distance of 802.47 feet to a 1/2-inch iron rod with “Macias” cap found, for an angle point hereof.
hereof;

9) N70°06'57"W, a distance of 39.04 feet to an 8-inch creosoted fence post found, for the southwesterly corner hereof;

THENCE, N46°27'14"W, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called west line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 79.93 feet to a 1/2-inch iron pipe found at the called southeast corner of said 85.00 acre tract, for an angle point hereof;

THENCE, leaving said northeast right-of-way line of County Road 266, along the occupied east line of said 85.00 acre tract, being the called and occupied west line of said 248.77 acre tract, generally with a barbed wire fence, the following eight (8) courses and distances:

1) N41°35'30"W, a distance of 51.65 feet to a 1/2-inch iron pipe found, for an angle point hereof;

2) N45°22'24"W, a distance of 1221.06 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) N45°15'48"W, a distance of 427.82 feet to a 6-inch cedar fence post found, for an angle point hereof;

4) N45°19'43"W, a distance of 673.22 feet to a 10-inch cedar fence post found, for an angle point hereof;

5) N46°33'40"W, a distance of 275.02 feet to a calculated point in a fence line, for an angle point hereof;

6) N47°51'30"W, a distance of 124.53 feet to a 6-inch cedar fence post found, for an angle point hereof;

7) N46°26'02"W, a distance of 218.87 feet to a T-post found, for an angle point hereof;

8) N46°25'10"W, at 158.03 feet passing a 1/2-inch iron pipe found, and continuing for a total distance of 769.08 feet to the POINT OF BEGINNING, and containing 417.630 acres (18,191,980 square feet) of land, more or less.
Exhibit “A-1”

Non-Redeemable Property
6.800 ACRES
WILLIAM H. VAN HORN SURVEY
SAN MARCOS, TX

FIELD NOTE FILE: 15.068
PROJECT NO.: 230-001
SEPTEMBER 23, 2015

FIELD NOTES

BEING A 6.800 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY,
ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT
CERTAIN 248.77 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P.
BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC
RECORDS OF HAYS COUNTY, TEXAS; SAID 6.800 ACRES BEING MORE
PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1-inch iron pipe found in the east right-of-way line of Interstate
Highway 35 (300' r.o.w.), being the northeast corner of that certain 85.00 acre tract conveyed to
San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page 562, of said
Official Public Records, also being the northwest corner of said 248.77 acre tract, for the
northwesterly corner hereof;

THENCE, N43°34'33"E, along said east right-of-way line, being the north line of said
248.77 acre tract, a distance of 339.95 feet to a calculated point, for the northeasterly corner
hereof, from which a 1/2-inch iron rod found at the northeast corner of said 248.77 acre tract
bears N43°34'33"E, a distance of 1882.54 feet;

THENCE, leaving said east right-of-way line, over and across said 248.77 acre tract, the
following twelve (12) courses and distances:

1.) Along a non-tangent curve to the left, having a radius of 50.09 feet, a central angle of
    102°40'36", an arc length of 89.76 feet, and a chord which bears S66°59'57"E, a
distance of 78.23 feet to a calculated point at the end of said curve;

2.) N73°07'25"E, a distance of 56.81 feet to a calculated point, for an angle point;

3.) S88°52'39"E, a distance of 49.90 feet to a calculated point, for an angle point;

4.) S85°06'15"E, a distance of 85.66 feet to a calculated point at the beginning of a non-
tangent curve to the left;

5.) Along said curve, having a radius of 154.84 feet, a central angle of 45°04'40"", an arc
    length of 121.82 feet, and a chord which bears N72°59'34"E, a distance of 118.71
    feet to a calculated point at the point of reverse curvature of a curve to the right;

6.) Along said curve, having a radius of 103.69 feet, a central angle of 62°54'23"", an arc
    length of 113.85 feet, and a chord which bears N65°39'52"E, a distance of 108.21
    feet to a calculated point at the end of said curve;

7.) S86°01'48"E, a distance of 77.24 feet to a calculated point, for an angle point;

8.) S80°32'37"E, a distance of 76.23 feet to a calculated point, for an angle point;

9.) S65°47'10"E, a distance of 29.82 feet to a calculated point, for an angle point;
10.) N90°00'00"E, a distance of 34.19 feet to a calculated point at the beginning of a non-tangent curve to the right;

11.) Along said curve, having a radius of 175.23 feet, a central angle of 11°33'29", an arc length of 35.35 feet, and a chord which bears N79°10'38"E, a distance of 35.29 feet to a calculated point at the end of said curve, for the southeasterly corner hereof;

12.) S43°34'33"W, a distance of 861.94 feet to a calculated point on the west line of said 248.77 acre tract, being the east line of said 85.00 acre tract, for the southwesterly corner hereof, from which a 1-inch iron pipe found bears S46°25'10"E, a distance of 111.05 feet;

THENCE, N46°25'10"W, along the east line of said 85.00 acre tract, being the west line of said 248.77 acre tract, a distance of 500.00 feet to the POINT OF BEGINNING, and containing 6.800 acres (296,219 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
5.525 ACRES  
WILLIAM H. VAN HORN SURVEY  
SAN MARCOS, TX  

FIELD NOTE FILE: 15.072  
PROJECT NO.: 230-001  
SEPTEMBER 23, 2015

FIELD NOTES

BEING A 5.525 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 248.77 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 5.525 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, for reference, at a 1-inch iron pipe found in the east right-of-way line of Interstate Highway 35 (300’ r.o.w.), being the northeast corner of that certain 85.00 acre tract conveyed to San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page 562, of said Official Public Records, also being the northwest corner of said 248.77 acre tract;

THENCE, N43°34’33”E, along said east right-of-way line, being the north line of said 248.77 acre tract, a distance of 441.02 feet to a calculated point, for the POINT OF BEGINNING and northwesterly corner hereof;

THENCE, N43°34’33”E, continuing along said east right-of-way line, being the north line of said 248.77 acre tract, a distance of 789.48 feet to a calculated point, for the northeasterly corner hereof, from which a 1/2-inch iron rod found at the northeast corner of said 248.77 acre tract bears N43°34’33”E, a distance of 991.98 feet;

THENCE, leaving said east right-of-way line, over and across said 248.77 acre tract, the following twenty-two (22) courses and distances:

1.) S46°25’27”E, a distance of 506.75 feet to a calculated point, for the southeasterly corner hereof;
2.) S41°54’06”W, a distance of 25.01 feet to a calculated point, for an angle point;
3.) S12°09’06”W, a distance of 40.97 feet to a calculated point, for an angle point;
4.) S75°28’29”W, a distance of 49.39 feet to a calculated point, for an angle point;
5.) S59°03’10”W, a distance of 62.78 feet to a calculated point, for an angle point;
6.) S56°19’38”W, a distance of 88.10 feet to a calculated point, for an angle point;
7.) S49°46’55”W, a distance of 18.87 feet to a calculated point, for an angle point;
8.) N79°30’55”W, a distance of 11.71 feet to a calculated point, for an angle point;
9.) N87°16’32”W, a distance of 33.92 feet to a calculated point, for an angle point;
10.) S79°00’12”W, a distance of 43.96 feet to a calculated point, for an angle point;
11.) N90°00’00”W, a distance of 3.12 feet to a calculated point, for an angle point;
12.) N65°47′10″W, a distance of 21.32 feet to a calculated point, for an angle point;
13.) N80°32′37″W, a distance of 93.97 feet to a calculated point, for an angle point;
14.) N86°01′48″W, a distance of 91.05 feet to a calculated point, for an angle point;
15.) S83°39′50″W, a distance of 78.44 feet to a calculated point, for an angle point;
16.) S59°45′35″W, a distance of 65.63 feet to a calculated point, for an angle point;
17.) S45°01′07″W, a distance of 32.84 feet to a calculated point, for an angle point;
18.) S60°02′04″W, a distance of 18.44 feet to a calculated point, for an angle point;
19.) S82°34′24″W, a distance of 38.72 feet to a calculated point, for an angle point;
20.) N85°06′15″W, a distance of 78.16 feet to a calculated point, for an angle point;
21.) N88°52′39″W, a distance of 69.04 feet to a calculated point, for an angle point;
22.) S73°07′25″W, a distance of 44.75 feet to the POINT OF BEGINNING, and containing 5.525 acres (240,647 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
FIELD NOTES

BEING A 48.128 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THOSE CERTAIN 67.53 ACRE AND 248.77 ACRE TRACTS CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 48.128 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod found near the base of a fence post in the east right-of-way line of Interstate Highway 35 (300’ r.o.w.), at the called northeast corner of said 248.77 acre tract, being the northwest corner of that certain 14.86 acre tract conveyed to Kimberley Gunnarson, by Deed of record in Volume 3281, Page 47, of said Official Public Records, for the northeasterly corner hereof;

THENCE, S45°57’08”E, leaving said east right-of-way line, along the west line of said 14.86 acre tract, being an east line of said 248.77 acre tract, generally with the remnants of an old barbed-wire fence (a new barbed-wire fence meanders parallel and several feet to the west), a distance of 976.48 feet to a calculated point at the called southwest corner of said 14.86 acre tract, being an angle point of said 248.77 acre tract, for an angle point, from which an 8-inch cedar fence post found bears S45°57’08”E, a distance of 0.87 feet;

THENCE, N44°02’46”E, along the south line of said 14.86 acre tract, generally with a barbed-wire fence, at 14.92 feet passing a 1/2-inch iron rod found at the base of an 8-inch cedar fence post, being approximately at an angle point in the east line of said 248.77 acre tract and the approximate northwest corner of said 67.53 acre tract, and continuing along the north line of said 67.53 acre tract for a total distance of 673.37 feet to a 1/2-inch iron rod found at the base of a leaning 10-inch cedar fence post at the called southeast corner of said 14.86 acre tract, being the northeast corner of said 67.53 acre tract, also being in the west line of Lot 2, Final Plat of San Marcos Toyota Subdivision, of record in Book 9, Pages 155-156, of the Plat Records of Hays County, Texas, for an angle point;

THENCE, S46°27’25”E, in part along the west line of said Lot 2 and in part along the remainder of that certain 56.288 acre tract conveyed to JMC Realty, LP, by Deed of record in Volume 1662, Page 628, of said Official Public Records, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and Volume 1820, Page 715, a distance of 181.47 feet to a 3-inch cedar fence post found, for an angle point;

THENCE, continuing along the west line of said 56.288 acre tract, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and said Volume 1820, Page 715, the following four (4) courses and distances:

1) S46°59’15”E, a distance of 232.69 feet to an 8-inch cedar fence post found, for an angle point;

2) S49°30’26”E, a distance of 29.86 feet to a calculated point, for the southeasterly corner hereof;
THENCE, leaving the west line of said 56.288 acre tract, over and across said 67.53 acre and said 248.77 acre tracts, the following eighteen (18) courses and distances:

1.) Along a non-tangent curve to the left, having a radius of 52.13 feet, a central angle of 125°11'32"N, an arc length of 113.91 feet, and a chord which bears S10°10'02"E, a distance of 92.56 feet to a calculated point at the end of said curve;

2.) S00°35'28"W, a distance of 0.97 feet to a calculated point at the beginning of a non-tangent curve to the right;

3.) Along said curve, having a radius of 257.51 feet, a central angle of 16°44'39", an arc length of 75.25 feet, and a chord which bears S38°53'08"W, a distance of 74.99 feet to a calculated point at the end of said curve;

4.) S09°46'04"W, a distance of 34.74 feet to a calculated point, for an angle point;

5.) S09°28'06"E, a distance of 28.23 feet to a calculated point, for an angle point;

6.) S30°23'43"W, a distance of 5.43 feet to a calculated point, for an angle point;

7.) S19°02'13"W, a distance of 21.95 feet to a calculated point, for an angle point;

8.) S11°57'06"W, a distance of 20.73 feet to a calculated point, for an angle point;

9.) S26°34'48"W, a distance of 12.48 feet to a calculated point, for an angle point;

10.) S36°35'27"W, a distance of 26.24 feet to a calculated point at the beginning of a non-tangent curve to the right;

11.) Along said curve, having a radius of 220.38 feet, a central angle of 46°19'41", an arc length of 178.19 feet, and a chord which bears S18°34'32"W, a distance of 173.38 feet to a calculated point at the end of said curve;

12.) S05°42'52"W, a distance of 20.02 feet to a calculated point at the beginning of a non-tangent curve to the left;

13.) Along said curve, having a radius of 239.33 feet, a central angle of 12°07'22", an arc length of 50.64 feet, and a chord which bears S20°16'33"W, a distance of 50.54 feet to a calculated point at the end of said curve;

14.) S45°48'26"W, a distance of 1229.89 feet to a calculated point, for an angle point;

15.) S55°30'40"W, a distance of 100.10 feet to a calculated point, for the southwesterly corner hereof;

16.) N31°57'14"W, a distance of 383.71 feet to a calculated point at the point of curvature of a curve to the left;
17.) Along said curve, having a radius of 1450.00 feet, a central angle of 14°28'14" a
arc
length of 366.21 feet, and a chord which bears N39°11'20" W, a distance of 365.23
feet to a calculated point at the point of tangency of said curve;

18.) N46°25'27" W, a distance of 880.42 feet to a calculated point in the north line of said
248.77 acre tract, being said east right-of-way line of Interstate Highway 35, for the
northwesterly corner hereof;

THENCE, N43°34'33" E, along said east right-of-way line, being the north line of said
248.77 acre tract, a distance of 991.99 feet to the POINT OF BEGINNING, and containing
48.128 acres (2,096,445 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH
CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING
SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY
PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF
FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY
ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
FIELD NOTES

BEING A 9.929 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 100.22 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 9.929 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a calculated point in the southwest right-of-way line of Posey Road, being the west line of that certain 2.4004 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 2927, Page 699, of said Official Public Records, also being the east line of the remainder of said 100.22 acre tract, for the northeasterly corner hereof, from which a 1/2-inch iron rod with “Capital Surveying Company” cap found at an angle point in said southwest right-of-way line bears N46°08’26”W, a distance of 1607.49 feet;

THENCE, along said southwest right-of-way line of Posey Road, being the west line of said 2.4004 acre tract, over and across said 100.22 acre tract, the following four (4) courses and distances:

1) S46°08’26”E, a distance of 163.00 feet to a calculated point at the point of curvature of a curve to the left;

2) Along said curve, having a radius of 14862.04 feet, a central angle of 00°34’49”, an arc length of 150.53 feet, and a chord which bears S46°25’49”E, a distance of 150.53 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

3) S46°41’07”E, a distance of 195.22 feet to a 1/2-inch iron rod with “Capital Surveying Company” stamp found near the base of a 2-inch steel fence post, for an angle point;

