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, or provide direction to Staff regarding the following Executive Session item in accordance with Local Government Code Section § 551.074 - Personnel Matters: Discuss and review Appointee Evaluation Goals for the City Manager, City Attorney, and City Clerk.

V. 30 Minute Citizen Comment Period

PRESENTATIONS

2. Receive the City of San Marcos’ Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended September 30, 2017 from the City’s audit firm ABIP, P.C.

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.

3. Consider approval, by motion, of the following meeting Minutes:
   A) March 6, 2018 - Work Session Minutes
   B) March 6, 2018 - Regular Meeting Minutes
4. Consider approval of Resolution 2018-37R, approving the Professional Engineering Agreement between the City and Halff Associates Inc. for the Blanco Riverine Community Development Block Grant - Disaster Recovery (CDBG-DR) and Texas Water Development Board (TWDB) Project in the estimated amount of $683,518.00; and contingent upon the provision of sufficient insurance in accordance with the attached agreement; authorizing the City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

5. Consider approval of Resolution 2018-38R, approving the purchase of water meters and registers from Aqua Metric Sales Company in the estimated amount of $3,248,801.50 over five years; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

6. Consider approval of Resolution 2018-39R, approving the renewal of the contract with Matchpoint Water Asset Management, Inc. for Leak Detection Services for an additional one-year term in the amount of $26,475.00 making the total value of the contract $52,950.00; authorizing the City Manager or his designee to execute the appropriate documents related to the renewal of this agreement; and declaring an effective date.

7. Consider approval of Resolution 2018-40R, approving a contract with TXI Operations, LP, d/b/a Martin Marietta for the sale of reclaimed water; authorizing the City Manager to execute the appropriate documents related to this contract on behalf of the City and declaring an effective date.

8. Consider approval of Resolution 2018-41R, approving the award of a construction contract to Santa Clara Construction, Ltd. for the Cheatham Street Waterline Bore Improvements project in the amount of $527,775.00 contingent upon the contractor’s timely submission of sufficient bonds and insurance in accordance with the City’s construction contract documents for the project; authorizing the City Manager or his designee to execute all contract documents on behalf of the City and declaring an effective date.

NON-CONSENT AGENDA

9. Consider approval of Resolution 2018-42R, approving and authorizing the City Manager to execute a wholesale electric power purchase agreement with AEP Energy Partners, Inc. to supply wind energy to the San Marcos Electric Utility; declaring the agreement to be a competitive matter of the San Marcos Electric Utility under Section 552.133 of the Texas Government Code; and declaring an effective date.

10. Discuss and consider an appointment to fill two vacancies on the Library Board, and provide direction to Staff.

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.
POSTED ON MONDAY, MARCH 12, 2018 @ 6:30PM

JAMIE LEE CASE, 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
File #: ID#18-147, Version: 1

AGENDA CAPTION:
Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Local Government Code Section § 551.074 - Personnel Matters: Discuss and review Appointee Evaluation Goals for the City Manager, City Attorney, and City Clerk.
AGENDA CAPTION:
Receive the City of San Marcos' Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended September 30, 2017 from the City's audit firm ABIP, P.C.
Meeting date: 3/20/2018

Department: Finance

Amount & Source of Funding
Funds Required: Click or tap here to enter text.
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: Click or tap here to enter text.

City Council Goal: [Please select goal from dropdown menu below]
Goal # 7 Maintain Fiscal Responsibility
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)]
Background Information:
The audit of the City's annual financial statements has been completed by ABIP, P.C. Janet Pitman, shareholder with the firm, will be available to discuss the results of the audit and the City's financial position as of September 30, 2017.

The City's Comprehensive Annual Financial Report (CAFR) was presented to the Finance and Audit Committee prior to Council presentation.

Council Committee, Board/Commission Action:
Finance & Audit Committee received the report on March 13, 2018.

Alternatives:
Click or tap here to enter text.

Recommendation:
Click or tap here to enter text.
City of San Marcos, Texas
Comprehensive Annual Financial Report
Year Ended September 30, 2017
Independent Auditor’s Report

Audit Standards followed
- Generally Accepted Auditing Standards
- Government Auditing Standards

Purpose
- To form an independent opinion on whether the financial statements are presented in accordance with Generally Accepted Accounting Principles (GAAP).

Independent opinion on the financial statements
- Audit is “unmodified”
  - This is the best opinion that can be given for an independent audit. It means we have no modifying statements in our opinion letter.
Financial Highlights
-Government-Wide Financial Statements

- Assets of the City exceeded its Liabilities (Net Position) by $282 million at September 30, 2017.
  - Governmental Activities - $105.8 million
  - Business-type Activities - $176.2 million
- Overall Net Position increased by $13.1 million from 2016.
  - Governmental Activities – decrease of $2.8 million
    - Sales tax decreased by 3.7% as a result of one-time revenues collected in FY2016 generated by the construction of the Amazon Distribution Center
    - Expenses in Community Services increased by 17% primarily due to spending of CDBG DR funds and the addition of the Convention and Visitors Bureau to the Hotel Motel fund.
  - Business-type Activities – increase of $15.9 million
    - Charges for services increased by over 7.5% primarily due to growth in customers both the Electric and Water/Wastewater funds and rate increase in Water/Wastewater
Financial Highlights
-Fund Financial Statements

Governmental Funds

- The General Fund’s fund balance at the end of the 2017 fiscal year was $15.9 million, a decrease of $2.4 million from 2016.
  - Fund balance decrease budgeted at $2.6 million
  - The City’s unassigned fund balance at September 30, 2017 remains at the required fiscal policy of 25% (fund balance equal to 90 days of expenditures)
- The combined fund balance for all government funds was $56.2 million, a decrease of $859K from 2016.
- Restricted fund balance at the end of the 2017 fiscal year was $39.2 million primarily consisting of $27 million for capital projects and $9 million for debt service.
Proprietary Funds:

- Electric fund net position increased from $54.3 to $61.1 million
  - $32.1M Unrestricted

- Water/Wastewater fund net position increased from $92.4 to $99.9 million
  - $42.1M Unrestricted

- Stormwater fund net position increased from $7.5 to $9.3 million
  - $3.6M Unrestricted
LETTER ON CONDUCT OF AUDIT

Accounting Policies
Accounting Estimates and Disclosures
Difficulties in Performing the Audit
Misstatements
Disagreements
Management Representations
Consultations with other Independent Accountants
Compliance with the Public Funds Investment Act
Questions?

CONTACT INFORMATION

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jpitman@abipcpa.com
(210) 341-2581
or
Michael Del Toro, CPA
mdeltoro@abipcpa.com
(210) 341-2581
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
A) March 6, 2018 - Work Session Minutes
B) March 6, 2018 - Regular Meeting Minutes
Meeting date: 3/20/2018

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.
Background Information:
The following minutes are attached for review:
A) March 6, 2018 - Work Session Minutes
B) March 6, 2018 - Regular 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 Thomaides at 6:04 p.m. Tuesday, March 6, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 7 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Deputy Mayor Pro Tem Scott Gregson, Council Member Melissa Derrick, Council Member Jane Hughson, Mayor John Thomaides and Council Member Ed Mihalkanin

III. Invocation

Reverend Ben Nelson, with St. Mark’s Episcopal Church, provided the invocation this evening.

IV. Pledges Of Allegiance - United States And Texas

Eliyah Chaney, Pre-K Student at San Marcos Texas Preparatory School, led the assembly in the pledges of allegiance.

EXECUTIVE SESSION

1. Consider action, by motion, or provide direction to Staff regarding the following Executive Session items in accordance with Local Government Code Section § 551.086 Public Power Utility Competitive Matters.

A motion was made by Council Member Hughson, seconded by Deputy Mayor Pro Tem Gregson, that this Executive Session be approved. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

V. 30 Minute Citizen Comment Period
Richard Shaver, spoke to council regarding his application to serve on the Parks Board. He outlined his work experience as a supervisor at the Blue Hole Park in Wimberley and his experience in parks and recreation. He is asking Council for their appointment to the parks board.

Roland Saucedo, 211 Ebony, spoke of some concerns in regards to the workshop on CodeSMTX regarding Neighborhood Districts. He was under the impression that Small area plans were going to replace the Neighborhood Character Studies. In the last few meetings, the City staff has done amazing. However, he just wants clarification on what is different from the small area plan vs neighborhood character study. He believes this can be done simultaneously.

Diane Baker, 727 Belvin, stated that it has been more than 20 years since a historic survey has been completed and preservationist encourage these every 5 years. Please consider how the results might affect CodeSMTX and how this might fit into it. This could be a game changer if it comes into effect after Code SMTX is approved.

PRESENTATIONS

CONSENT AGENDA

A motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to approve the consent agenda with the exception of item # 7, 11, and 12 which were pulled and considered separately. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

2. Consider approval, by motion, of the following meeting Minutes:
   A) January 30, 2018 - Work Session Minutes
   B) January 30, 2018 - Regular Meeting Minutes
   C) February 6, 2018 - Work Session Minutes
   D) February 6, 2018 - Regular Meeting Minutes
   E) February 20, 2018 - Regular Meeting Minutes
   F) February 22, 2018 - Budget Policy Workshop

3. Consider approval of Ordinance 2018-06, on the second of two readings, amending the City’s 2017-2018 Fiscal Year Budget to allocate PEG (Public, Educational And Governmental) Funds in the amount of $60,000.00 for modifications to city facilities and the purchase of equipment to enhance the broadcast of city meetings; and providing an
4. Consider approval of Resolution 2018-28R, approving the purchase of plate carrier ballistic vest packages for the Police Department and Peace Officers in the Neighborhood Services Department from GT Distributors, Inc. through the Texas Local Government Purchasing Cooperative Buyboard Contract for Public Safety and Fire House Supplies and Equipment (Contract #524-17); in the total purchase amount of $57,500; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

5. Consider approval of Resolution 2018-29R, approving the renewal of the Aerial Fireworks Display Agreement (Contract #217-007) with Pyro Shows of Texas, Inc. for one year in the amount of $27,000; authorizing the City Manager to execute the appropriate documents related to the renewal of this agreement; and declaring an effective date.

6. Consider approval of Resolution 2018-30R, approving a license to encroach agreement with Ricardo Garza Hinojosa to allow certain driveway access and trash and recycling receptacle enclosure improvements to encroach within the right-of-way at 1654 Post Road; authorizing the City Manager to execute the license agreement on behalf of the City; and declaring an effective date.

7. Consider approval of Resolution 2018-31R, approving an Interlocal Cooperative Purchasing Agreement between the City of San Marcos and the City of Grand Prairie, Texas to establish a cooperative purchasing agreement for Slurry Seal Pavement Treatment Services and other Public Works contracts; approving funding under this agreement in an amount not to Exceed $500,000.00; authorizing the City Manager or his designee to execute the agreement; and declaring effective date.

A motion was made by Mayor Pro Tem Prewitt, seconded by Deputy Mayor Pro Tem Gregson, to approve Resolution 2018-31R. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

8. Consider approval of Resolution 2018-32R, approving an Interlocal Agreement with the Lower Colorado River Authority concerning electrical distribution, control and substation facilities including the Canyon Substation; authorizing the City Manager to execute the agreement; and providing an effective date.

9. Consider approval of Resolution 2018-33R, approving an Economic Development Incentive Agreement with Haddad Enterprises, LLC, DBA Leyali’s Mediterranean Grill, that grants a waiver of the requirement under Section 4.3.4.2 of the Land Development Code that a restaurant in the Central Business Area must be in operation for at least six
months before it may sell beer and wine for on-premises consumption in connection with a proposed restaurant at 301 N. Guadalupe Street, Suite 154; authorizing the City Manager to execute said agreement on behalf of the City; and declaring an effective date.

10. Consider approval of Resolution 2018-34R approving the City Council’s Strategic Initiatives for Fiscal Year 2019; and declaring an effective date.

11. Consider approval, by motion, of the final locations for the Mermaid March Sculptures, and allowing the City Manager or his designee to make changes as necessary.

**Main Motion:** a motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Derrick to approve final locations of the Mermaid Sculptures.

**Motion to Amend:** a motion was made by Council Member Derrick, seconded by Council Member Hughson, to place the "Blooming Brightly Sculpture" at Children's park. The motion carried by the following vote:

- **For:** 6 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson and Council Member Mihalkanin
- **Against:** 1 - Mayor Thomaides

**Main Motion:** to approve the locations for the Mermaid Sculptures as amended. The motion carried by the following vote:

- **For:** 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin
- **Against:** 0

12. Consider approval, by motion, to waive Impact Fees for Hays County Public Safety Facility Projects in the estimated amount of $400,486.

**A motion was made by Mayor Pro Tem Prewitt, seconded by Deputy Mayor Pro Tem Gregson, to postpone the approval to waive impact fees for Hays County Public Safety Facility Projects to a later date, so further discussion can be held.** The motion carried by the following vote:

- **For:** 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin
- **Against:** 0

**PUBLIC HEARINGS - 6:00 PM**

13. Receive a Staff briefing and hold a Public Hearing to receive comments for or against Resolution 2018-35R, approving the issuance of a Limousine Service Certificate to
Adam Jester, d/b/a Luck Man Limo Service for the provision limousine service in the City; and declaring an effective date, and consider approval of Resolution 2018-35R.

Mayor Thomaides opened the Public Hearing at 6:38 p.m. there being no comments, the Public Hearing was closed at 6:39 p.m.