4) S01°32’03”E, a distance of 28.03 feet to a calculated point at the southwest corner of said 2.4004 acre tract, being in the south line of said 100.22 acre tract, also being the intersection of said southwest right-of-way line of Posey Road and the northeast right-of-way line of County Road 266/Old Bastrop Highway/El Camino Real (R.O.W. varies), for the southeasterly corner hereof;

THENCE, along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following two (2) courses and distances:

1) S43°45’05”W, a distance of 70.45 feet to an 8-inch cedar fence post found, for an angle point;

2) S44°04’56”W, a distance of 207.09 feet to a calculated point at the point of curvature of a curve to the right, being near the base of a 2-inch steel fence post, also being the east corner of that certain 0.0123 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 4600, Page 118, of said Official Public Records;
THENCE, continuing along said northeast right-of-way line, over and across said 100.22 acre tract, along said curve to the right, having a radius of 950.00 feet, a central angle of 08°05’19”, an arc length of 134.11 feet, and a chord which bears S62°20’44”W, a distance of 134.00 feet to a calculated point near the base of a 2-inch steel fence post at the west corner of said 0.123 acre tract, being on the called south line of said 100.22 acre tract, for an angle point hereof;

THENCE, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following three (3) courses and distances:

1) S68°39’21”W, a distance of 769.76 feet to an 8-inch cedar fence post found, for an angle point;

2) S69°15’47”W, a distance of 221.52 feet to a 60D nail found in an 8-inch cedar fence post, for an angle point;

3) S70°25’00”W, a distance of 20.28 feet to calculated point, for the most westerly corner hereof;

THENCE, leaving said northeast right-of-way line, over and across said 100.22 acre tract, the following two (2) courses and distances:

1.) N41°15’56”E, a distance of 498.01 feet to a calculated point, for an angle point;

2.) N41°24’18”E, a distance of 841.99 feet to the POINT OF BEGINNING, and containing 9.929 acres (432,505 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2011), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
EXHIBIT “B”

AGRICULTURAL USE WAIVER

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

THAT this Agricultural Use Waiver (this “Waiver”) is made and entered into as of the ___ day of ________________, 20___, for the benefit of the City of San Marcos, Texas (the “City”) and the Escrow Agent (as defined below), by Highpointe Trace, LLC, a California limited liability company (the “Landowner”), owner of the property described on Schedule 1 hereto (the “Property”), which Property is located within Trace Public Improvement District (the “District”), a public improvement district of the City, pursuant to Texas Tax Code Ann. §23.20.

RECITALS

A. The City has the right to levy assessments on land located within the District pursuant to a separate ordinance enacted by the City Council of the City, which assessments are intended to provide for the financing of certain public improvements for the benefit of the District.

B. The purpose of the City in levying assessments and, if approved by the City Council of the City, selling its assessment revenue bonds is to provide, among other things, financing for certain public improvements to serve the District (the “Facilities”).

C. UMB Bank, N.A. (the “Escrow Agent”) is a trustee as described in that certain Trace Public Improvement District Financing Agreement having an effective date of October 20, 2015 (the “PID Financing Agreement”), by and between Landowner and the City, as amended and restated effective September 18, 2018.

D. In furtherance of this purpose, the City has agreed to reimburse Landowner for payments made for certain public improvements for the benefit of the District.

E. Landowner, the City and Escrow Agent have also entered into that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (the “Agreement”) dated _______, 2019, which requires Landowner to provide executed originals of this Waiver to the Escrow Agent to be held in escrow pursuant to the terms and conditions of said Agreement;
F. Landowner acknowledges that the election by Landowner to claim agricultural use exemptions or valuations arising under Subchapter C of Chapter 23 of the Texas Tax Code (collectively, the “Exemptions”), but not including any residential homestead exemption, for the Property would be detrimental to the property valuation base and may significantly impair the ability of the City to meet its obligations under the PID Financing Agreement or, if issued, its revenue bonds secured by and payable from assessment revenues.

G. Landowner further acknowledges that the exercise of the right to redemption after a tax sale pursuant to Subchapter B of Chapter 34 of the Texas Tax Code would also significantly impair the City’s ability to meet its debt obligations for its revenue bonds secured by and payable from assessment revenues.

WAIVER

Section 1. Waiver of Exemptions. Landowner, on behalf of itself, its successors and assigns, (i) irrevocably waives its right to claim any of the Exemptions with respect to the Property for a period of 30 years beginning on the date this Waiver is received by the Hays County Tax Assessor/Collector (the “Waiver Period”); (ii) authorizes the City and/or the Escrow Agent to file this Waiver with the Chief Appraiser of the Hays Central Appraisal District, or its successors, in accordance with the terms of the Agreement; and (iii) covenants that it will not, during the Waiver Period, if applicable, make any claim for a special appraisal except on written authorization of the City. Landowner acknowledges that it may have the right under Article 8 of the Texas Constitution to assert some or all of the Exemptions which it is waiving herein, and agrees that it shall be estopped from claiming such Exemptions at any time during the Waiver Period, if applicable; provided, however, it is expressly acknowledged and agreed by Landowner that mechanisms for single-family residences now available or to be made available by any change in Texas laws for the reduction of ad valorem tax liability or of valuation for the purposes of ad valorem taxes or other assessments with respect to real property, such as exemptions for homesteads, disabled veterans, elderly homesteads, and etcetera, are not included in the definition of Exemptions and are expressly allowed, to the extent such exemptions would be otherwise available, with respect to the Property.

[Section 2. Disclosures of Lienholders. Landowner represents and warrants that ________________ and ________________ are the current lienholders on the Property.]

Section 3. Covenants to Run with Land. The terms and provisions hereof shall be deemed to be restrictive covenants encumbering and running with the Property and shall be binding upon the Landowner and its successors and assigns. In particular, each successive purchaser of the Property shall, upon purchase thereof (or such portion thereof) be deemed to have waived its right to claims of the Exemptions with respect to the Property (or such portions thereof) at any time during the Waiver Period, if applicable.
Section 4. **Enforceability.** The covenants and restrictions binding the Property hereunder shall be enforceable only by the City, the Escrow Agent, and their respective successors and assigns. This Waiver is for the sole benefit of the parties hereto, and of the Escrow Agent, and no other third party is intended to be a beneficiary of this Waiver.

Section 5. **Termination.** This Waiver shall continue in full force and effect until the earlier to occur of the following: (i) the expiration of the Waiver Period; or (ii) such time as the Escrow Agent approves a revocation in writing.

Section 6. **Severability.** Every provision of this Waiver is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable to the maximum extent permitted by law, it being the intent of the parties hereto to give full force and effect to the agreements made hereunder to the maximum extent permitted by law.

Section 7. **Headings.** The Section headings are included in this Waiver for convenience of reference only, and shall not be deemed to affect the substantive provisions of this Waiver.

Section 8. **Remedies.** If Landowner breaches its obligations hereunder, the Escrow Agent or the City (on behalf of the Escrow Agent), in addition to all other remedies set forth herein or otherwise available at law or in equity, shall be entitled to recover from Landowner the amount of assessments that would have been due to the City had Landowner complied with this Waiver. Such payment will be due and payable, and will incur penalties and charges under the same terms as if the payment had been an assessment obligation of Landowner to City.
EXECUTED to be effective as of the date first above written.

Highpointe Trace, LLC,
a California limited liability company

By: Highpointe Posey, LP, a California limited partnership, its managing member

By: Highpointe Investments, Inc., a California corporation, its general partner

By: ______________________________  
Timothy D. England, SVP

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of _________________________  

On _________________________ before me, __________________________________________ (insert name and title of the officer)

personally appeared
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _________________________ (Seal)
Schedule 1 to Agricultural Use Waiver
EXHIBIT “C”

RELEASE OF REDEMPTION AGREEMENT

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

WHEREAS, the land described in the attached Exhibit “A” (“Property”) is located within the Trace Public Improvement District (“District”);

WHEREAS, _____________________ is the owner of the Property (“Owner”);

WHEREAS, the Property is subject to the terms of the Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation with an effective date of __________, 201__ and recorded in Document No. ____ , Official Public Records of Hays County, Texas (“Redemption Agreement”);

WHEREAS, the City of San Marcos, Texas (the “City”), Highpointe Trace, LLC (the “Initial Owner”), and UMB Bank, N.A. (the “Escrow Agent”) are parties to the Redemption Agreement;

WHEREAS, pursuant to the Redemption Agreement, certain rights to redeem the Property under the Texas Tax Code (as described in the Redemption Agreement) were conveyed by the Initial Owner to the Escrow Agent;

WHEREAS, pursuant to Redemption Agreement, the Escrow Agent is authorized to deliver a Waiver of Agricultural Use to the City for filing with the appropriate Tax Assessor/Collector office in the event that delinquent taxes or assessments are owed on the Property;

WHEREAS, pursuant to Redemption Agreement, the City and the Escrow Agent are authorized to release property from the terms of the Redemption Agreement; and

WHEREAS, the City and the Escrow Agent have determined that the Property should be released from the terms of the Redemption Agreement.

NOW, THEREFORE, for and in consideration of the above stated premises, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged by the City and the Escrow Agent, the City and the Escrow Agent do hereby forever release and discharge the Property from all terms, restrictions, covenants, and conditions of the Redemption Agreement in its entirety, and release any and all rights that the City and the Escrow Agent had, have or may have by virtue of the Redemption Agreement. In no event shall this release have any impact on land within the District other than the Property described in the attached Exhibit “A”.

C-1
Escrow Agent has GRANTED, to have and to hold, and by these presents does hereby GRANT, unto Owner all rights that Escrow Agent and its successors and assigns received from Owner or its predecessors pursuant to the Redemption Agreement and, to the extent applicable, the Acknowledgment of Assumption and Conveyance of Right of Redemption in the form attached as Exhibit “D” to the Redemption Agreement.

Escrow Agent does hereby GRANT, TO HAVE AND TO HOLD the Tax Redemption Rights (as defined in the Redemption Agreement) in the Property, which Property is described in the attached Exhibit “A”, belonging in any way to Escrow Agent, unto the Owner, its successors and assigns, forever without warranty.

[SIGNATURE PAGE FOLLOWS]
WITNESS THE EXECUTION HEREOF this the ___ day of ________, 20__.

The City of San Marcos, Texas

By: _________________________________.
    ________________, Mayor

ATTEST:

By: _________________________________.
    ________________, City Clerk

THE STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on _____________, 20__, by
_______________ and ________________, the Mayor and Clerk, respectively, of the City of
San Marcos, Texas, a home rule city and Texas municipal corporation, on behalf of said city and
municipal corporation.

__________________________
Notary Public, State of
Texas
WITNESS THE EXECUTION HEREOF this the __ day of __________, 20__. 

Escrow Agent

By: __________________________________________

THE STATE OF ___________________________ §
COUNTY OF ___________________________ §

This instrument was acknowledged before me on this __________ day of ____________, 20__, by ____________________________, the __________________, on behalf of said entity.

________________________________________
Notary Public, State of ____________________________

* Attach description of the Property as Exhibit “A” prior to recording.

After Recording Mail to:
EXHIBIT “D”

ACKNOWLEDGMENT OF ASSUMPTION AND CONVEYANCE
OF RIGHT OF REDEMPTION

This Acknowledgment of Assumption and Conveyance of Right of Redemption (this “Acknowledgment and Agreement”) is entered into effective _______________, 20__ by ____________________________, a ____________________ (whether one or more, the “Buyer”) in favor of the City of San Marcos, Texas and the Escrow Agent, as such term is defined in the Redemption Agreement (defined below).

RECITALS

A. WHEREAS, Buyer has purchased and acquired certain land described on Exhibit “A” attached hereto (the “Property”); and

B. WHEREAS, the Property is subject to that certain Agreement Regarding Conveyance of Right of Redemption and Wavier of Agricultural Valuation, dated on or about ________________, 2019 (the “Redemption Agreement”); and

C. WHEREAS, pursuant to the requirements of the Redemption Agreement, it is a condition to the acquisition of the Property that the Buyer execute this Acknowledgment and Agreement and record same in the Official Public Records of Hays County, Texas; and

D. WHEREAS, the purchase price paid by Buyer for the Property was calculated and determined, in part, based upon the benefits and restrictions applicable to the Property and arising in connection with the Redemption Agreement and the other agreements executed in connection therewith and the requirement that Buyer execute this Acknowledgment and Agreement.

NOW, THEREFORE, in consideration of $10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer hereby represents, warrants and agrees as follows:

1. Buyer acknowledges that the Redemption Agreement continues to affect the Property, and that Buyer has assumed, and Buyer hereby does assume and agree to perform, the obligations of Landowner (as such term is defined in the Redemption Agreement) under the Redemption Agreement with respect to the Property.

2. Buyer hereby grants, sells, conveys and assigns to the Escrow Agent all rights Buyer and its successors and assigns now have or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, following any Forced Sale in connection with any portion of the Property that constitutes Non-Redeemable Property (as defined in the Redemption Agreement), including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, but excluding any redemption rights arising out of the homestead status of the Property. In the event that the foregoing conveyance is not effective, Buyer hereby absolutely, unconditionally and
irrevocably waives, releases, relinquishes and surrenders forever, on behalf of itself and its successors and assigns, and agrees not to assert or exercise any and all rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, following any foreclosure of a tax lien or sale, transfer or conveyance in connection with a tax sale, any portion of the Property that constitutes Exempt Property, including, without limitation, any and all rights arising Subchapter B of Chapter 34 of the Texas Tax Code.

3. Concurrently with the execution and delivery of this Acknowledgment and Agreement, Buyer has executed and has delivered (or will promptly deliver) to the Escrow Agent to be held in escrow a Waiver of Special Appraisal in the form attached as Exhibit “B” to the Redemption Agreement waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to the Property. Such agreement shall be held in, and released from, escrow in accordance with the provisions of the Redemption Agreement.

EXECUTED to be effective as of the date first above written.

BUYER:

__________________________________________

Address for Buyer:

__________

__________

__________

THE STATE OF TEXAS §

COUNTY OF §

This document was acknowledged before me on ________________, 20__, by ________________, the _______________ of ________________, a ________________, on behalf of said entity.

______________________________

Notary Public in and for the State of TEXAS

* Attach description of the Property as Exhibit A prior to recording.
EXHIBIT “E”
RELEASE OF OBLIGATIONS AND NOTICE OF TERMINATION

THE STATE OF TEXAS §

§ KNOW EVERYONE BY THESE PRESENTS:

COUNTY OF HAYS §

All rights and obligations under that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation having an effective date of ________________, 2019 (the "Agreement") recorded in the Official Public Records of Hays County, Texas, on ________________, 201_ under Instrument No. ____________ ARE HEREBY RELEASED and NOTICE IS HEREBY GIVEN of the termination of the Agreement in accordance with its terms.

THE CITY OF SAN MARCOS, TEXAS

By: _________________________________

_________, Mayor

ATTEST:
By: _________________________________

_________, City Clerk

STATE OF TEXAS §

§

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared, __________, Mayor and __________, the Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of ________________, 201_.

(SEAL)

Notary Public, State of Texas
AGENDA CAPTION:
Consider approval of Resolution 2019-11R, approving an agreement regarding conveyance of right of redemption and waiver of agricultural valuation with Highpointe Trace, LLC and UMB Bank, N.A. in connection with the Trace Public Improvement District; authorizing the City Manager or his designee to execute such agreement on behalf of the City; and declaring an effective date.

Meeting date: January 15, 2019

Department: City Manager Office

Amount & Source of Funding
Funds Required: N/A
Account Number: Click or tap here to enter text.
Funds Available: Click or tap here to enter text.
Account Name: Click or tap here to enter text.

Fiscal Note:
Prior Council Action: The City Council approved the Amended Trace Public Improvement District Financing agreement and the Acquisition and Reimbursement agreement on September 18, 2018 and they also amended the Trace Public Improvement District Term Sheet on August 7, 2018. An amended and updated Service and Assessment Plan was approved on October 15, 2018.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Workforce Housing
City Facilities
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
Background Information:

Highpointe Communities has approximately 420 acres of land, generally located on the east side of IH-35, south of Posey Road, and also bordered by Old Bastrop Highway, at the southern edge of the City of San Marcos. The property is primarily for residential housing along with a component of multi-family along with a business park and community commercial.

Under Texas law, ag exempt property can be reclaimed by the original property owner within two years of foreclosure. Collection of both ad valorem taxes and special assessments can be enforced through foreclosure, but ag exempt property (and homesteads) can be reclaimed up to two years after the foreclosure. Since the Developer currently owns a significant portion of land within the PID that has a wildlife management exemption from ad valorem taxes (i.e. ag exempt), this agreement would prevent them from trying to reclaim (or redeem) the foreclosed land. As development progresses in the PID, less and less property will claim this exemption, so at full development, this issue will go away, but until then the City will be able to enforce collection of the taxes and assessments through foreclosure.

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:

City staff recommends approval of this agreement.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AGREEMENT REGARDING CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF AGRICULTURAL VALUATION WITH HIGHPOINTE TRACE, LLC AND UMB BANK, N.A. IN CONNECTION WITH THE TRACE PUBLIC IMPROVEMENT DISTRICT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE SUCH AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation is hereby approved.

PART 2. The City Manager or his designee is authorized to execute such agreement on behalf of the City.

PART 3. This resolution will be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
AGREEMENT REGARDING CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF AGRICULTURAL VALUATION

(TRACE PID)

This agreement regarding conveyance of right of redemption and waiver of agricultural valuation (the “Agreement”), dated as of ________, 2019 (the “Effective Date”), by and among Highpointe Trace, LLC, a California limited liability company (the “Landowner”), the City of San Marcos, Texas (the “City”), and UMB Bank, N.A. (the “Escrow Agent”), each acting by and through its duly authorized representative (the Landowner, City, and Escrow Agent collectively referred to as the “Parties”). Capitalized terms not defined herein shall have the meanings provided in Appendix “A” attached hereto.

RECITALS

WHEREAS, on October 20, 2015, the City authorized the formation of the Trace Public Improvement District (the “District”) on the Property (defined below) in accordance with Chapter 372 of the Texas Local Government Code. The “Property” shall mean the approximately 417.63 acres of land located in Hays County, Texas and more particularly described in Exhibit “A” attached hereto;

WHEREAS, Landowner intends to develop the Property as a master planned development and Landowner has constructed and/or proposes to construct certain public improvements to serve the Property and transfer certain of those improvements to the City in accordance with the terms and provisions of the Trace Public Improvement District Financing Agreement, dated as of October 20, 2015, between the Landowner and the City, as such was amended and restated on September 18, 2018 (the “PID Financing Agreement”);

WHEREAS, the City adopted ordinances (each an “Assessment Ordinance”) pursuant to which assessments were levied against all or a portion of the Property (“Assessed Property”), and intends to issue one or more series of bonds for payment of costs associated with construction and/or acquisition of the certain public improvements in connection with the Property (the “PID Bonds”);

WHEREAS, Landowner agrees to (a) convey to the Escrow Agent all rights to redeem any portion of the Non-Redeemable Property (defined below), following a (i) tax sale, (ii) foreclosure sale for failure to pay assessments levied by an Assessment Ordinance, or (iii) sale, transfer, or conveyance in lieu of foreclosure for failure to pay assessments under an Assessment Ordinance (each of items (i) - (iii), a “Forced Sale”), and (b) execute and deliver into escrow with the Escrow Agent a waiver of agricultural use valuation as described in Section 2 hereof; and
NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto hereby agree as follows:

SECTION 1. CONVEYANCE OF RIGHT OF REDEMPTION.

Landowner GRANTS to Escrow Agent, to its successors, and to its assigns forever, to have and to hold, all rights that Landowner and its successors and assigns now have or in the future may have in equity, at law, or otherwise to redeem, repurchase, or reacquire those portions of the Property that are Assessed Property and are designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Redeemable Property”) following a Forced Sale, including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code (collectively, the “Tax Redemption Rights”). As of the Effective Date, the Non-Redeemable Property is more particularly described in Exhibit “A-1” attached hereto and made a part hereof.

Landowner GRANTS to Escrow Agent, to its successors, and to its assigns forever, to have and to hold, the Tax Redemption Rights in the Non-Redeemable Property belonging in any way to Landowner so that neither Landowner nor Landowner’s successors and assigns, nor any other person claiming by, through, or under Landowner, shall at any time hereafter claim any right, title, or interest in or to the Tax Redemption Rights in the Non-Redeemable Property or any part thereof, except as expressly provided in this Agreement.

In the event that a court of competent jurisdiction enters a final judgment that the foregoing conveyance of Tax Redemption Rights is not effective, Landowner hereby irrevocably waives and surrenders forever all Tax Redemption Rights it has now or in the future may have, in equity, at law, or otherwise, to redeem, repurchase, or reacquire any portion of the Property that is Non-Redeemable Property following a Forced Sale, including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code.

SECTION 2. DEPOSIT OF FUNDS WITH ESCROW AGENT/WAIVER OF AGRICULTURAL USE VALUATION.

(a) Deposit. Concurrently with the closing of the PID Bonds, the Landowner will deposit $1,591.72 with the Escrow Agent to be held in the “Developer Property Tax Reserve Fund” relating to the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2019 (Trace Public Improvement District) (the “Property Tax Fund”), which is estimated to be two years of ad valorem taxes levied by all taxing units on the Non-Redeemable Property for the calendar years 2018 and 2019. Escrow Agent is instructed to hold the Property Tax Fund in cash until such time as the Escrow Agent receives further instruction from the City to either (i) return the funds to the Landowner; or (ii) deliver the funds to the City if, and only if, the Agricultural
Use Waiver (defined herein) is released to the City under Section 2(b) below; provided however, if on the eighth anniversary of the execution of this Agreement (the “Anniversary Date”), the Escrow Agent has not received instruction from the City, then it shall return such funds to the Landowner within 30 days of the Anniversary Date and this Agreement shall terminate subject to the return of the Agricultural Use Waiver as described in Section 2(b) below.

(b) Delivery of Agricultural Use Waiver into Escrow. Concurrently with the execution and delivery of this Agreement, Landowner executed and delivered, or will promptly deliver, to the Escrow Agent to be held in escrow 5 originals of the form attached hereto as Exhibit “B” (each an “Agricultural Use Waiver”) waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to Non-Redeemable Property. The Agricultural Use Waiver shall be held in escrow, and shall only be released from escrow in accordance with the provisions of this Section 2.

The Escrow Agent shall hold the Agricultural Use Waiver in escrow until it receives further instruction from the City to (i) deliver the Agricultural Use Waiver to the City if, and only if, foreclosure or sale for failure to pay assessments levied by the Assessment Ordinance or foreclosure of a tax lien or sale, transfer or conveyance in connection with a sale for failing to pay assessments under the Assessment Ordinance or a tax sale has occurred with respect to Non-Redeemable Property; (ii) return the Agricultural Use Waiver to the Landowner; provided however, if on the Anniversary Date the Escrow Agent has not received such instruction from the City, then it shall return the Agricultural Use Waiver to the Landowner within 30 days of the Anniversary Date and this Agreement shall terminate subject to the Property Tax Fund being returned to the Landowner as described in Section 2(a) above; or (iii) provided this Agreement remains in effect and the City has previously informed the Escrow Agent in writing of a foreclosure sale of a tax lien or public improvement district lien that has been conducted in a legally sufficient manner with respect to Non-Redeemable Property and such sale has failed to occur for any reason other than the payment by the Landowner of the delinquent taxes and/or assessments, penalties and interest, then, upon the City’s instruction and certification to Escrow Agent and Landowner that such failed foreclosure sale has occurred, the Escrow Agent shall deliver the Agricultural Use Waiver to the City.

(c) Proportional Release. Notwithstanding anything in this Agreement to the contrary, if all or a portion of the Non-Redeemable Property ceases to be included in the Assessment Rolls with respect to the District, then the owner of such land shall have the right to assume ownership of the Tax Redemption Rights for said portion of the Non-Redeemable Property. In addition, if all or a portion of the Non-Redeemable Property ceases to be designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Agricultural Portion”), that Non-Agricultural Portion shall be entitled to release from this Agreement upon Landowner providing written notice to the Escrow Agent and the City with documentation that shows (i) the Non-Agricultural Portion no longer has an agricultural use
appraisal, and (ii) that the taxes for the final year in which an agricultural use appraisal applied to the Non-Agricultural Portion have been paid in full. Upon written request by an owner of land subject to an event described in this Section 2(c), the City and the Escrow Agent shall execute a Release of Redemption from this Agreement in the form attached hereto as Exhibit “C”.

It is hereby acknowledged and agreed that the Hays County Appraisal District is the sole entity authorized to make the determination of whether the Property is subject to an agricultural use valuation and/or any right to special appraisal arising based on agricultural use.

SECTION 3. DEFAULT AND REMEDIES.

If Landowner or any Subsequent Landowner (defined herein) of Non-Redeemable Property shall violate any of the terms and provisions set forth in this Agreement, then the Escrow Agent, upon written notice from the City of a violation of this Agreement, shall have any remedies available at law or in equity. Upon written direction from the City, the Escrow Agent shall provide 30 days’ notice to any lender or mortgagee that holds a lien or security interest in all or a portion of the Assessed Property prior to taking any enforcement action. Notwithstanding anything to the contrary set forth in this Agreement, the obligations of Landowner under this Agreement shall be several, not joint.

SECTION 4. REGARDING ESCROW AGENT.

(a) The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement and no implied obligations or duties are to be imposed upon Escrow Agent. The Escrow Agent shall not be responsible for the enforceability of the transfer rights provided in Section 2 or the terms of this Agreement.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it in the performance of its duties under this Agreement, except for its own negligence or willful misconduct.

(c) Any action against the Escrow Agent under this Agreement shall be limited to specific performance.

(d) The Escrow Agent shall be under no obligation to institute any suit, or to undertake any proceeding under this Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of its responsibilities hereunder or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel
fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct.

SECTION 5. MISCELLANEOUS.

(a) **Term of Agreement.** This Agreement shall continue in full force and effect until the earlier of: (1) Escrow Agent receives instruction from the City under Section 2(a)-(b); (2) the Anniversary Date and the return of Property Tax Fund and Agricultural Use Waiver to the Landowner; or (3) the Landowner provides written notice to the Escrow Agent and the City with documentation that shows (i) the Assessed Property no longer has an agricultural use appraisal, and (ii) that the taxes for the final year in which an agricultural use appraisal applied to the Assessed Property have been paid in full.

(b) **Covenants Run with the Land; Transfers of the Property.** This Agreement shall be recorded in the deed records of Hays County, Texas, and shall run with the land and the ownership of any Non-Redeemable Property and shall be binding upon Subsequent Landowners having an interest in the Non-Redeemable Property. Upon the acquisition by any party of any interest in the Non-Redeemable Property, (a) such party shall automatically and without further action by such party or any other party be deemed to have assumed and agreed to be bound by this Agreement from and after the date of such transfer, and (b) Landowner shall be released of liability with respect to the transferred interest in the Non-Redeemable Property from and after the date of such transfer, but not prior thereto. Without limiting the foregoing, any party who acquires a fee interest in any portion of the Non-Redeemable Property (each, a “Subsequent Landowner”) shall, and hereby shall be deemed to have agreed to, (i) execute and record in the Official Public Records of Hays County, Texas, promptly following the recording of the conveyance instrument, an agreement in the form attached hereto as Exhibit “D” (the “Acknowledgment and Agreement”) to acknowledge that such party is subject to the terms of this Agreement, expressly agreeing to comply with the terms and provisions of this Agreement applicable to the portion of the Non-Redeemable Property acquired by such party, and waiving such party’s right to redeem such portion of the Non-Redeemable Property, and (ii) execute and deliver to the Escrow Agent, concurrently with the recording of the Acknowledgment and Agreement, 5 Agricultural Use Waivers in the form attached hereto as Exhibit “B” for that portion of the Non-Redeemable Property acquired by such party. In the event that the number of Agricultural Use Waivers signed by a Subsequent Landowner that are held by Escrow Agent is fewer than 2 and some portion of the Property owned by the Subsequent Landowner is Non-Redeemable Property, such Subsequent Landowner agrees to promptly execute and deliver to the Escrow Agent, to be held in and released from escrow as provided herein, another Agricultural Use Waiver for use with any remaining Non-Redeemable Property owned by such Subsequent Landowner; provided, however, that the Escrow Agent shall deliver to the Hays County Tax Assessor/Collector or its successor an Agricultural Use Waiver with respect to the remaining Non-Redeemable Property owned by a Subsequent Landowner that has not paid taxes or
(c) Release of Obligations and Notice of Termination. Immediately prior to the termination of this Agreement as contemplated in Subsection (a) of this Section 5, the City shall execute and cause the Escrow Agent to record the Release of Obligations and Notice of Termination of this Agreement in the form attached hereto as Exhibit “E” in the deed records of Hays County, Texas.