A motion was made by Mayor Pro Tem Prewitt, seconded by Deputy Mayor Pro Tem Gregson, to approve Resolution 2018-35R. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

14. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-36R approving a Budget Policy Statement for preparation of the 2018-2019 fiscal year budget; and declaring an effective date; and consider approval of Resolution 2018-36R.

Main Motion: a motion was made by Deputy Mayor Pro Tem Gregson, seconded by Mayor Pro Tem Prewitt to approve Resolution 2018-36R

Motion to Amend: a motion was made by Mayor Pro Tem Prewitt, seconded by Deputy Mayor Pro Tem Gregson, that this Resolution be amended to include direction that the City Manager will review the Special Economic Development Funding Policy during the budget process in order to analyze the policies potential uses. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

Main Motion: to approve Resolution 2018-36R, as amended. The motion carried by the following vote:

For: 6 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

Absent: 1 - Council Member Derrick

NON-CONSENT AGENDA

15. Consider approval of Ordinance 2018-07, on the first of two readings, amending the City’s 2017-2018 Fiscal Year Budget by budgeting and appropriating $442,000 from
General Fund to be distributed to The Village to provide funding for the construction of Phase II of The Village Main Project; and providing an effective date.

A motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to approve Ordinance 2018-07, on the first of two readings. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

16. Consider approval of Ordinance 2018-08, on the first of two readings, creating a designated permit area under Section 82.189 of the San Marcos City Code that allows parking by permit only on the West side of the 300 Block of North Street between Burleson Street and Hutchison Street, amending the traffic register to reflect such designated permit area; and providing for an effective date.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Mayor Thomaides, to deny Ordinance 2018-08. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

17. Discuss and consider annual appointments to various Boards and Commissions, to wit:
   A) Airport Commission
   B) Animal Shelter Advisory Committee
   C) Arts Commission
   D) Cemetery Commission
   E) Convention and Visitors Bureau Board
   F) Economic Development San Marcos Board
   G) Ethics Review Commission
   H) Historic Preservation Commission
   I) Housing Authority
   J) Library Board
   K) Main Street Advisory Board
   L) Neighborhood Commission
   M) Parks and Recreation Board
   N) Planning and Zoning Commission
   O) San Marcos Youth Commission
   P) Senior Citizen Advisory Board
   Q) Veteran's Affairs Advisory Committee
   R) Zoning Board of Adjustment

   The following applicants were nominated by Deputy Mayor Pro Tem Gregson
for consideration to serve on the Airport Advisory Board:
Tom Roach
David Badal
Dan Stauffer

Following a roll call vote all members were unanimously approved for appointment to the Airport Advisory Board.

The following applicants were nominated by Deputy Mayor Pro Tem Gregson for consideration to serve on the Animal Shelter Advisory Committee:
Kara Montiel
Gail Ann Sharp

Following a roll call vote both members were unanimously approved for appointment to the Animal Shelter Advisory Committee.

The following applicants were nominated for consideration to serve on the Arts Commission:
Amy Lou Cox - nominated by Council Member Derrick
Barbara Williamson - nominated by Deputy Mayor Pro Tem Gregson
Jamie Poole - nominated by Council Member Prewitt

Following a roll call vote all members were unanimously approved for appointment to the Arts Commission.

The following applicants were nominated for consideration to serve on the Cemetery Commission
Dolores Gibbs - nominated by Council Member Hughson
Robert Moore - nominated by Council Member Hughson
Robert Cotner - nominated by Deputy Mayor Pro Tem Gregson
Shannon Fitzpatrick - nominated by Council Member Hughson
Michele Donnelly - nominated by Council Member Hughson
Patsy Pohl - nominated by Mayor Pro Tem Prewitt

Following a roll call vote Dolores Gibbs, Robert Moore, Robert Cotner, and Shannon Fitzpatrick received a majority of council votes and were appointed to the Cemetery Commission.

The following applicants were nominated by Mayor Pro Tem Prewitt for consideration to serve on the Convention and Visitor Bureau Board:
Michael Vivroux
Kristin Williams
Celina McGuill
Adriana Cruz
Sandy Clinton
Jason Mock
Saul Gonzales

Following a roll call vote all members were unanimously approved for appointment to the Convention and Visitor Bureau Board.

The following applicants were nominated for consideration to serve on the Economic Development San Marcos Board:
Scott Gregson - nominated my Mayor Thomaides
Vikash Patel - nominated by Mayor Pro Tem Prewitt

Following a roll call vote both members were unanimously approved for appointment to the Economic Development San Marcos Board.

The following applicants were nominated for consideration to serve on the Ethics Review Commission:
Arthur Taylor - nominated by Council Member Derrick
Forrest Fulkerson - nominated by Council Member Gregson
Judy Kay Thomas - nominated by Mayor Thomaides
Lee Garcia - nominated by Council Member Mihalkanin
Lea Rice - nominated by Council Member Hughson
Maurizio Turri - nominated by Mayor Pro Tem Prewitt

Following a roll call vote Arthur Taylor, Lee Garcia, Lea Rice, and Maurizio Turri received a majority of council votes and were appointed to the Ethics Commission.

The following applicants were nominated for consideration to serve on the Historic Preservation Commission
Griffin Spell - nominated by Council Member Hughson
Diana Baker - nominated by Mayor Pro Tem Prewitt to serve a one year term
Thea Dake - nominated by Council Member Hughson
Sue Cohen - nominated by Deputy Mayor Pro Tem Gregson
Ben Kvanli - nominated by Deputy Mayor Pro Tem Gregson

Following a roll call vote Griffin Spell, Diana Baker, and Thea Dake received a majority of council votes and were appointed to the Historic Preservation Commission.
The following applicants were nominated for consideration to serve on the Housing Authority:
Rose Brooks
Gloria Salazar
Richard Cruz
Juan Miguel Arredondo

Following a roll call vote Rose Brooks, Richard Cruz, and Juan Miguel Arredondo received a majority of council votes and were appointed to the Housing Authority.

The following applicants were nominated for consideration to serve on the Library Board:
Donnell Gooch - nominated by Council Member Hughson
Adelaide McAninch - nominated by Council Member Hughson
Joanne Engel - nominated by Deputy Mayor Pro Tem Gregson
Joan Nagel - nominated by Deputy Mayor Pro Tem Gregson

Following a roll call vote all members were unanimously approved for appointment to the Library Board.

The following applicants were nominated for consideration to serve on the Main Street Advisory Board:
Kristan Alvarez - nominated by Council Member Hughson
Cory S. Glisson-Munier - nominated by Council Member Derrick
Salana Henderson - nominated by Mayor Pro Tem Prewitt
Ashley McCafferty - nominated by Council Member Mihalkanin

Following a roll call vote Kristan Alvarez and Ashley McCafferty received a majority of council votes and were appointed to the Main Street Advisory Board.