(d) INDEMNIFICATION. LANDOWNER AND SUBSEQUENT OWNERS, SEVERALLY SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ESCROW AGENT AND EACH DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY, AGENT AND AFFILIATE OF ESCROW AGENT AND CITY (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) AGAINST ANY AND ALL ACTIONS, CLAIMS (WHETHER OR NOT VALID), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, COSTS AND EXPENSES) INCURRED BY OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF OR ARISING FROM OR IN ANY WAY RELATING TO ANY CLAIM, DEMAND, SUIT, ACTION OR PROCEEDING BY ANY PERSON, INCLUDING WITHOUT LIMITATION SUCH LANDOWNER, ASSERTING A CLAIM FOR ANY LEGAL OR EQUITABLE REMEDY AGAINST ANY PERSON ARISING FROM OR IN CONNECTION WITH THE NEGOTIATING, EXECUTION, PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY LANDOWNER OR SUCH SUBSEQUENT OWNER, AS APPLICABLE, WHETHER OR NOT ANY SUCH INDEMNIFIED PARTY IS A PARTY TO ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED, HOWEVER, THAT NO INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED HEREUNDER FOR ANY LIABILITY TO HAVE RESULTED SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

(e) Escrow Agent’s Fees. The Escrow Agent shall not charge a fee for the performance of services hereunder. The Landowner and/or Subsequent Owner shall fully cover payment for any and all expenses incurred by the Escrow Agent, including legal expenses, relating to or arising from the Escrow Agent's duties under this Agreement.

(f) Binding Effect. This Agreement shall be binding upon Landowner and its successors, receivers, trustees, and assigns and shall inure to the benefit of the City, the Escrow Agent, and the successors and assigns of the City and Escrow Agent.
(g) **Amendments.** This Agreement may be modified or amended only by a written agreement executed by the Escrow Agent, the City, and each owner of Non-Redeemable Property and recorded in the Official Public Records of Hays County, Texas.

(h) **Severability; No Waiver.** If any provision of this Agreement is held invalid or unenforceable, no other provision of this Agreement will be affected by such holding and all other provisions of this Agreement will continue in full force and effect. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver of such requirement or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

(i) **Notices.** Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by (i) hand delivery, (ii) overnight courier, or (iii) by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the address set forth below or at such other address as may be specified in writing by any party hereto to the other Parties.

If to Landowner: Highpointe Trace, LLC  
Attn: Timothy D. England  
2 Venture, Suite 350  
Irvine, California 92618

With a copy to: Metcalfe Wolff Stuart & Williams, LLP  
Attn: Talley Williams  
221 W. 6th, Suite 1300  
Austin, Texas 78701

If to City: City of San Marcos  
Attn: City Manager  
630 E. Hopkins Street  
San Marcos, Texas 78666

With a copy to: San Marcos City Attorney  
Attn: Michael Cosentino  
630 E. Hopkins Street  
San Marcos, Texas 78666

If to Escrow Agent: UMB Bank, N.A.  
Attn: Jose Gaytan  
6034 W Courtyard Dr., Ste. 370  
Austin, Texas 78730
(j) **Third Party Beneficiaries.** The provisions of this Agreement are and will be for the benefit of the Parties, the Escrow Agent and the holders of the PID Bonds only and are not for the benefit of any other third party and, accordingly, no other third party shall have the right to enforce the provisions of this Agreement.

(k) **Counterparts.** This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

(l) **Governing Law.** The law of the State of Texas shall govern this Agreement.

(m) **Anti-Boycott Verification.** Pursuant to Section 2270.002, Texas Government Code, the Landowner and the Escrow Agent hereby verify that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent, if any, boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Landowner and Escrow Agent understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

(n) **Iran, Sudan and Foreign Terrorist Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Landowner and Escrow Agent represent that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Landowner, the Escrow Agent, and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner or Escrow Agent, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal
sanctions regime relating to a foreign terrorist organization. The Landowner and the Escrow Agent understand ‘affiliate’ to mean any entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.
IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives on dates set forth in the acknowledgements below, to be effective as of the day and year first above written.

The City of San Marcos, Texas

By: ____________________________________.
    Jane Hughson, Mayor

ATTEST:

By: ____________________________________
    Jamie Lee Case, City Clerk

STATE OF TEXAS §

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared, Jane Hughson, Mayor, and Jamie Lee Case, City Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _________________, 2019.

(SEAL) ____________________________________

Notary Public, State of Texas
Highpointe Trace, LLC,
a California limited liability company

By: Highpointe Posey, LP, a California limited partnership, its managing member

By: Highpointe Investments, Inc., a California corporation, its general partner

By: ________________________________  
Timothy D. England, SVP

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of ____________________________

On ___________________ before me, ________________________________  
(insert name and title of the officer)

personally appeared ____________________________________________,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________  (Seal)
UMB Bank, N.A., as Escrow Agent

By: ______________________________________
Name: ___________________________________
Title: ____________________________________

THE STATE OF TEXAS  §
COUNTY OF __________  §

This instrument was acknowledged before me on_______________, 2019, by
__________________, ____________________, on behalf of [ ___________ ]

[SEAL]  

Notary Public, State of Texas
Appendix “A”

Definitions

“Indenture” shall mean the Indenture of Trust between the City and UMB Bank, N.A. relating to the issuance of a series of PID Bonds for financing costs of authorized public improvements, as it may be amended from time to time.

“Assessment Roll” or “Assessment Rolls” shall mean the Assessment Roll prepared and approved in connection with the Service and Assessment Plan pertaining to the District, as such Service and Assessment Plan was initially approved by the City Council of the City pursuant to Ordinance No. 2016-42 on October 18, 2016, as such Service and Assessment Plan is amended or restated from time to time.
Exhibit “A”

Description of the Property

FIELD NOTES

BEING A 417.630 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THOSE CERTAIN 100.22 ACRE, 67.53 ACRE, 248.77 ACRE, AND 5.01 ACRE TRACTS CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 417.630 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1-inch iron pipe found in the east right-of-way line of Interstate Highway 35 (300’ R.O.W.), being the called northeast corner of that certain 85.00 acre tract conveyed to San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page 562, of said Official Public Records, also being the northwest corner of said 248.77 acre tract, for the northwesterly corner hereof;

THENCE, N43°34'33"E, along said east right-of-way line of Interstate Highway 35, being the north line of said 248.77 acre tract, a distance of 2222.49 feet to a 1/2-inch iron rod found near the base of a fence post at the called northeast corner of said 248.77 acre tract, being the northwest corner of that certain 14.86 acre tract conveyed to Kimberley Gunnarson, by Deed of record in Volume 3281, Page 47, of said Official Public Records, for the northeasterly corner hereof;

THENCE, S45°57'08"E, leaving said east right-of-way line, along the west line of said 14.86 acre tract, being an east line of said 248.77 acre tract, generally with the remnants of an old barbed-wire fence (a new barbed-wire fence meanders parallel and several feet to the west), a distance of 976.48 feet to a calculated point at the called southwest corner of said 14.86 acre tract, being an angle point of said 248.77 acre tract, for an angle point hereof, from which an 8-inch cedar fence post found bears S45°57'08"E, a distance of 0.87 feet;

THENCE, S46°27'25"E, in part along the west line of said Lot 2 and in part along the remainder of that certain 56.288 acre tract conveyed to JMC Realty, LP, by Deed of record in Volume 1662, Page 628, of said Official Public Records, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and Volume 1820, Page 715, a distance of 181.47 feet to a 3-inch cedar fence post found, for an angle point hereof;

THENCE, continuing along the west line of said 56.288 acre tract, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and said Volume 1820, Page 715, the following four (4) courses and distances:

1) S46°59'15"E, a distance of 232.69 feet to an 8-inch cedar fence post found, for an angle point
hereof;

2) S49°30'26"E, deviating from a re-established fence line over a creek, a distance of 126.95 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) S47°20'32"E, rejoining and continuing generally with a barbed-wire fence line, a distance of 387.84 feet to a 1\1/2-inch iron rod found in the base of a hackberry tree, as called in said Volume 1662, Page 628, for an angle point hereof;

4) S47°39'57"E, a distance of 528.76 feet to a 1\1/2-inch iron rod found at the called southwest corner of said 56.288 acre tract, being at the base of a 10-inch cedar fence post at a called angle point in the east line of said 67.53 acre tract, for an angle point hereof;

**THENCE**, N44°31'00"E, along the south line of said 56.288 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 646.04 feet to a 1\1/2-inch iron rod found at an angle point in the east line of said 67.53 acre tract, being the northwest corner of that certain 1.000 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 536, Page 849, of the Real Property Records of Hays County, Texas, for an angle point hereof;

**THENCE**, S46°59'32"E, leaving the south line of said 56.288 acre tract, along the west line of said 1.000 acre tract, being an east line of said 67.53 acre tract, generally with a barbed-wire fence, a distance of 280.51 feet to a 1\1/2-inch iron rod found at the base of a fence post at the called southwest corner of said 1.000 acre tract, for an angle point hereof;

**THENCE**, N47°03'15"E, along the south line of said 1.000 acre tract and that certain 1.335 acre tract conveyed to Wilford L. Wootan, Jr., et ux, by Deed of record in Volume 401, Page 769, of said Real Property Records, being an east line of said 67.53 feet, generally with a barbed-wire fence, a distance of 335.24 feet to a 1\1/2-inch iron rod with “Capital Surveying Company” cap found at the northwest corner of that certain 0.8521 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 2927, Page 699, of said Official Public Records, being the southwest right-of-way line of Posey Road (R.O.W. varies), for an angle point hereof;

**THENCE**, leaving the south line of said 1.335 acre tract, over and across said 67.53 acre tract and said 100.22 acre tract, along said southwest right-of-way line of Posey Road, being the west line of said 0.8521 acre tract, and those certain 0.5415 acre and 2.4004 acre tracts conveyed to Hays County, Texas for right-of-way purposes, by said Deed of record in Volume 2927, Page 699, the following eight (8) courses and distances:

1) S41°53’43”E, a distance of 78.28 feet to a disturbed 1\1/2-inch iron rod found at the point of curvature of a curve to the left;

2) Along said curve, having a radius of 6075.00 feet, a central angle of 04°47’50”, an arc length of 508.66 feet, and a chord which bears S44°20’45”E, a distance of 508.51 feet to a 1\1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

3) S46°43’43”E, at 327.46 feet passing a 1\1/2-inch iron rod found on the south line of said 67.53 acre tract, being the north line of said 100.22 acre tract, and continuing for a total distance of 865.99 feet to a calculated point at the point of curvature of a curve to the right;

4) Along said curve, having a radius of 15031.48 feet, a central angle of 00°34’12”, an arc length of 149.56 feet, and a chord which bears S46°08’19”E, a distance of 149.56 feet to a 1\1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;
5) S46°08’26”E, a distance of 1770.49 feet to a calculated point at the point of curvature of a curve to the left;

6) Along said curve, having a radius of 14862.04 feet, a central angle of 00°34’49”, an arc length of 150.53 feet, and a chord which bears S46°25’49”E, a distance of 150.53 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

7) S46°41’07”E, a distance of 195.22 feet to a 1/2-inch iron rod with “Capital Surveying Company” stamp found near the base of a 2-inch steel fence post, for an angle point hereof;

8) S01°32’03”E, a distance of 28.03 feet to a calculated point at the southwest corner of said 2.4004 acre tract, being in the south line of said 100.22 acre tract, also being the intersection of said southwest right-of-way line of Posey Road and the northeast right-of-way line of County Road 266/Old Bastrop Highway/El Camino Real (R.O.W. varies), for the southeasterly corner hereof;

THENCE, along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following two (2) courses and distances:

1) S43°45’05”W, a distance of 70.45 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S44°04’56”W, a distance of 207.09 feet to a calculated point at the point of curvature of a curve to the right, being near the base of a 2-inch steel fence post, also being the east corner of that certain 0.0123 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 4600, Page 118, of said Official Public Records;

THENCE, continuing along said northeast right-of-way line, over and across said 100.22 acre tract, along said curve to the right, having a radius of 950.00 feet, a central angle of 08°05’19”, an arc length of 134.11 feet, and a chord which bears S62°20’44”W, a distance of 134.00 feet to a calculated point near the base of a 2-inch steel fence post at the west corner of said 0.123 acre tract, being on the called south line of said 100.22 acre tract, for an angle point hereof;

THENCE, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following four (4) courses and distances:

1) S68°39’21”W, a distance of 769.76 feet to an 8-inch cedar fence post found, for an angle point hereof;

2) S69°15’47”W, a distance of 221.52 feet to a 60D nail found in an 8-inch cedar fence post, for an angle point hereof;

3) S70°25’00”W, a distance of 127.68 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) S69°14’26”W, a distance of 228.32 feet to a calculated point at the called southwest corner of said 100.22 acre tract, being the southeast corner of that certain 5.0000 acre tract conveyed to Pleasant F. Rexroat and wife, Elwanda J. Rexroat, by Deed of record in Volume 1898, Page 98, of said Official Public Records, for an angle point hereof;

THENCE, N45°06’19”W, leaving said northeast right-of-way line of County Road 266, along the called west line of said 100.22 acre tract, generally with the remnants of an old barbed-wire fence
(new wire fence meanders approximately parallel and several feet southwest of old fence), a distance of 85.52 feet to a 6-inch cedar fence post found leaning, for an angle point;

**THENCE,** N46°36'04"W, continuing generally with the remnants of an old-barbed wire fence as called in said Volume 1820, Page 715, a distance of 642.34 feet to a 1/2-inch iron pipe found near the base of a fence post, being the called northeast corner of said Rexroat 5.0000 acre tract, also being an angle point in the occupied east line of said 248.77 acre tract, for an angle point hereof;

**THENCE,** S70°39'07"W, leaving the occupied west line of said 100.22 acre tract, along the called and occupied north line of said Rexroat 5.0000 acre tract, being the occupied east line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 329.36 feet to a 1/2-inch iron pipe found near the base of a fence post at the called northwest corner of said Rexroat 5.0000 acre tract, being the occupied northeast corner of said 5.01 acre tract, also being in said used and occupied northeast right-of-way line of County Road 266, for an angle point hereof;

**THENCE,** S46°20'51"E, leaving the east line of said 248.77 acre tract, along the called and occupied west line of said Rexroat 5.0000 acre tract, being the occupied east line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 747.43 feet to a 1/2-inch iron pipe found near the base of a fence post at the called southwest corner of said Rexroat 5.0000 acre tract, being the southeast corner of said 5.01 acre tract, also being in said used and occupied northeast right-of-way line of County Road 266, for an angle point hereof;

**THENCE,** S72°25'29"W, along the used and occupied northeast right-of-way of County Road 266, being the called south line of said 5.01 acre tract, generally with a barbed-wire fence, a distance of 335.30 feet to a calculated point in a fence line, being the called southwest corner of said 5.01 acre tract, from which a 1/2-inch iron pipe found bears N46°20'31"W, a distance of 2.00 feet, for an angle point hereof;

**THENCE,** continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 248.77 acre tract, generally with a barbed-wire fence, the following nine (9) courses and distances:

1) S71°40'15"W, a distance of 115.86 feet to a calculated point in a fence line, for an angle point hereof;

2) S76°06'10"W, a distance of 46.03 feet to an 8-inch cedar fence post found, for an angle point hereof;

3) S86°28'05"W, a distance of 428.20 feet to an 8-inch cedar fence post found, for an angle point hereof;

4) N89°34'56"W, a distance of 321.83 feet to a T-post found, for an angle point hereof;

5) N89°02'24"W, a distance of 554.59 feet to a calculated point in a fence line, for an angle point hereof;

6) S89°48'27"W, a distance of 68.91 feet to an 8-inch creosoted fence post found, for an angle point hereof;

7) N81°53'25"W, a distance of 50.53 feet to an 8-inch creosoted fence post found, for an angle point hereof;

8) N88°55'45"W, at approximately 713 feet leaving said barbed-wire fence line, and continuing for a distance of 802.47 feet to a 1/2-inch iron rod with “Macias” cap found, for an angle point
hereof;

9) N70°06'57"W, a distance of 39.04 feet to an 8-inch creosoted fence post found, for the southwesterly corner hereof;

**THENCE,** N46°27'14"W, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called west line of said 248.77 acre tract, generally with a barbed-wire fence, a distance of 79.93 feet to a 1/2-inch iron pipe found at the called southeast corner of said 85.00 acre tract, for an angle point hereof;

**THENCE,** leaving said northeast right-of-way line of County Road 266, along the occupied east line of said 85.00 acre tract, being the called and occupied west line of said 248.77 acre tract, generally with a barbed wire fence, the following eight (8) courses and distances:

1) N41°35'30"W, a distance of 51.65 feet to a 1/2-inch iron pipe found, for an angle point hereof;

2) N45°22'24"W, a distance of 1221.06 feet to a 6-inch cedar fence post found, for an angle point hereof;

3) N45°15'48"W, a distance of 427.82 feet to a 6-inch cedar fence post found, for an angle point hereof;

4) N45°19'43"W, a distance of 673.22 feet to a 10-inch cedar fence post found, for an angle point hereof;

5) N46°33'40"W, a distance of 275.02 feet to a calculated point in a fence line, for an angle point hereof;

6) N47°51'30"W, a distance of 124.53 feet to a 6-inch cedar fence post found, for an angle point hereof;

7) N46°26'02"W, a distance of 218.87 feet to a T-post found, for an angle point hereof;

8) N46°25'10"W, at 158.03 feet passing a 1/2-inch iron pipe found, and continuing for a total distance of 769.08 feet to the **POINT OF BEGINNING,** and containing 417.630 acres (18,191,980 square feet) of land, more or less.
Exhibit “A-1”

Non-Redeemable Property
6.800 ACRES
WILLIAM H. VAN HORN SURVEY
SAN MARCOS, TX

FIELD NOTE FILE: 15.068
PROJECT NO.: 230-001
SEPTEMBER 23, 2015

FIELD NOTES

BEING A 6.800 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY,
ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT
CERTAIN 248.77 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P.
BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC
RECORDS OF HAYS COUNTY, TEXAS; SAID 6.800 ACRES BEING MORE
PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1-inch iron pipe found in the east right-of-way line of Interstate
Highway 35 (300' r.o.w.), being the northeast corner of that certain 85.00 acre tract conveyed to
San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page 562, of said
Official Public Records, also being the northwest corner of said 248.77 acre tract, for the
northwesterly corner hereof;

THENCE, N43°34'33"E, along said east right-of-way line, being the north line of said
248.77 acre tract, a distance of 339.95 feet to a calculated point, for the northeasterly corner
hereof, from which a 1/2-inch iron rod found at the northeast corner of said 248.77 acre tract
bears N43°34'33"E, a distance of 1882.54 feet;

THENCE, leaving said east right-of-way line, over and across said 248.77 acre tract, the
following twelve (12) courses and distances:

1.) Along a non-tangent curve to the left, having a radius of 50.09 feet, a central angle of
102°40'36", an arc length of 89.76 feet, and a chord which bears S66°59'57"E, a
distance of 78.23 feet to a calculated point at the end of said curve;

2.) N73°07'25"E, a distance of 56.81 feet to a calculated point, for an angle point;

3.) S88°52'39"E, a distance of 49.90 feet to a calculated point, for an angle point;

4.) S85°06'15"E, a distance of 85.66 feet to a calculated point at the beginning of a non-
tangent curve to the left;

5.) Along said curve, having a radius of 154.84 feet, a central angle of 45°04'40", an arc
length of 121.82 feet, and a chord which bears N72°59'34"E, a distance of 118.71
feet to a calculated point at the point of reverse curvature of a curve to the right;

6.) Along said curve, having a radius of 103.69 feet, a central angle of 62°54'23", an arc
length of 113.85 feet, and a chord which bears N65°39'52"E, a distance of 108.21
feet to a calculated point at the end of said curve;

7.) S86°01'48"E, a distance of 77.24 feet to a calculated point, for an angle point;

8.) S80°32'37"W, a distance of 76.23 feet to a calculated point, for an angle point;

9.) S65°47'10"E, a distance of 29.82 feet to a calculated point, for an angle point;
10.) N90°00'00"E, a distance of 34.19 feet to a calculated point at the beginning of a non-tangent curve to the right;

11.) Along said curve, having a radius of 175.23 feet, a central angle of 11°33'29", an arc length of 35.35 feet, and a chord which bears N79°10'38"E, a distance of 35.29 feet to a calculated point at the end of said curve, for the southeasterly corner hereof;

12.) S43°34'33"W, a distance of 861.94 feet to a calculated point on the west line of said 248.77 acre tract, being the east line of said 85.00 acre tract, for the southwesterly corner hereof, from which a 1-inch iron pipe found bears S46°25'10"E, a distance of 111.05 feet;

**THENCE**, N46°25'10"W, along the east line of said 85.00 acre tract, being the west line of said 248.77 acre tract, a distance of 500.00 feet to the **POINT OF BEGINNING**, and containing 6.800 acres (296,219 square feet) of land, more or less.

**BEARING BASIS:** TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
5.525 ACRES
WILLIAM H. VAN HORN SURVEY
SAN MARCOS, TX

FIELD NOTE FILE: 15.072
PROJECT NO.: 230-001
SEPTEMBER 23, 2015

FIELD NOTES

BEING A 5.525 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY,
ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN
248.77 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P.
BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC
RECORDS OF HAYS COUNTY, TEXAS; SAID 5.525 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, for reference, at a 1-inch iron pipe found in the east right-of-way line
of Interstate Highway 35 (300’ r.o.w.), being the northeast corner of that certain 85.00 acre tract
conveyed to San Marcos 197 Acre Associates, LLC, by Deed of record in Volume 4015, Page
562, of said Official Public Records, also being the northwest corner of said 248.77 acre tract;

THENCE, N43°34′33″E, along said east right-of-way line, being the north line of said
248.77 acre tract, a distance of 441.02 feet to a calculated point, for the POINT OF BEGINNING
and northwesterly corner hereof;

THENCE, N43°34′33″E, continuing along said east right-of-way line, being the north
line of said 248.77 acre tract, a distance of 789.48 feet to a calculated point, for the northeasterner
corner hereof, from which a 1/2-inch iron rod found at the northeast corner of said 248.77 acre
tract bears N43°34′33″E, a distance of 991.98 feet;

THENCE, leaving said east right-of-way line, over and across said 248.77 acre tract, the
following twenty-two (22) courses and distances:

1.) S46°25′27″E, a distance of 506.75 feet to a calculated point, for the southeasterly
corner hereof;

2.) S41°54′06″W, a distance of 25.01 feet to a calculated point, for an angle point;

3.) S12°09′06″W, a distance of 40.97 feet to a calculated point, for an angle point;

4.) S75°28′29″W, a distance of 49.39 feet to a calculated point, for an angle point;

5.) S39°03′10″W, a distance of 62.78 feet to a calculated point, for an angle point;

6.) S56°19′38″W, a distance of 88.10 feet to a calculated point, for an angle point;

7.) S49°46′55″W, a distance of 18.87 feet to a calculated point, for an angle point;

8.) N79°30′55″W, a distance of 11.71 feet to a calculated point, for an angle point;

9.) N87°16′32″W, a distance of 33.92 feet to a calculated point, for an angle point;

10.) S79°00′12″W, a distance of 43.96 feet to a calculated point, for an angle point;

11.) N90°00′00″W, a distance of 3.12 feet to a calculated point, for an angle point;
12.) N65°47'10"W, a distance of 21.32 feet to a calculated point, for an angle point;
13.) N80°32'37"W, a distance of 93.97 feet to a calculated point, for an angle point;
14.) N86°01'48"W, a distance of 91.05 feet to a calculated point, for an angle point;
15.) S83°39'50"W, a distance of 78.44 feet to a calculated point, for an angle point;
16.) S59°45'35"W, a distance of 65.63 feet to a calculated point, for an angle point;
17.) S45°01'07"W, a distance of 32.84 feet to a calculated point, for an angle point;
18.) S60°02'04"W, a distance of 18.44 feet to a calculated point, for an angle point;
19.) S82°34'24"W, a distance of 38.72 feet to a calculated point, for an angle point;
20.) N85°06'15"W, a distance of 78.16 feet to a calculated point, for an angle point;
21.) N88°52'39"W, a distance of 69.04 feet to a calculated point, for an angle point;
22.) S73°07'25"W, a distance of 44.75 feet to the POINT OF BEGINNING, and containing 5.525 acres (240,647 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH CENTRAL ZONE, REFERENCES THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
FIELD NOTES

BEING A 48.128 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THOSE CERTAIN 67.53 ACRE AND 248.77 ACRE TRACTS CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 48.128 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod found near the base of a fence post in the east right-of-way line of Interstate Highway 35 (300' R.O.W.), at the called northeast corner of said 248.77 acre tract, being the northwest corner of that certain 14.86 acre tract conveyed to Kimberley Gunnarson, by Deed of record in Volume 3281, Page 47, of said Official Public Records, for the northeasterly corner hereof;

THENCE, S45°57'08"E, leaving said east right-of-way line, along the west line of said 14.86 acre tract, being an east line of said 248.77 acre tract, generally with the remnants of an old barbed-wire fence (a new barbed-wire fence meanders parallel and several feet to the west), a distance of 976.48 feet to a calculated point at the called southwest corner of said 14.86 acre tract, being an angle point of said 248.77 acre tract, for an angle point, from which an 8-inch cedar fence post found bears S45°57'08"E, a distance of 0.87 feet;

THENCE, N44°02'46"E, along the south line of said 14.86 acre tract, generally with a barbed-wire fence, at 14.92 feet passing a 1/2-inch iron rod found at the base of an 8-inch cedar fence post, being approximately at an angle point in the east line of said 248.77 acre tract and the approximate northwest corner of said 67.53 acre tract, and continuing along the north line of said 67.53 acre tract for a total distance of 673.37 feet to a 1/2-inch iron rod found at the base of a leaning 10-inch cedar fence post at the called southeast corner of said 14.86 acre tract, being the northeast corner of said 67.53 acre tract, also being in the west line of Lot 2, Final Plat of San Marcos Toyota Subdivision, of record in Book 9, Pages 155-156, of the Plat Records of Hays County, Texas, for an angle point;

THENCE, S46°27'25"E, in part along the west line of said Lot 2 and in part along the remainder of that certain 56.288 acre tract conveyed to JMC Realty, LP, by Deed of record in Volume 1662, Page 628, of said Official Public Records, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and Volume 1820, Page 715, a distance of 181.47 feet to a 3-inch cedar fence post found, for an angle point;

THENCE, continuing along the west line of said 56.288 acre tract, being the east line of said 67.53 acre tract, generally with a barbed-wire fence as called in said Volume 1662, Page 628 and said Volume 1820, Page 715, the following four (4) courses and distances:

1) S46°59'15"E, a distance of 232.69 feet to an 8-inch cedar fence post found, for an angle point;

2) S49°30'26"E, a distance of 29.86 feet to a calculated point, for the southeasterly corner hereof;
THENCE, leaving the west line of said 56.288 acre tract, over and across said 67.53 acre and said 248.77 acre tracts, the following eighteen (18) courses and distances:

1.) Along a non-tangent curve to the left, having a radius of 52.13 feet, a central angle of 125°11'32", an arc length of 113.91 feet, and a chord which bears S10°10'02"E, a distance of 92.56 feet to a calculated point at the end of said curve;

2.) S00°35'28"W, a distance of 0.97 feet to a calculated point at the beginning of a non-tangent curve to the right;

3.) Along said curve, having a radius of 257.51 feet, a central angle of 16°44'39", an arc length of 75.25 feet, and a chord which bears S38°53'08"W, a distance of 74.99 feet to a calculated point at the end of said curve;

4.) S09°46'04"W, a distance of 34.74 feet to a calculated point, for an angle point;

5.) S09°28'06"E, a distance of 28.23 feet to a calculated point, for an angle point;

6.) S30°23'43"W, a distance of 5.43 feet to a calculated point, for an angle point;

7.) S19°02'13"W, a distance of 21.95 feet to a calculated point, for an angle point;

8.) S11°57'06"W, a distance of 20.73 feet to a calculated point, for an angle point;

9.) S26°34'48"W, a distance of 12.48 feet to a calculated point, for an angle point;

10.) S36°35'27"W, a distance of 26.24 feet to a calculated point at the beginning of a non-tangent curve to the right;

11.) Along said curve, having a radius of 220.38 feet, a central angle of 46°19'41", an arc length of 178.19 feet, and a chord which bears S18°34'32"W, a distance of 173.38 feet to a calculated point at the end of said curve;

12.) S05°42'52"W, a distance of 20.02 feet to a calculated point at the beginning of a non-tangent curve to the left;

13.) Along said curve, having a radius of 239.33 feet, a central angle of 12°07'22", an arc length of 50.64 feet, and a chord which bears S20°16'33"W, a distance of 50.54 feet to a calculated point at the end of said curve;

14.) S45°48'26"W, a distance of 1229.89 feet to a calculated point, for an angle point;

15.) S55°30'40"W, a distance of 100.10 feet to a calculated point, for the southwesterly corner hereof;

16.) N31°57'14"W, a distance of 383.71 feet to a calculated point at the point of curvature of a curve to the left;
17.) Along said curve, having a radius of 1450.00 feet, a central angle of 14°28'14", an arc length of 366.21 feet, and a chord which bears N39°11'20"W, a distance of 365.23 feet to a calculated point at the point of tangency of said curve;

18.) N46°25'27"W, a distance of 880.42 feet to a calculated point in the north line of said 248.77 acre tract, being said east right-of-way line of Interstate Highway 35, for the northwesterly corner hereof;

THENCE, N43°34'33"E, along said east right-of-way line, being the north line of said 248.77 acre tract, a distance of 991.99 feet to the POINT OF BEGINNING, and containing 48.128 acres (2,096,445 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2012A), SOUTH CENTRAL ZONE, REFERENCING THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
FIELD NOTES