The following applicants were nominated for consideration to serve on the Neighborhood Commission:
Michelle McWaters - nominated by Mayor Thomaides
Roland Saucedo - nominated by Mayor Thomaides
Lizbeth Dobbins - nominated by Mayor Pro Tem Prewitt
Lupe Costilla - nominated by Council Member Gregson
Robert Mooney - nominated by Mayor Thomaides
Following a roll call vote Michelle McWaters, Roland Saucedo, Lizbeth Dobbins, and Lupe Costilla received a majority of council votes and were appointed to the Neighborhood Commission.

The following applicants were nominated for consideration to serve on the Parks Board:
Richard Shaver - nominated by Mayor Pro Tem Prewitt
Thomas Hardy - nominated by Council Member Derrick
Brian Olson - nominated by Deputy Mayor Pro Tem Gregson
Diane Phalen - nominated by Council Member Hughson
Maggie Hutchins-Wagner - nominated by Council Member Hughson
Ryan McGillicuddy - nominated by Council Member Derrick
Joshua Simpson - nominated by Council Member Mihalkanin
Lea Rice - nominated by Council Member Hughson

Following a roll call vote Richard Shaver, Diane Phalen, Maggie Hutchins-Wagner, and Ryan McGillicuddy received a majority of council votes and were appointed to the Parks Board.

The following applicants were nominated for consideration to serve on the Planning and Zoning Commission:
Shawn Dupont - nominated by Deputy Mayor Pro Tem Gregson
Mike Dillon - nominated by Council Member Hughson
Maxfield Baker - nominated by Council Member Derrick
Elena Duran - nominated by Council Member Gonzales
Rick Henderson - nominated by Mayor Thomaides
Matthew Haverland - nominated by Mayor Pro Tem Prewitt

Following a roll call vote Mike Dillon, Maxfield Baker, and Matthew Haverland received a majority of council votes and were appointed to the Planning and Zoning Commission.

The following applicants were nominated by Council Member Hughson for consideration to serve on the San Marcos Youth Commission:
Tellef Ault
Isabella de la Iglesia
Aaron MacEmerich
Aubrey Ashton
Fatima Cardenas
George Daniel
Dakota Fernandez
Avery Jones
Benjamin Murdoch
Gabriel Ortiz

Following a roll call vote all members were unanimously approved for appointment to the Youth Commission.

The following applicants were nominated by Deputy Mayor Pro Tem Gregson for consideration to serve on the Senior Citizen Advisory Board:
Marie Gobble
Sandra Martinez
Marianne Reese
Megan Jones

Following a roll call vote all members were unanimously approved for appointment to the Senior Citizen Advisory Board.

The following applicants were nominated for consideration to serve on the Veteran Affairs Advisory Board:
Linda Darlene Upshaw - nominated by Mayor Pro Tem Prewitt
Jerry Lager - nominated by Council Member Hughson
Samantha Bagley - nominated by Mayor Thomaides
Ben Kvanli - nominated by Council Member Hughson
Theodore Dake, Jr. - nominated by Council Member Hughson

Following a roll call vote Linda Darlene Upshaw, Jerry Lager, Ben Kvanli, and Theodore Dake, Jr. received a majority of council votes and were appointed to the Veteran Affairs Advisory Board.

The following applicants were nominated for consideration to serve on the Zoning Board of Adjustments:
Wayman Jones - nominated by Council Member Mihalkanin
Floyd Akers - nominated by Mayor Pro Tem Prewitt
Tom Rowe - nominated by Mayor Thomaides
Nicholas Costilla - nominated by Council Member Gonzales
Jennifer Rogers - nominated by Mayor Thomaides

Following a roll call vote Wayman Jones, Tom Rowe, and Nicholas Costilla received a majority of council votes and were appointed to the Zoning Board of Adjustments.
VI. Question and Answer Session with Press and Public.

Roland Saucedo, 211 Ebony, what is the difference in an arterial road and thoroughfare road and whom makes that determination?

Assistant City Manager Collette Jamison responded. The difference can be the section of street, how wide it is including the right of way and sidewalk. There is a thoroughfare plan outlined in the Transportation Master Plan.

Stephanie Battle, asked a question about item #12 on the agenda. If Council does not approve the waiver of fees for the Public Safety Facilities how do you suggest staff will pay for this facility.

Mayor responded that it was postponed to allow further discussion between the City and County to determine a way to move forward.

Ms. Ybarra, clarification on item #16 on the agenda. What are you suggesting regarding parking.

Mayor responded that it was denied this evening, but staff will continue to redefine what Residential Public Parking are actually allowed and staff meetings will be held to discuss further.

VII. Adjournment.

Jamie Lee Case, TRMC, City Clerk                                  John Thomaides, Mayor

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
I. Call To Order

With a quorum present, the work session meeting of the San Marcos City Council was called to order by Mayor Thomaides at 3:05 p.m. Tuesday, March 6, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 7 - Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Deputy Mayor Pro Tem Scott Gregson, Council Member Melissa Derrick, Council Member Jane Hughson, Mayor John Thomaides and Council Member Ed Mihalkanin

1. Receive a staff presentation and discuss the proposed San Marcos Development Code (Code SMTX) items including, but not limited to, Small Area Plans, Regulating Plans and Proposed Amendments, and provide direction to staff related to a resolution regarding the next steps following adoption of Code SMTX.

Bert Lumbreras, City Manager, provided an introduction that the focus of the work session was on small area plans. He provided that Staff has prepared a presentation to walk Council through the work that was previously done with the Comprehensive Plan, as well as, the Neighborhood Workshops and how that work has been incorporated into this process. In addition, Staff is proposing a two-phase approach for how we conduct small area plans. Mr. Lumbreras stated that they were looking for direction regarding how the small area plans process moves forward and for Council to review a proposed resolution outlining our next steps once Code SMTX is adopted. Lastly, he stated that they are asking the Council to review substantive amendments submitted subsequent to first reading, as well as, those submitted by individual Council Members early last week. Mr. Lumbreras explained that Staff was able to provide analysis with information about the impact, but for amendments submitted over the weekend, yesterday and today, Staff has not had enough time to analyze. If Council would like to move forward with the new amendments, Staff will need additional time to make sure they do not affect other code areas. Mr. Lumbreras also explained the amendments Council approved in regard to Chapter 34, Rental Property Standards is an
example of an area where Staff will need time to determine how the implementation and enforcement process needs to be modified to address the policy changes approved by Council. The one-year delay in the effective date is critical as it allows us the time we need to review those processes and provide a recommendation to Council prior to the January 1, 2019 effective date.

Abigail Gillfillan, Planning Manager, began the presentation to Council recapping what would be reviewed today. Shannon Mattingly, Director of Planning and Development Services, provided the council with the Small Area Plans part of the presentation. Ms. Mattingly explained the process of Phase 1 and Phase 2 of the Small Area Plans Process. Phase 1: Project Plan, would establish and prioritize area city wide with community and council. Update Neighborhood Character Study Page of the Comp Plan. She explained that it would cost around $10,000 in FY18 and take approximately 6 months. Phase 2: Small Area Plans, plans may be conducted concurrently and would take approximately 10 months and cost around $50,000 in FY19. Ms. Mattingly provided a list of the potential outcomes.