BEING A 9.929 ACRE TRACT OUT OF THE WILLIAM H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 100.22 ACRE TRACT CONVEYED TO JOQ-SAN MARCOS VENTURES L.P. BY DEED OF RECORD IN VOLUME 1820, PAGE 715, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 9.929 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a calculated point in the southwest right-of-way line of Posey Road, being the west line of that certain 2.4004 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 2927, Page 699, of said Official Public Records, also being the east line of the remainder of said 100.22 acre tract, for the northeasterly corner hereof, from which a 1/2-inch iron rod with “Capital Surveying Company” cap found at an angle point in said southwest right-of-way line bears N46°08’26”W, a distance of 1607.49 feet;

THENCE, along said southwest right-of-way line of Posey Road, being the west line of said 2.4004 acre tract, over and across said 100.22 acre tract, the following four (4) courses and distances:

1) S46°08’26”E, a distance of 163.00 feet to a calculated point at the point of curvature of a curve to the left;

2) Along said curve, having a radius of 14862.04 feet, a central angle of 00°34’49”, an arc length of 150.53 feet, and a chord which bears S46°25’49”E, a distance of 150.53 feet to a 1/2-inch iron rod with “Capital Surveying Company” cap found at the point of tangency of said curve;

3) S46°41’07”E, a distance of 195.22 feet to a 1/2-inch iron rod with “Capital Surveying Company” stamp found near the base of a 2-inch steel fence post, for an angle point;

4) S01°32’03”E, a distance of 28.03 feet to a calculated point at the southwest corner of said 2.4004 acre tract, being in the south line of said 100.22 acre tract, also being the intersection of said southwest right-of-way line of Posey Road and the northeast right-of-way line of County Road 266/Old Bastrop Highway/El Camino Real (R.O.W. varies), for the southeasterly corner hereof;

THENCE, along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following two (2) courses and distances:

1) S43°45’05”W, a distance of 70.45 feet to an 8-inch cedar fence post found, for an angle point;

2) S44°04’56”W, a distance of 207.09 feet to a calculated point at the point of curvature of a curve to the right, being near the base of a 2-inch steel fence post, also being the east corner of that certain 0.0123 acre tract conveyed to Hays County, Texas for right-of-way purposes, by Deed of record in Volume 4600, Page 118, of said Official Public Records;
THENCE, continuing along said northeast right-of-way line, over and across said 100.22 acre tract, along said curve to the right, having a radius of 950.00 feet, a central angle of 08°05'19", an arc length of 134.11 feet, and a chord which bears S62°20'44"W, a distance of 134.00 feet to a calculated point near the base of a 2-inch steel fence post at the west corner of said 0.123 acre tract, being on the called south line of said 100.22 acre tract, for an angle point hereof;

THENCE, continuing along the used and occupied northeast right-of-way line of County Road 266, being the called south line of said 100.22 acre tract, generally with a barbed-wire fence, the following three (3) courses and distances:

1) S68°39'21"W, a distance of 769.76 feet to an 8-inch cedar fence post found, for an angle point;

2) S69°15'47"W, a distance of 221.52 feet to a 60D nail found in an 8-inch cedar fence post, for an angle point;

3) S70°25'00"W, a distance of 20.28 feet to calculated point, for the most westerly corner hereof;

THENCE, leaving said northeast right-of-way line, over and across said 100.22 acre tract, the following two (2) courses and distances:

1.) N41°15'56"E, a distance of 498.01 feet to a calculated point, for an angle point;

2.) N41°24'18"E, a distance of 841.99 feet to the POINT OF BEGINNING, and containing 9.929 acres (432,505 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(2011), SOUTH CENTRAL ZONE, REFERENCE THE LEICA SMARTNET REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal September 23, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 253-001
EXHIBIT “B”

AGRICULTURAL USE WAIVER

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

THAT this Agricultural Use Waiver (this “Waiver”) is made and entered into as of the ___ day of ________________, 20___, for the benefit of the City of San Marcos, Texas (the “City”) and the Escrow Agent (as defined below), by Highpointe Trace, LLC, a California limited liability company (the “Landowner”), owner of the property described on Schedule 1 hereto (the “Property”), which Property is located within Trace Public Improvement District (the “District”), a public improvement district of the City, pursuant to Texas Tax Code Ann. §23.20.

RECITALS

A. The City has the right to levy assessments on land located within the District pursuant to a separate ordinance enacted by the City Council of the City, which assessments are intended to provide for the financing of certain public improvements for the benefit of the District.

B. The purpose of the City in levying assessments and, if approved by the City Council of the City, selling its assessment revenue bonds is to provide, among other things, financing for certain public improvements to serve the District (the “Facilities”).

C. UMB Bank, N.A. (the “Escrow Agent”) is a trustee as described in that certain Trace Public Improvement District Financing Agreement having an effective date of October 20, 2015 (the “PID Financing Agreement”), by and between Landowner and the City, as amended and restated effective September 18, 2018.

D. In furtherance of this purpose, the City has agreed to reimburse Landowner for payments made for certain public improvements for the benefit of the District.

E. Landowner, the City and Escrow Agent have also entered into that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (the “Agreement”) dated __________, 2019, which requires Landowner to provide executed originals of this Waiver to the Escrow Agent to be held in escrow pursuant to the terms and conditions of said Agreement;
F. Landowner acknowledges that the election by Landowner to claim agricultural use exemptions or valuations arising under Subchapter C of Chapter 23 of the Texas Tax Code (collectively, the “Exemptions”), but not including any residential homestead exemption, for the Property would be detrimental to the property valuation base and may significantly impair the ability of the City to meet its obligations under the PID Financing Agreement or, if issued, its revenue bonds secured by and payable from assessment revenues.

G. Landowner further acknowledges that the exercise of the right to redemption after a tax sale pursuant to Subchapter B of Chapter 34 of the Texas Tax Code would also significantly impair the City’s ability to meet its debt obligations for its revenue bonds secured by and payable from assessment revenues.

WAIVER

Section 1. Waiver of Exemptions. Landowner, on behalf of itself, its successors and assigns, (i) irrevocably waives its right to claim any of the Exemptions with respect to the Property for a period of 30 years beginning on the date this Waiver is received by the Hays County Tax Assessor/Collector (the “Waiver Period”); (ii) authorizes the City and/or the Escrow Agent to file this Waiver with the Chief Appraiser of the Hays Central Appraisal District, or its successors, in accordance with the terms of the Agreement; and (iii) covenants that it will not, during the Waiver Period, if applicable, make any claim for a special appraisal except on written authorization of the City. Landowner acknowledges that it may have the right under Article 8 of the Texas Constitution to assert some or all of the Exemptions which it is waiving herein, and agrees that it shall be estopped from claiming such Exemptions at any time during the Waiver Period, if applicable; provided, however, it is expressly acknowledged and agreed by Landowner that mechanisms for single-family residences now available or to be made available by any change in Texas laws for the reduction of ad valorem tax liability or of valuation for the purposes of ad valorem taxes or other assessments with respect to real property, such as exemptions for homesteads, disabled veterans, elderly homesteads, and etcetera, are not included in the definition of Exemptions and are expressly allowed, to the extent such exemptions would be otherwise available, with respect to the Property.

[Section 2. Disclosures of Lienholders. Landowner represents and warrants that ______________ and ______________ are the current lienholders on the Property.]

Section 3. Covenants to Run with Land. The terms and provisions hereof shall be deemed to be restrictive covenants encumbering and running with the Property and shall be binding upon the Landowner and its successors and assigns. In particular, each successive purchaser of the Property shall, upon purchase thereof (or such portion thereof) be deemed to have waived its right to claims of the Exemptions with respect to the Property (or such portions thereof) at any time during the Waiver Period, if applicable.
Section 4. **Enforceability.** The covenants and restrictions binding the Property hereunder shall be enforceable only by the City, the Escrow Agent, and their respective successors and assigns. This Waiver is for the sole benefit of the parties hereto, and of the Escrow Agent, and no other third party is intended to be a beneficiary of this Waiver.

Section 5. **Termination.** This Waiver shall continue in full force and effect until the earlier to occur of the following: (i) the expiration of the Waiver Period; or (ii) such time as the Escrow Agent approves a revocation in writing.

Section 6. **Severability.** Every provision of this Waiver is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable to the maximum extent permitted by law, it being the intent of the parties hereto to give full force and effect to the agreements made hereunder to the maximum extent permitted by law.

Section 7. **Headings.** The Section headings are included in this Waiver for convenience of reference only, and shall not be deemed to affect the substantive provisions of this Waiver.

Section 8. **Remedies.** If Landowner breaches its obligations hereunder, the Escrow Agent or the City (on behalf of the Escrow Agent), in addition to all other remedies set forth herein or otherwise available at law or in equity, shall be entitled to recover from Landowner the amount of assessments that would have been due to the City had Landowner complied with this Waiver. Such payment will be due and payable, and will incur penalties and charges under the same terms as if the payment had been an assessment obligation of Landowner to City.
EXECUTED to be effective as of the date first above written.

Highpointe Trace, LLC,  
a California limited liability company

By: Highpointe Posey, LP, a California limited partnership, its managing member

By: Highpointe Investments, Inc., a California corporation, its general partner

By: ________________________________
    Timothy D. England, SVP

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of ________________________

On ______________________ before me, ______________________
(insert name and title of the officer)

personally appeared ______________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________ (Seal)
Schedule 1 to Agricultural Use Waiver
EXHIBIT “C”

RELEASE OF REDEMPTION AGREEMENT

STATE OF TEXAS §
§
COUNTY OF HAYS §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the land described in the attached Exhibit “A” (“Property”) is located within the Trace Public Improvement District (“District”);

WHEREAS, ________________ is the owner of the Property (“Owner”);

WHEREAS, the Property is subject to the terms of the Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation with an effective date of __________, 201__ and recorded in Document No. ____ , Official Public Records of Hays County, Texas (“Redemption Agreement”);

WHEREAS, the City of San Marcos, Texas (the “City”), Highpointe Trace, LLC (the “Initial Owner”), and UMB Bank, N.A. (the “Escrow Agent”) are parties to the Redemption Agreement;

WHEREAS, pursuant to the Redemption Agreement, certain rights to redeem the Property under the Texas Tax Code (as described in the Redemption Agreement) were conveyed by the Initial Owner to the Escrow Agent;

WHEREAS, pursuant to Redemption Agreement, the Escrow Agent is authorized to deliver a Waiver of Agricultural Use to the City for filing with the appropriate Tax Assessor/Collector office in the event that delinquent taxes or assessments are owed on the Property;

WHEREAS, pursuant to Redemption Agreement, the City and the Escrow Agent are authorized to release property from the terms of the Redemption Agreement; and

WHEREAS, the City and the Escrow Agent have determined that the Property should be released from the terms of the Redemption Agreement.

NOW, THEREFORE, for and in consideration of the above stated premises, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged by the City and the Escrow Agent, the City and the Escrow Agent do hereby forever release and discharge the Property from all terms, restrictions, covenants, and conditions of the Redemption Agreement in its entirety, and release any and all rights that the City and the Escrow Agent had, have or may have by virtue of the Redemption Agreement. In no event shall this release have any impact on land within the District other than the Property described in the attached Exhibit “A”.

C-1
Escrow Agent has GRANTED, to have and to hold, and by these presents does hereby
GRANT, unto Owner all rights that Escrow Agent and its successors and assigns received from
Owner or its predecessors pursuant to the Redemption Agreement and, to the extent applicable,
the Acknowledgment of Assumption and Conveyance of Right of Redemption in the form
attached as Exhibit “D” to the Redemption Agreement.

Escrow Agent does hereby GRANT, TO HAVE AND TO HOLD the Tax Redemption
Rights (as defined in the Redemption Agreement) in the Property, which Property is described in the
attached Exhibit “A”, belonging in any way to Escrow Agent, unto the Owner, its successors and
assigns, forever without warranty.

[SIGNATURE PAGE FOLLOWS]
WITNESS THE EXECUTION HEREOF this the ___ day of __________, 20__. 

The City of San Marcos, Texas  

By: _____________________________.  

________________, Mayor  

ATTEST:  

By: _____________________________.  

________________, City Clerk  

THE STATE OF TEXAS §  
COUNTY OF HAYS §  

This instrument was acknowledged before me on __________, 20__, by  
________________ and ________________, the Mayor and Clerk, respectively, of the City of  
San Marcos, Texas, a home rule city and Texas municipal corporation, on behalf of said city and  
municipal corporation.  

________________  
Notary Public, State of  
Texas
WITNESS THE EXECUTION HEREOF this the __ day of __________, 20_.

Escrow Agent

By: ___________________________

THE STATE OF ________________ §
COUNTY OF ________________ §

This instrument was acknowledged before me on this __________ day of ____________, 20__, by ____________________________, the ________________, on behalf of said entity.

_____________________________________
Notary Public, State of ________________

* Attach description of the Property as Exhibit “A” prior to recording.

After Recording Mail to:
EXHIBIT “D”

ACKNOWLEDGMENT OF ASSUMPTION AND CONVEYANCE
OF RIGHT OF REDEMPTION

This Acknowledgment of Assumption and Conveyance of Right of Redemption (this “Acknowledgment and Agreement”) is entered into effective ________________, 20__ by ________________, a ____________________ (whether one or more, the “Buyer”) in favor of the City of San Marcos, Texas and the Escrow Agent, as such term is defined in the Redemption Agreement (defined below).

RECITALS

A. WHEREAS, Buyer has purchased and acquired certain land described on Exhibit “A” attached hereto (the “Property”); and

B. WHEREAS, the Property is subject to that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation, dated on or about ________________, 2019 (the “Redemption Agreement”); and

C. WHEREAS, pursuant to the requirements of the Redemption Agreement, it is a condition to the acquisition of the Property that the Buyer execute this Acknowledgment and Agreement and record same in the Official Public Records of Hays County, Texas; and

D. WHEREAS, the purchase price paid by Buyer for the Property was calculated and determined, in part, based upon the benefits and restrictions applicable to the Property and arising in connection with the Redemption Agreement and the other agreements executed in connection therewith and the requirement that Buyer execute this Acknowledgment and Agreement.

NOW, THEREFORE, in consideration of $10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer hereby represents, warrants and agrees as follows:

1. Buyer acknowledges that the Redemption Agreement continues to affect the Property, and that Buyer has assumed, and Buyer hereby does assume and agree to perform, the obligations of Landowner (as such term is defined in the Redemption Agreement) under the Redemption Agreement with respect to the Property.

2. Buyer hereby grants, sells, conveys and assigns to the Escrow Agent all rights Buyer and its successors and assigns now have or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, following any Forced Sale in connection with any portion of the Property that constitutes Non-Redeemable Property (as defined in the Redemption Agreement), including, without limitation, any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, but excluding any redemption rights arising out of the homestead status of the Property. In the event that the foregoing conveyance is not effective, Buyer hereby absolutely, unconditionally and
irrevocably waives, releases, relinquishes and surrenders forever, on behalf of itself and its successors and assigns, and agrees not to assert or exercise any and all rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, following any foreclosure of a tax lien or sale, transfer or conveyance in connection with a tax sale, any portion of the Property that constitutes Exempt Property, including, without limitation, any and all rights arising Subchapter B of Chapter 34 of the Texas Tax Code.

3. Concurrently with the execution and delivery of this Acknowledgment and Agreement, Buyer has executed and has delivered (or will promptly deliver) to the Escrow Agent to be held in escrow a Waiver of Special Appraisal in the form attached as Exhibit “B” to the Redemption Agreement waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to the Property. Such agreement shall be held in, and released from, escrow in accordance with the provisions of the Redemption Agreement.

EXECUTED to be effective as of the date first above written.

BUYER:

Address for Buyer:

THE STATE OF TEXAS §
COUNTY OF §

This document was acknowledged before me on ________________, 20__, by ________________, the _________________ of ________________, a ______________, on behalf of said entity.

Notary Public in and for the State of TEXAS

* Attach description of the Property as Exhibit A prior to recording.
EXHIBIT “E”

RELEASE OF OBLIGATIONS AND NOTICE OF TERMINATION

THE STATE OF TEXAS §

§ KNOW EVERYONE BY THESE PRESENTS:

COUNTY OF HAYS §

All rights and obligations under that certain Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation having an effective date of ________________, 2019 (the "Agreement") recorded in the Official Public Records of Hays County, Texas, on ________________, 201_ under Instrument No. ____________ ARE HEREBY RELEASED and NOTICE IS HEREBY GIVEN of the termination of the Agreement in accordance with its terms.

THE CITY OF SAN MARCOS, TEXAS

By: _______________________________

_________, Mayor

ATTEST:

By: _______________________________

_________, City Clerk

STATE OF TEXAS §

§

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared, _________, Mayor and _________, the Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _________________, 201_.

(SEAL)

Notary Public, State of Texas
AGENDA CAPTION:
Consider approval of Resolution 2019-12R, amending the Business Improvement and Growth (BIG) Grant Program guidelines to prohibit City employees and officials from benefiting from BIG Grant Program Funds and to clarify program eligibility and intent; and declaring an effective date.

Meeting date: January 15, 2019

Department: CMO - Steve Parker, Assistant City Manager / CFO

Amount & Source of Funding
Funds Required: N/A
Account Number: 10001280.54246
Funds Available: $69,400
Account Name: GF Special Services - BIG Grant Program

Fiscal Note:
Prior Council Action: The BIG Grant Program was established by Resolution No. 2016-49R on April 5, 2016.

City Council Strategic Initiative:
N/A

Comprehensive Plan Element (s):
☒ Economic Development - Fiscally Responsible Incentives for Economic Development
☐ Environment & Resource Protection
☐ Land Use
☐ Neighborhoods & Housing
☐ Parks, Public Spaces & Facilities
☐ Transportation
☐ Not Applicable

Master Plan:
Vision San Marcos - A River Runs Through Us
**Background Information:**

The BIG Grant Program was established by Resolution No. 2016-49R on April 5, 2016.

The Resolution establishes the program, adopts guidelines and an application, and authorizes the City Manager to take such measures as necessary to implement the policy.

The guidelines and application form were approved by Council; therefore, Council action is required to amend the program. The proposed amendments provide for the following:

- City employees or officials, or their immediate family members (spouse, children, siblings, parents) are ineligible to apply for or receive BIG Program funds.
- BIG Program funds may not be awarded for any improvements to property or buildings owned in whole or in part by any city employee or official, or their immediate family members (spouse, children, siblings, parents), or any business organization of which such persons are equity owners, shareholders, members, partners or officers.
- Clarifies the intent of the program to provide funding for signage, stating that grant funding for signage may only be requested in conjunction with a grant application for real property improvements, and that applications for signage only will not be considered.
- Other, minor, text amendments.

The BIG Grant Program was funded with a one-time appropriation, which has been drawn down since 2016. As of September 22, 2018, 14 projects have been completed under the Program, and a total of $90,755 in grant funds have been awarded. An additional $3,722 in Program funds were expended for the purchase and installation of bicycle racks downtown. The amount available for future grants as of the end of FY18 is $69,400.

**Council Committee, Board/Commission Action:**

N/A

**Alternatives:**

Take no action.

**Recommendation:**

Staff recommends approval.
RESOLUTION NO. 2019-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE BUSINESS IMPROVEMENT AND GROWTH (BIG) GRANT PROGRAM GUIDELINES TO PROHIBIT CITY EMPLOYEES AND OFFICIALS FROM BENEFITING FROM BIG GRANT PROGRAM FUNDS AND TO CLARIFY PROGRAM ELIGIBILITY AND INTENT; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The BIG Program Guidelines are amended as shown in the Exhibit A, attached hereto.

PART 2. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on January 15, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
EXHIBIT A

How does the BIG Program work?

The City will provide a fifty percent matching grant to reimburse up to $20,000 for well-designed property improvements, and an additional fifty percent matching grant to reimburse up to $5,000 for construction of monument-type signage or the removal and replacement of non-conforming signs. Grant funding for signage may only be requested in conjunction with a grant application for real property improvements. Applications for signage only will not be considered. The applicant’s match may be in the form of other financial aid (grant or loan) received from other agencies or financial institutions, but may not be “in-kind.”

The BIG Grant Program will only reimburse applicants after the project is determined to have been completed in accordance with the contract and the applicant has paid his/her architect, contractor and vendor(s) in full.

Improvements funded by the program must be compatible with the character and architecture of the individual property, and must meet current City standards with regard to occupant safety. Historical or architecturally significant features shall be restored and maintained. Improvements to properties without such features should be seen as an opportunity to substantially enhance the appearance of the properties and adjacent streetscapes. Properties should be oriented to the pedestrian and provide visual interest both day and night. Effort should be made to promote accessibility and to create a property identity unique to San Marcos or the respective neighborhood.

Initial consultation with City staff is necessary in order to help avoid misunderstanding as to the eligibility of proposals. City staff may provide guidance regarding improvements specific to individual storefronts. The applicant may hire his/her own licensed design professional(s) to work on the project from start to completion, or request that City staff assist first with the conceptual design of the project. If the latter option is chosen, the applicant may be required to hire his/her own licensed design professional(s) to carry forth the conceptual design to completion of construction.
What improvements are eligible for the BIG grant program?

- Restoration of exterior details in historically contributing or significant buildings, and removal of elements that conceal architectural details, including cleaning, repainting or residing of building;
- New storefront construction, appropriately scaled within an existing building, and in substantial conformance with all applicable provisions of the San Marcos Land Development Code;
- Awnings or canopies in character with the building and streetscape;
- Lighting that is visually appealing and appropriately illuminates signage, storefront window displays, and recessed areas of a building façade;
- Window replacement and window framing visible from the street and appropriately scaled to the building;
- Signage that is attractively integrated into the architecture of the building, including the window area, awnings or canopies, and entryways, and the removal and replacement of non-conforming signs;
- Installation of monument signage, and the removal and replacement of non-conforming signs;
- Curbing, irrigation, approved trees, landscaping beds (not including planting material) or other landscape features attached to the building where appropriate, not to exceed twenty percent (20%) of the project budget;
- Removal of architectural barriers to public accessibility;
- Installation of fire sprinklers or other life-safety systems in historically or architecturally significant buildings; and
- Other improvements that meet the objectives of the BIG Grant Program.
Who is eligible for the BIG grant program?

- Applicants must be commercial property owners or commercial tenants located in San Marcos within the Downtown CD-5D zoning district or along designated corridors (see BIG Grant Program Eligible Area Map);
- Preference will be given to independent businesses not required by contractual arrangement to maintain standardized décor, architecture, signs or similar features;
- Tenants must have written approval from property owners to participate in the program;
- Any and all nonconforming signage on the property must be permanently removed as part of the improvement;
- Property owners must be current on all municipal taxes prior to participation in the program;
- Applicants must comply with all State and local laws and regulations pertaining to licensing, permits, building code and zoning requirements;
- Applicants must agree not to change or alter the property improvements without prior written approval from the BIG Review Committee for three (3) years from the date of the rebate check issued under the BIG Grant Program;
- Improvements made prior to written approval by the BIG Review Committee will not be funded;
- City employees or officials, or their immediate family members (spouse, children, siblings, parents) are ineligible to apply for or receive BIG Program funds;
- BIG Program funds may not be awarded for any improvements to property or buildings owned in whole or in part by any city employee or official, or their immediate family members (spouse, children, siblings, parents), or any business organization of which such persons are equity owners, shareholders, members, partners or officers; and
- Understanding that the overall objective of the BIG Grant Program is to improve the exterior visibility and presentation of a property, the City has the discretion to decline an application while suggesting enhancements that would enable future acceptance.
Business Improvement & Growth
(BIG) Grant Program Guidelines
Why BIG?
The City of San Marcos Comprehensive Plan, Vision San Marcos: A River Runs Through Us, places strong emphasis on economic development, with the goal of creating an enhanced and diverse local economic environment that is prosperous, efficient and provides improved opportunities for residents.

To achieve this goal, the City has established the Business Improvement & Growth (BIG) Grant Program to provide technical and financial assistance to property owners or business tenants seeking to renovate or restore exterior façades, signage, lighting and life-safety systems for commercial buildings.

The BIG Grant Program is designed to impact properties in need of revitalization, resulting in improved exterior visibility and presentation of a property, as well as enhanced occupant safety. The BIG Grant Program is not designed to subsidize corrections to building code violations that prolong the life of a commercial property. The BIG Grant Program strives to increase sales and/or revenue for the property owner or tenant.
How does the BIG Program work?

The City will provide a fifty percent matching grant to reimburse up to $20,000 of well-designed property improvements. An additional fifty percent matching grant to reimburse up to $5,000 for construction of monument-type signage or the removal and replacement of non-conforming signs. The applicant’s match may be in the form of other financial aid (grant or loan) received from other agencies or financial institutions, but may not be “in-kind.”

The BIG Grant Program will only reimburse applicants after the project is determined to have been completed in accordance with the contract and the applicant has paid his/her architect, contractor and vendor(s) in full.

Improvements funded by the program must be compatible with the character and architecture of the individual property, and must meet current City standards with regard to occupant safety. Historical or architecturally significant features shall be restored and maintained. Improvements to properties without such features should be seen as an opportunity to substantially enhance the appearance of the properties and adjacent streetscapes. Properties should be oriented to the pedestrian and provide visual interest both day and night. Effort should be made to promote accessibility and to create a property identity unique to San Marcos or the respective neighborhood.

Initial consultation with City staff is necessary in order to help avoid misunderstanding as to the eligibility of proposals. City staff may provide guidance regarding improvements specific to individual storefronts. The applicant may hire his/her own licensed design professional(s) to work on the project from start to completion, or request that City staff assist first with the conceptual design of the project. If the latter option is chosen, the applicant may be required to hire his/her own licensed design professional(s), if necessary, to carry forth the conceptual design to completion of construction. City staff will monitor the progress of the project to ensure compliance with the “Scope of Services” outlined in the contract between the City and applicant. Depending on the overall size and scope of a project, City staff may entertain additional and/or alternative incentives that would require City Council approval.
What improvements are eligible for the BIG grant program?

- Restoration of exterior details in historically contributing or significant buildings, and removal of elements that conceal architectural details, including cleaning, repainting or residing of building;
- New storefront construction, appropriately scaled within an existing building, that is in substantial conformance with all applicable provisions of the San Marcos Land Development Code;
- Awnings or canopies in character with the building and streetscape;
- Lighting that is visually appealing and appropriately illuminates signage, storefront window displays, and recessed areas of a building façade;
- Window replacement and window framing visible from the street and appropriately scaled to the building;
- Signage that is attractively integrated into the architecture of the building, including the window area, awnings or canopies, and entryways, and the removal and replacement of non-conforming signs;
- Installation of monument signage, and the removal and replacement of non-conforming signs;
- Curbing, irrigation, approved trees, landscaping beds (not including planting material) or other landscape features attached to the building where appropriate, not to exceed twenty percent (20%) of the project budget;
- Removal of architectural barriers to public accessibility;
- Installation of fire sprinklers or other life-safety systems in historically or architecturally significant buildings; and
- Other improvements that meet the objectives of the BIG Grant Program.

Who is eligible for the BIG grant program?

- Applicants must be commercial property owners or commercial tenants located in San Marcos within the Downtown SmartCode zoning district or along designated corridors (see BIG Grant Program Eligible Area Map);
- Preference will be given to independent businesses not required by contractual arrangement to maintain standardized décor, architecture, signs or similar features;
- Tenants must have written approval from property owners to participate in the program;
- Any nonconforming signage on the property must be permanently removed as part of the improvement;
- Property owners must be current on all municipal taxes prior to participation in the program;
- Applicants must comply with all State and local laws and regulations pertaining to licensing, permits, building code and zoning requirements;
- Applicants must agree not to change or alter the property improvements without prior written approval from the BIG Review Committee for three (3) years from the date of the rebate check issued under the BIG Grant Program;
- Improvements made prior to written approval by the vBIG Review Committee will not be funded; and
- Understanding that the overall objective of the BIG Grant Program is to improve the exterior visibility and presentation of a property, the City has the discretion to decline an application while suggesting enhancements that would enable future acceptance.
BIG GRANT PROCESS
Getting your project funded

1. Applicant meets with city staff for initial project discussion and files application.
2. Applicant meets with BIG Review Committee to discuss property improvements and design alternatives.
3. If necessary, an architect prepares final designs and submits them to BIG Review Committee.
4. Upon approval, applicant has 60 days to solicit 3 contractor bids. Bids must be itemized.
5. BIG Review Committee will review/approve bids, applicant enters into contract for reimbursement with the city.
6. BIG Review Committee sends applicant a “notice to proceed with improvements.” Any improvements completed before notice is sent WILL NOT BE FUNDED.
7. Applicant, contractor(s), and project architect hold a pre-development meeting with applicable city staff.
8. Applicant has 60 days from “notice” to begin improvements. Applicant is responsible for obtaining all required City permits.
9. Contractor carries out improvements as specified in the final design. If any design changes are to occur, the BIG Review Committee must be notified.
10. Applicant notifies BIG Review Committee when improvements are complete. Architect and BIG Review Committee certify that project improvements comply with the approved plans.
11. Applicant submits copy of all paid invoices to BIG Review Committee. Architect and contractor(s) submit letters to the BIG Review Committee acknowledging full payment by the applicant.
Applicant’s Name  
Mailing Address  
Phone  
E-mail  

Business Organization of Applicant:  
☐ Corporation (dba)  ☐ Partnership  ☐ Sole Proprietorship

Business Name  

Relationship of Applicant to the property to be renovated:  
☐ Owner  
☐ Tenant  

Address of property to be improved:  

Describe the scope of work:  

Design professional responsible for your drawings, plans, and permits:  

Mailing Address  
Phone  
E-mail  

The undersigned hereby represents and certifies to the best of his/her knowledge and belief that the information contained on this statement and any exhibits or attachments hereto are true and complete and accurately describe the proposed project, and the undersigned agrees to promptly inform the City of San Marcos Economic & Development Coordinator of any changes in the proposed project which may occur.