Staff will try to find a consultant within the Central Texas Area to assist with the hybrid proposed. Council discussed public outreach and asked Staff to ensure that the folks that live there have their comments received. Staff will involve CONA, the Neighborhood Commission and residents in the process. Ms. Gillfillan walked the Council through the amendments for Second Reading. Council held discussion regarding the Neighborhood Districts. Discussion was held regarding a proposed amendment from Mayor Pro Tem Prewitt regarding the preservation buffer and chart. Council provided direction to have another Work Session. Council also provided consensus regarding moving forward with the proposed chart.

EXECUTIVE SESSION

2. In accordance with Local Government Code Section § 551.086 Public Power Utility Competitive Matters: Receive a Staff presentation and deliberate regarding a purchase power agreement.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Mihalkanin, to enter Executive Session at 4:53 p.m. The motion carried by the following vote:

For: 6 - Mayor Pro Tem Prewitt, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin

Against: 0

Absent: 1 - Council Member Gonzales
III. Adjournment.

The Council returned into Open Session at 6:03 p.m.

Mayor Thomaides adjourned the work session meeting of the San Marcos City Council at 6:03 p.m.

Jamie Lee Case, TRMC, City Clerk  
John Thomaides, Mayor
Consider approval of Resolution 2018-37R, approving the Professional Engineering Agreement between the City and Halff Associates Inc. for the Blanco Riverine Community Development Block Grant - Disaster Recovery (CDBG-DR) and Texas Water Development Board (TWDB) Project in the estimated amount of $683,518.00; and contingent upon the provision of sufficient insurance in accordance with the attached agreement; authorizing the City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

Meeting date: 3/20/2018

Amount & Source of Funding
Funds Required: $683,518
Account Number: C633 - State funds
Funds Available: $1,947,114
Account Name: Blanco Overflow Mitigation

Fiscal Note:
Prior Council Action: 2017-160 Approval of Substantial Amendment #4 to CDBG-DR Grant; 2017-100R Approval of On-Call List of Professional Engineering Firms; 2017-084 Approval of Loan & Loan Forgiveness to TWDB

City Council Goal: [Please select goal from dropdown menu below]
Goal #5 Maintain & Improve City’s Infrastructure
Goal #2 Beautify & Enhance the Quality of Place
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 - Population Prepared for and resilient to Man-Made & Natural Disasters
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
Flood Protection Master Plan

Background Information:
In June 2017 City Council approved a list of on-call engineering firms responding to RFP #217-247 for design of the Riverine Project. Three firms from the list were selected for interview on their specific qualifications for the Blanco Riverine (aka Blanco San Marcos Rivers Flood Mitigation) Project. Halff was selected after the interviews based upon their project team and involvement with the GBRA/USACE Flood Mitigation project.

This project is the fifth project approved by City Council for the CDBG-DR infrastructure funding. The scope will begin with the project as envisioned with the CDBG-DR- Feasibility Study and the GBRA/USACE Flood Mitigation Study. A refinement of these two studies will provide a preliminary engineering report (30% design and environmental coordination) for the short term CDBG-DR Blanco Riverine project as approved in Substantial Amendment #4. The preliminary report will consider input from both a public meeting and landowner meetings as well as environmental constraints and benefit/cost. The prioritization matrix developed during the Feasibility Study will be refined for the short term alternatives analysis. Additionally the Preliminary Engineering report will identify long term options to increase the flood protection level through a larger state or federal funded project and through the City's planning and engineering efforts.

The milestones in this scope are:
Property Owner & Public Listening Mtg - April 2018
Evaluation of alternatives, follow-up public mtg and City Council direction - August 2018
Schematic design, environmental assessment, agency coordination, clearance - August 2019

The loan proceeds from the Texas Water Development Board loan will be used to fund this preliminary phase. After the preliminary phase is approved and environmentally cleared, the design scope will be finalized and will be potentially funded from either TWDB or CDBG-DR funds. Using the $1,921,000 in TWDB funds for as much of the design and land acquisition costs as possible will allow the CDBG-DR funds to be allocated to construction. Based upon the proposed schedule, construction should begin late 2020.
Council Committee, Board/Commission Action:
None

Alternatives:
Click or tap here to enter text.

Recommendation:
Approve agreement
RESOLUTION 2018  

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PROFESSIONAL ENGINEERING AGREEMENT BETWEEN THE CITY AND HALFF ASSOCIATES INC. FOR THE BLANCO RIVERINE CDBG-DR AND TWDB PROJECT IN THE ESTIMATED AMOUNT OF $683,518.00 AND CONTINGENT UPON THE PROVISION OF SUFFICIENT INSURANCE IN ACCORDANCE WITH THE ATTACHED AGREEMENT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THIS 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 professional engineering agreement between the city and Halff Associates Inc. for the Blanco Riverine CDBG-DR and TWDB Project in the estimated amount of $683,518.00 is approved contingent upon Halff Associates Inc.’s provision of sufficient insurance in accordance with the attached agreement.

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

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

ADOPTED this the day of 2018.

John Thomaides,  
Mayor

Attest:

Jamie Lee Case,  
City Clerk
AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL FIRM FOR
ENGINEERING SERVICES
CONTRACT #________

This Agreement is made as of [Date], 20[ ] (the “Effective Date”), by and between:

The Owner: The City of San Marcos, Texas

and


for

The Project: The Blanco Riverine Flood Mitigation Project

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the General Terms and Conditions found at http://www.sanmarcostx.gov/DocumentCenter/Home/View/6608.

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM’S SERVICES

Professional Firm agrees to perform the services specifically described in Exhibit 1 and all other professional services reasonably inferable from Exhibit 1 and necessary for complete performance of Professional Firm’s obligations under this Agreement (collectively, “Professional Firm’s Services”). To the extent of any conflict between the terms in Exhibit 1 and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional Firm agrees to use Professional Firm’s best efforts, skill, judgment, and abilities so as to perform Professional Firm’s Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.

Professional Firm agrees to perform Professional Firm's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.
Professional Firm's Services shall be reasonably accurate and free from material errors or omissions. Professional Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Professional Firm without any additional cost or expense to Owner.

Professional Firm shall designate a representative primarily responsible for Professional Firm's Services under this Agreement. The designated representative shall act on behalf of Professional Firm with respect to all phases of Professional Firm's Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Professional Firm shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of $1,000,000 each claim and $1,000,000 aggregate. The fees for such insurance will be at the expense of the Professional Firm. The Professional Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Professional Firm's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

ARTICLE 3
THE OWNER'S RESPONSIBILITIES

The Owner shall provide the Professional Firm with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Professional Firm and as reasonably necessary for the completion of Professional Firm's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

The Owner will review the Professional Firm's drawings, specifications and other documents of service produced by Professional Firm's in the performance of its obligations under this Agreement (collectively the "Design Documents") as required. Owner will notify Professional Firm of any design fault or defect in Professional Firm’s Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Firm's Services.

The Owner designates Laurie Moyer, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

Name: Laurie Moyer, P.E.
Title: Director of Engineering and Capital Improvement
630 East Hopkins
San Marcos, Texas 78666
Ph. 512-393-8130
E-mail: lmoyer@sanmarcostx.gov
ARTICLE 4
OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Professional Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner’s use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

ARTICLE 5
DISPUTE RESOLUTION

If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Professional Firm agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Professional Firm will share the mediator’s fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

ARTICLE 6
PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.
In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between Professional Firm and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

Independent Contractor. Professional Firm recognizes that Professional Firm is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. Professional Firm will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

Family Code Child Support Certification. If State funds are being used in the procurement of the services described in Exhibit A, pursuant to Section 231.006, Texas Family Code, Professional Firm certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, Texas Government Code, Professional Firm certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.
Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the Owner from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Professional Firm hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Professional Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Professional Firm shall not disclose any such confidential information, unless required by law. Professional Firm shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Professional Firm understands that those Owner funds for the payment for work performed by the Professional Firm under this Agreement have been provided through the Owner’s budget approved by Owner Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Owner cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Professional Firm acknowledges and agrees that it will have no recourse against the Owner for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Professional Firm and its employees, agents, representatives, and subcontractors have read and understand Owner’s Ethics Policy available at http://www.sanmarcostx.gov/380/Ethics, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner’s Conflicts of Interest Policy, provisions described by Owner’s Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

Termination for Convenience. The Owner may terminate the Agreement at any time upon 30-calendar days’ notice in writing to Professional Firm. Upon receipt of such notice, Professional Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Professional Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.
Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be
demed effective when delivered by hand delivery or on the third business day after the notice is deposited
in the U.S. Mail. Notices shall be sent to the following addresses:

If to Owner: The City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Attn: Engineering & Capital Improvements
EngInfo@sanmarcostx.gov

With Copies to: The City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Attn: City Attorney’s Office
LegInfo@sanmarcostx.gov

If to Professional Firm Eric Ratzman, P.E.
Halff Associates, Inc
9500 Amberglen Blvd., Building f, Suite 125
Austin, TX 78729
eratzman@halff.com

The parties may designate alternative persons or addresses for receipt of notices by written notice.

Changes in Service. If a Party requires a change or amendment to this Agreement or its Exhibits,
the Parties agree to use the Authorization on Change in Services Form in Exhibit 2 to do so. The
Authorization on Change in Services Form must be agreed to and signed by both Parties before any
change to this Agreement is effective.

ARTICLE 8
REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to Compensation for Professional Firm’s Services and
include actual and reasonable expenses incurred by the Professional Firm, that are (i) outside the services
listed in Exhibit 1; and (ii) solely and directly in connection with the performance of Professional Firm’s
Services. Such Reimbursable Expenses must be approved in writing by the Owner and may include the
following:

Expense of transportation (coach class air travel only) and living expenses in connection with
out-of-state travel as directed and approved in advance by the Owner. Transportation and living
expenses incurred within the State of Texas are not reimbursable unless expressly approved by
the Owner in advance.

Fees paid for securing approval of authorities having jurisdiction over the Project.

Professional models and renderings if requested by the Owner.
Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Professional Firm.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omисs ons insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Professional Firm.

ARTICLE 9
ADDITIONAL SERVICES

Additional Services are services not included in the Professional Firm’s Services and not reasonably inferable from Professional Firm’s Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Professional Firm shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Professional Firm shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by Professional Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 10
PAYMENTS TO PROFESSIONAL FIRM

Professional Firm shall present monthly Applications for Payment to the Owner detailing the Professional Firm’s Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Professional Firm shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Application for Payment and notify Professional Firm whether the Application is approved or disapproved, in whole or in part. Owner shall promptly pay Professional Firm for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner’s representative approves the Application for Payment.

Owner shall have the right to withhold from payments due Professional Firm such sums as are reasonably necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of Professional Firm to perform its obligations under this Agreement.

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ARTICLE 11
PROFESSIONAL FIRM’S ACCOUNTING RECORDS

Records of Professional Firm costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Professional Firm in writing. Professional Firm’s records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 12
INSURANCE

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Statutory Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker's Compensation</td>
<td>$1,000,000 each occurrence</td>
</tr>
<tr>
<td>Employer's Liability</td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Comprehensive General Liability</td>
<td>$1,000,000 each occurrence</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Comprehensive Auto Liability</td>
<td>$1,000,000 each person</td>
</tr>
<tr>
<td>Bodily Injury</td>
<td>$1,000,000 each occurrence</td>
</tr>
<tr>
<td>Property Damage</td>
<td>$1,000,000 each occurrence</td>
</tr>
<tr>
<td>Professional Liability</td>
<td>$1,000,000 per claim / annual aggregate</td>
</tr>
</tbody>
</table>

Professional Firm shall include the Owner as an additional insured on the General Liability policy, and the Worker’s Compensation policy shall include a waiver of subrogation in favor of the Owner.

Required insurance shall not be cancelable without thirty (30) days’ prior written notice to Owner.

Upon receipt of a written request from Owner supported by a good-cause description of the reasons supporting Owner’s request, Professional Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in Exhibit 1.

ARTICLE 13
INDEMNITY

Professional Firm shall hold Owner, The City of San Marcos, and its City Council, officers, agents and employees harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner, and its City Council, officers, agents and employees, customers, agents, successors and assigns against any damage or claim of any type to the extent arising from the negligent or intentional acts or omission of Professional Firm, its employees, agents and/or assigns.
ARTICLE 14
PROFESSIONAL FIRM’S COMPENSATION

The Professional Firm’s compensation for Professional Firm’s Services shall be as follows:

Service Fees: The maximum fee for Professional Firm’s Services shall not exceed Six hundred eight-three thousand, five hundred eighteen and 00/100 dollars ($683,518.00).

Reimbursable Expenses: For Reimbursable Expenses approved by the Owner (ref. Article 8 and Exhibit 3), Professional Firm shall be compensated for the actual expense incurred by Professional Firm. Notwithstanding the foregoing, Owner’s payment to Professional Firm for Reimbursable Expenses will not exceed a maximum of amount agreed upon in this Agreement and Exhibits without the prior written approval of the Owner.

Additional Services: The Professional Firm’s Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

The Owner and Professional Firm have entered into this Agreement as of the Effective Date.

OWNER: THE CITY OF SAN MARCOS

By: ____________________________
Name: Bert Lumbreras
Title: City Manager
Date: ____________________________

PROFESSIONAL FIRM: HALFF ASSOCIATES, INC.