Signature of Property Owner  
Date  

Print Name  

Signature of Commercial Tenant (if Applicant)  
Date  

Print Name

The City of San Marcos reserves the right to terminate any agreement under the BIG Program if a participant is found to be in violation of any conditions set forth in these guidelines or if the project has been started prior to an executed agreement with the City of San Marcos.
<table>
<thead>
<tr>
<th>Application Date</th>
<th>Business Name</th>
<th>Business Address</th>
<th>Applicant Name</th>
<th>Property Owner Name</th>
<th>Project Description</th>
<th>Current Status</th>
<th>Est. Total Investment</th>
<th>Reimbursement Amount</th>
<th>Reimbursement Date</th>
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<td>1504 AQ Springs</td>
<td>Stan Ledbetter</td>
<td>Vance J. Elliott</td>
<td>New sign</td>
<td>Pending</td>
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<td>237 N. LBJ</td>
<td>Tim Williamson</td>
<td>James N. Casey</td>
<td>Façade, lighting &amp; signage improvements</td>
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<td>217 E. Hopkins</td>
<td>Adam Lilley</td>
<td>Wade Hudson</td>
<td>Rebuild porch, build trash enclosure, landscaping</td>
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</tr>
<tr>
<td>03.15.17</td>
<td>Fortune Corner</td>
<td>812 S. Guadalupe</td>
<td>Mindi Lai</td>
<td>Mindi Lai</td>
<td>Outdoor lighting and seating</td>
<td>Pending</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>02.01.17</td>
<td>Kiva Lounge</td>
<td>202 N. LBJ</td>
<td>Miles Altgelt</td>
<td>Dennis Figol</td>
<td>Outdoor patio</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.24.16</td>
<td>The Hub Cyclery</td>
<td>119 E. Hopkins</td>
<td>Andy Howard</td>
<td>Scott Gregson</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>09.15.16</td>
<td>Satin's Salon</td>
<td>141 S. LBJ</td>
<td>Satin Ritchie</td>
<td>William Nicola</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08.29.16</td>
<td>San Marcos Allegheny, LTD</td>
<td>1504 AQ Springs</td>
<td>Vance J. Elliott</td>
<td>Vance J. Elliott</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08.25.16</td>
<td>Phone Geeks</td>
<td>243 N. LBJ</td>
<td>Matt Middleton</td>
<td>James N. Casey</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08.25.16</td>
<td>SM Nightlife</td>
<td>145 E. Hopkins</td>
<td>Brian Scofield</td>
<td>B.L. Scofield, Inc.</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08.04.16</td>
<td>The Spot</td>
<td>408 S. LBJ</td>
<td>Gabriel Gutierrez</td>
<td>David Sassenhagen</td>
<td>N/A</td>
<td>Inactive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.15.17</td>
<td>TBD</td>
<td>216 North Street</td>
<td>Chase &amp; Seth Katz</td>
<td>Kevin Katz</td>
<td>Remodel + signage</td>
<td>Application denied</td>
<td>Permits issued prior to BIG application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>07.12.16</td>
<td>San Marcos Tattoo Emporium</td>
<td>120 N. LBJ</td>
<td>Brian Price</td>
<td>H.C. Kyle, III</td>
<td>Remove and replace sign</td>
<td>Application denied</td>
<td>Sign installed w/o permit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>06.29.16</td>
<td>AquaBrew</td>
<td>150 S. LBJ</td>
<td>Carlos Russo</td>
<td>Carlos Russo</td>
<td>New sign</td>
<td>Application denied</td>
<td>Sign installed prior to BIG application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>09.11.18</td>
<td>North Street</td>
<td>216 North Street</td>
<td>Chase Katz</td>
<td>Chase Katz</td>
<td>New sign</td>
<td>Approved</td>
<td>$850.00</td>
<td>$425.00</td>
<td></td>
</tr>
<tr>
<td>04.02.18</td>
<td>Son of a Sailor</td>
<td>241 N. LBJ</td>
<td>William Knopp</td>
<td>James N. Casey</td>
<td>Façade improvements, new signage</td>
<td>Approved</td>
<td>$10,866.00</td>
<td>$5,000.00</td>
<td>10.22.18</td>
</tr>
<tr>
<td>03.15.17</td>
<td>Fortune Corner</td>
<td>812 S. Guadalupe</td>
<td>Mindi Lai</td>
<td>Mindi Lai</td>
<td>Paint façade</td>
<td>Approved</td>
<td>$8,000.00</td>
<td>$3,580.00</td>
<td>10.22.18</td>
</tr>
<tr>
<td>03.30.17</td>
<td>Root Cellar Café</td>
<td>145 E. Hopkins</td>
<td>Kyle Mylius</td>
<td>Brian Scofield</td>
<td>New awning and enclosure for sidewalk café</td>
<td>Complete</td>
<td>$35,550.00</td>
<td>$12,250.00</td>
<td>06.20.18</td>
</tr>
<tr>
<td>02.06.18</td>
<td>EdR - The Local</td>
<td>Hutchison and Edward Gary</td>
<td>Reagan Tatsch</td>
<td>COSM</td>
<td>Pet relief area, public ROW improvements</td>
<td>Complete</td>
<td>$5,145.28</td>
<td>$2,061.00</td>
<td>05.15.18</td>
</tr>
<tr>
<td>08.07.17</td>
<td>Gumby's Pizza</td>
<td>312 W. Hopkins</td>
<td>Forrest Higdon</td>
<td>Forrest Higdon</td>
<td>New signs</td>
<td>Complete</td>
<td>$15,295.00</td>
<td>$4,690.00</td>
<td>05.02.18</td>
</tr>
<tr>
<td>01.08.18</td>
<td>Rita's Parlour</td>
<td>1504 Aquarena Springs, Suite 202A</td>
<td>Rita Patel</td>
<td>Carl Patterson</td>
<td>New signs</td>
<td>Complete</td>
<td>$7,981.98</td>
<td>$3,488.00</td>
<td>04.17.18</td>
</tr>
<tr>
<td>09.12.17</td>
<td>Hays County BBQ</td>
<td>1612 S. IH 35</td>
<td>Michael Hernandez</td>
<td>Michael Hernandez</td>
<td>Remove and replace awning, replace storefront glazing</td>
<td>Complete</td>
<td>$32,648.00</td>
<td>$5,000.00</td>
<td>11.16.17</td>
</tr>
<tr>
<td>05.05.17</td>
<td>Pitaya</td>
<td>230 N. LBJ</td>
<td>Dahlia Woods Gallery, LLC</td>
<td>Dahlia Woods</td>
<td>Remove and replace awning, replace storefront glazing</td>
<td>Complete</td>
<td>$50,000.00</td>
<td>$20,000.00</td>
<td>10.03.17</td>
</tr>
<tr>
<td>06.06.17</td>
<td>Eros Studio</td>
<td>118 W. San Antonio</td>
<td>Francisco Romero</td>
<td>Presley Platt</td>
<td>Paint façade, window display and exterior lighting, new sign</td>
<td>Complete</td>
<td>$3,407.00</td>
<td>$1,531.14</td>
<td>10.02.17</td>
</tr>
<tr>
<td>03.28.17</td>
<td>Japan Latino</td>
<td>1328 N. IH 35</td>
<td>Henry Lopez</td>
<td>George Van Klerf</td>
<td>New sign, building lights</td>
<td>Complete</td>
<td>$6,102.00</td>
<td>$2,825.00</td>
<td>07.14.17</td>
</tr>
<tr>
<td>01.13.17</td>
<td>Blue Dahlia Bistro</td>
<td>107 E. Hopkins</td>
<td>Sam &amp; Amy Ramirez</td>
<td>Vance J. Elliott</td>
<td>Awning, glazing and historic feature restoration</td>
<td>Complete</td>
<td>$111,820.00</td>
<td>$9,100.00</td>
<td>07.14.17</td>
</tr>
<tr>
<td>02.28.17</td>
<td>Buzz Mill</td>
<td>144 S. Guadalupe</td>
<td>Jason Sabala</td>
<td>Vance J. Elliott</td>
<td>New sign</td>
<td>Complete</td>
<td>$8,822.00</td>
<td>$4,075.00</td>
<td>06.01.17</td>
</tr>
<tr>
<td>04.06.17</td>
<td>City of San Marcos</td>
<td>Various</td>
<td>COSM</td>
<td>COSM</td>
<td>Branded bike racks to be installed downtown</td>
<td>Complete</td>
<td>$3,722.30</td>
<td>$3,722.30</td>
<td>08.07.17</td>
</tr>
<tr>
<td>01.13.17</td>
<td>Blue Dahlia Bistro</td>
<td>107 E. Hopkins</td>
<td>Sam &amp; Amy Ramirez</td>
<td>Vance J. Elliott</td>
<td>Fire suppression system</td>
<td>Complete</td>
<td>$21,800.00</td>
<td>$10,900.00</td>
<td>03.10.17</td>
</tr>
<tr>
<td>06.29.16</td>
<td>Hays Finance Corporation</td>
<td>125 N. Guadalupe</td>
<td>John Diaz (on behalf of)</td>
<td>Guadalupe Carbajal</td>
<td>Awnings and lighting improvements, replace sign</td>
<td>Complete</td>
<td>$5,066.00</td>
<td>$2,533.00</td>
<td>11.29.16</td>
</tr>
</tbody>
</table>

**Business Improvement & Growth (BIG) Grant Program Summary as of January 8, 2019**

- **Pending Applications**
- **Denied Applications**
- **Approved Applications**
- **Completed Projects**
- **Approved Applications Sub-Total**
- **Completed Projects Sub-Total**
- **Encumbered Funds Total (Approved + Completed Projects)**
Consider election of the Mayor Pro Tem and optional Deputy Mayor Pro Tem.
AGENDA CAPTION:
Consider the appointment of the Mayor or a City Council Member to fill vacancies on the following Boards or Committees:

a. Conditional Use Permit (CUP) Committee - (1 - Member of the Council)
b. Greater San Marcos Partnership Board of Directors - (1 - Member of the Council)
c. Rental Registration Committee - (1 - Member of the Council)
d. La Cima Committee - (1 - Member of the Council)

Meeting date: January 15, 2019

Department: City Clerk

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

Background Information:

a. CUP Committee
   Currently serving: Mayor Hughson, Council Member Gonzales and Vacant

b. Greater San Marcos Partnership Board of Directors
   Currently serving: Mayor Hughson, Council Member Mihalkanin and Vacant

c. Rental Registration Committee
   Currently serving: Council Member Derrick, Council Member Gonzales and Vacant

d. La Cima Committee
   Currently serving: Council Member Derrick, Council Member Prewitt and Vacant

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:
AGENDA CAPTION:
Consider appointments to the vacant positions on the San Marcos Innovation District Stakeholder Group, and provide direction to the City Manager.

Meeting date: January 15, 2019

Department: City Clerk’s Office in cooperation with Kevin Burke

Amount & Source of Funding
Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

Fiscal Note:
Prior Council Action: Council discussed the Innovation District concept on October 2, 2017, held a Work Session on June 19, 2018, and adopted Resolution 2018-131R on August 7, 2018, and amended this Resolution on December 12, 2019

City Council Strategic Initiative:
Community Partners

Comprehensive Plan Element(s):
☒ Economic Development - Opportunity created by Capital of University, Business, Civic, & Cultural Leaders
☐ Environment & Resource Protection
☐ Land Use
☐ Neighborhoods & Housing
☐ Parks, Public Spaces & Facilities
☐ Transportation
☐ Not Applicable

Master Plan:
Vision San Marcos - A River Runs Through Us
Background Information:
On December 12, 2018, the City Council amended the make-up of the San Marcos Innovation District Stakeholder Group to add the Calaboose African American History Museum and an additional Citizen-at-Large position.

a. Jane Hughson, Mayor, City of San Marcos
b. Debbie Ingalsbe, Hays County Commissioner’s Court representative
c. Anthony Stahl, President/CEO, Central Texas Medical Center
d. Carina Boston-Pinales, Splash Coworking, Coworking Space
e. Walter Horton, Assoc. Vice President for Research, Texas State University
f. Steve Frayser, Executive Director, Texas State University STAR Park
g. Kayli Head, Main Street Board Chair
h. Adriana Cruz, Greater San Marcos Partnership
i. Vacant, Centro Cultural Hispano de San Marcos
j. Vacant, Calaboose African American History Museum
k. Christopher Laing, Executive Director, Capital City Innovation
l. John David Carson, Carson Properties, Property Owner Representative
m. Vacant, Business Owner Representative
n. Vacant, Citizen-at-Large
o. Vacant, Citizen-at-Large

Council Committee, Board/Commission Action:

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends approval.
RESOLUTION NO. 2018- R


RECITALS:

1. By the adoption of Resolution No. 2018-131R the City Council approved the establishment of the San Marcos Innovation District.

2. The City Council wishes to amend certain provisions of its previous resolution as set forth in this resolution below.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The boundaries of the Innovation District are hereby modified as shown in Exhibit A, attached hereto.

PART 2. The stakeholder advisory group for the Innovation District shall be composed of the following members:

a. Mayor, City of San Marcos;
b. Hays County Commissioner’s Court representative
c. President/CEO, Central Texas Medical Center;
d. Coworking Representative;
e. Associate Vice President for Research, Texas State University;
f. Executive Director, Texas State University STAR Park;
g. Main Street Advisory Board Chair;
h. President, Greater San Marcos Partnership;
i. Centro Cultural Hispano de San Marcos Representative;
j. Calaboose African American History Museum;
k. Executive Director, Capital City Innovation;
l. Property Owner Representative;
m. Business Owner Representative;
n. Citizen-at- Large; and
o. Citizen-at-Large

PART 3. Persons previously appointed by name by virtue of holding any office or position listed in Part 2, subsections a-g, shall serve only for so long as such named persons
continue to hold such office or position. All other persons previously appointed shall continue to serve at the pleasure of the City Council.

PART 4. The stakeholder advisory group is hereby directed to approve a district governance structure, conduct an audit of innovation ecosystem assets, and develop an action plan.

PART 5. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on December 12, 2018.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk
Amendment:

Item #21 was amended to add the La Cima Committee.