By: ____________________________
Name: Eric J. Ratzman, P.E.
Title: Senior Project Manager
Date: 3/8/2018

Exhibits:
EXHIBIT 1 – Scope of Services and Deliverables
EXHIBIT 2 – Authorization of Change in Service Form
EXHIBIT 3 – Detailed Fee Schedule
EXHIBIT 4 – Other Language as Required by Federal, State, or Local Laws
EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES
EXHIBIT 2

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

AGREEMENT/ SERVICES:
CITY REPRESENTATIVE:
CONTRACTOR:
AUTHORIZATION NO.:
CONTRACT EFFECTIVE DATE:
THIS AUTHORIZATION DATE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: $_______
Net increase/decrease in contract amount: $_______
Revised Agreement amount: $_______

Contractor Name

By: ___________________________ Date: ___________________________

______________________________
Printed Name, Title

Approved by:

City of San Marcos: Date: ___________________________

By: ___________________________

______________________________
Printed Name, Title

City Department (PM, etc.) only below this line.
Account Number(s): ___________________________, ___________________________
Previous Changes in Service
#___: date; amount
#___: date; amount
#___: date; amount
EXHIBIT 4
FEDERAL, STATE, AND LOCAL REQUIRED PROVISIONS

A. NATIONAL OBJECTIVES
All activities funded with CDGB-DR funds must meet one of the CDBG-DR program’s National Objectives: (a) benefit low- and moderate- income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Engineer certifies that the activities carried out under this Agreement will meet a National Objective.

B. COPELAND ANTI-KICKBACK ACT COMPLIANCE
The Professional Firm will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

C. CONFLICTS OF INTEREST (24 CFR 570.611; 2 CFR 200.112 AND 200.318(c); 24 CFR 85.35; AND 24 CFR 84.42
There are two sets of conflict of interest provisions applicable to activities carried out with CDBG funding. The first set, applicable to the procurement of goods and services by subrecipients (funded applicants), is the procurement regulations located at 24 CFR 84.42 and 85.36. The second set of provisions is located at 24 CFR 570.61 l(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the Professional Firm must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

1) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:

   a) An employee, officer, or agent' of the Professional Firm;
   b) Any member or an employee's, officer's, or agent's immediate family;
   c) An employee's, agent's, or officer's partner; or
   d) An organization which employs or is about to employ any of the persons listed in the preceding sections.

2) Require that employees, agents, and officers of the Professional Firm neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, Professional Firms may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

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3) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents, or officers of the subrecipient.

With respect to all other CDBG-assisted activities, the general standard is that no employee, agent, or officer of the subrecipient who exercises decision-making responsibility with respect to CDBG funds and activities is allowed to obtain a financial interest in or benefit from CDBG activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds for the activities. Specific provisions include that:

a) This requirement applies to any person who is an employee, agent, Professional Firm, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s).

b) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.

c) Upon written request, exceptions may be granted by HUD on a case-by-case basis.

D. CERTIFICATION OF ELIGIBILITY

By submitting a proposal in response to the Invitation for Bids, the Professional Firm certifies that at the time of submission, he/she/it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

1) In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer will immediately notify the City.

2) Professional Firm certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

3) Placement of Professional Firm on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify City as required may result in City's termination of this Contract for default.

4) Contractor will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The Contractor and all subcontractors will be active and not debarred on the website, www.sam.gov, and provide a copy of the certification to the City before the entity performs work under this contract.

The Contractor must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and the UAR. Contractor will have each contractor and subcontractor complete a contractor eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify contractor eligibility.

E. NON-COLLUSION CERTIFICATION

Page 14 of 20
The Professional Firm certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

F. BYRD ANTI-LOBBYING AMENDMENT

(31 U.S.C. 1352) Contractors that bid for an award exceeding $100,000 must file the required certification that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

G. SECTION 3 COMPLIANCE

Compliance with Section 3 [These provisions are applicable to projects for which the amount of HUD assistance exceeds $200,000 and the contract or subcontract exceeds $100,000.]

1) The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2) The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

3) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date for work shall begin.

4) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

5) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment
opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

7) When required, Contractor shall furnish the City or HUD with satisfactory proof of its compliance herewith.

H. COMPLIANCE WITH RULES AND REGULATIONS

Funding for the Project has been made available by HUD through the CDBG-DR Program. The Professional Firm will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CPR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Professional Firm is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Professional Firm will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes, City permitting requirements, and City ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

a. WORKERS COMPENSATION LAWS:
1) Minimum and maximum salary and wage statutes and regulations, including but not limited to:
   a) Fair Labor Standards Act of 1938, as amended;
   b) Equal Pay Act of 1963, PL 88-38; and
   c) All applicable regulations implementing the above laws;

2) Non-discrimination statutes and regulations, including but not limited to:
   a) Title VII of the Civil Rights Act of 1964, as amended;
   b) Section 504 of the Rehabilitation Act of 1973, as amended;
   c) The Age Discrimination Act of 1975, as amended; and
   d) all applicable regulations implementing the above laws;

3) Licensing laws and regulations;
   a) Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;

4) Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;

5) All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C.7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387, as amended.

6) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.
7) National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable HUD regulations set forth in 24 C.F.R. Parts 50 and 58 including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, Professional Firm is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder; G) 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

b. AFFIRMATIVE ACTION - WOMEN-AND MINORITY-OWNED BUSINESSES (W/MBE)

The Contractor will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Affirmative steps must include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources.

iii. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;

iv. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

v. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

c. LABOR STANDARDS

The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work
Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

d. USE OF ASSETS AND ASSET REVERSION

City assets used by the Contractor during the contract shall be given back to the City at the conclusion of the contract.

e. PROGRAM INCOME

The City will accept and report program income to the federal government.

f. FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT (FFATA)

Contracts equal to or greater than $25,000 must be entered into the Federal Service Reporting System. Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act. The Contractor will complete the Federal Funding and Accountability Transparency Act form attached to this Contract.

g. LOBBYING

The Contractor hereby certifies that:

(i.) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the
making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and

(iii.) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly:

(iv.) **Lobbying Certification**
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

h. **LEAD-BASED PAINT**

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CPR 570.608, and 24 CPR Part 35, Subpart B. Such regulations pertain to all CDBG-DR-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

i. **FLOOD DISASTER PROTECTION**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Contractor shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

j. **HISTORIC PRESERVATION**
The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CPR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

k. RELIGIOUS ACTIVITIES

The Contractor agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CPR 570.200G), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.

l. COPYRIGHT

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

m. EQUAL EMPLOYMENT OPPORTUNITY

EXHIBIT 1

Scope of Services -
Blanco Riverine Flood Mitigation Project

Task 1: Project Administration/General
1. Compliance with TWDB, CDBG-DR and City – required forms, monthly billing, etc
2. Monthly project meetings - in person or web based. Kickoff meeting and meetings in preparation for public meetings will be counted towards monthly meeting.
3. Management of Environmental Tasks
4. Internal Quality Assurance / Quality Control (QA/QC) Review of Deliverables

- Task 1 Deliverables:
  i. monthly progress reports,
  ii. TWDB / CDBG-DR reporting forms as required

Task 2: Preliminary Engineering Phase 1 – Alternatives Analysis, Recommendation of Short Project and Identification of Long Term Strategies
1. Three coordination meetings with landowners and/or regulatory agencies (USACE, TWDB) Includes preparation of meeting minutes.
2. Consolidate all previously analyzed alternatives (AECOM, Halff, USACE) and develop comparison matrix for short term and long-term project evaluation. Matrix will be based upon Project Ranking Matrix from Feasibility Report. Prepare exhibits of concept plans to be used for initial listening meeting and property owner meeting.
3. Conduct Public Listening meeting with exhibits of concept plans. Objective is to listen to concerns prior to evaluation of flood reduction alternatives. Prepare summary of comments received at meeting.
4. Evaluate potential Flood Reduction Alternatives:
   o Structure Inventory: Use previously developed USACE data for structures inundated in the Blanco Gardens area by the 4%, 2%, 1%, and 0.2% frequency events. Inundation will be determined by comparing first floor elevation data from the City of San Marcos to updated model results of alternatives. Use appraisal data from the County to determine appraised value of structures inundated.
   o Structural Alternatives (Short Term): Conduct detailed hydraulic evaluation of four (4) short term alternatives using existing models including: mitigation berm, diversions channel, Blanco channel excavation, channel clearing, etc. Alternatives will be analyzed using updated 2D models to determine extent of downstream impacts, if any, along the Blanco and San Marcos Rivers.
     ▪ Conceptual flood walls will be accomplished as detailed in the attached proposal from Aguirre-Fields, LP
   o Structural Alternatives (Long Term): Refine hydraulic evaluation of two (2) long term strategies identified in USACE TRN Alternative Development for Blanco and San Marcos Rivers Confluence. The long term strategies will be evaluated in combination with the viable short term alternatives.
   o Environmental Constraints: Conduct desktop/GIS level investigation to determine potential environmental constraints and impacts. Identify potential environmental permits and requirements of TWDB and HUD.
     ▪ Cultural Resource Constraints analysis will be provided by Cox-McLean Environmental Consulting as detailed in Task 2 of their attached proposal.
EXHIBIT 1

- Stream Assessment of Fluvial Geomorphology: Perform geomorphologic modeling of preliminary design to assess bank stability, erodibility zones, and armoring potential
  - This scope is detailed in the attached proposal from Specialty Devices, Inc.
- Right-of-Way Needs Assessment: Identify potential properties to be acquired to implement flood mitigation alternatives.
  - ROW valuation services will be provided as detailed in the attached proposal from HRM Land Acquisition Solutions.
- Project Benefits and Probable Cost: Quantify benefits of mitigation alternatives and develop concept estimates of probable cost. Short term alternatives will include structure inventory benefit cost analysis based upon inundation in Blanco Gardens. FEMA’s Benefit Cost Analysis will be performed on two (2) final alternatives.
- Project Ranking: Complete comparison of Project Feasibility Ranking Matrix for long and short-term projects.

5. Conduct Public Open House
   - Prepare and submit exhibits of proposed mitigation short and long term alternatives
   - Address city review comments to mitigation alternatives
   - Review results/feedback of open house with city
   - Present analysis, and recommendation of short and long-term alternatives to City Council

6. Submit Phase 1 report documenting Phase 1 analysis and Council direction

- Task 2 Deliverables:
  i. Concept Exhibits of proposed mitigation short and long term alternatives
  ii. Fluvial Stream Assessment Report
  iii. Environmental Constraints Analysis
  iv. Project Feasibility Ranking Matrix for long and short-term projects.

Task 3: Preliminary Engineering Phase 2 - Schematic Design, Public Meeting, and Environmental Assessment (EA)

1. Preliminary Design
   - Begin preliminary engineering and EA of the selected short-term mitigation alternative

2. Field Investigations
   - Perform field assessment to determine additional data needs
   - Conduct Limited Field Surveys (supplement LiDAR, property boundaries, utilities, etc.)
   - Identify potential utility conflicts based on available record plans
   - Conduct environmental field investigations

3. Schematic Design Plan
   - Develop a project base map of the project area including: topography (using new LiDAR supplemented with field survey), utilities, property boundaries, key environmental features, floodplain limits, etc.
   - Reaffirm floodplain hydraulic analysis with 2D modeling to quantify project benefits and identify potential adverse impacts.
   - Develop and submit schematic plan and profile of proposed project (including property map with proposed easements/right-of-way needs);
     - Schematics of flood walls will be accomplished as detailed in the attached proposal from Aguirre-Fields, LP.
     - ROW valuation services will be provided as detailed in the attached proposal from HRM Land Acquisition Solutions.
EXHIBIT 1

- Prepare estimate of probable cost
- Address city comments to schematic design

4. Prepare Engineering Feasibility Report and submit to TWDB for review and approval
5. Prepare Environmental Assessment and documents to TWDB (EID) and HUD (EA) requirements
   - Conduct: agency kickoff and coordination
   - Prepare exhibit of schematic design for public hearing
   - Post EA document for public comments (30 days)
   - Conduct: Public Hearing
   - Address public comments in EA
   - Upon completion of agency coordination, Submit EA for review & environmental decision
     - Socioeconomic, Community Facilities/Services, and Cultural Resources impact analyses will be accomplished by Cox-McLain Environmental Consulting as detailed in Tasks 3 & 4 of their attached proposal

- Task 3 Deliverables: Design Schematic
  i. Design Schematic and estimate of probable construction cost
  ii. Engineering Feasibility Report (EFR) in TWBD format
  iii. Draft Environmental Assessment (EA) and supporting documents/reports to TWDB (EID) and HUD (EA) requirements
  iv. Final Environmental Assessment (EA) and supporting documents/reports to TWDB (EID) and HUD (EA) requirements

To be added by CIS...

Task 3: Final Design and Property Acquisition

Given the variability of the selected flood mitigation option(s), based on the results of Tasks 1-2, the remaining SRF funds will be allocated to initiate project implementation which may include:
1. Review and prioritize properties needed for project implementation (based on land availability and project needs for structure buyout or tracts for infrastructure improvements, etc.)
2. Initiate acquisition process (identify ownership, contacting owners)
3. Obtain ROE and perform Field Survey for Design and easement parcel preparation
4. AFTER the NEPA process is complete – Begin Land Acquisition (appraisals, etc.) in accordance with the Uniform Relocation Act
5. Prepare Construction Documents
February 15, 2018

Mr. Eric Ratzman, P.E.
Halff Associates, Inc.
9500 Amberglen Blvd., 3ldg. F, Suite 125
Austin, TX 78729

Re: Letter of Agreement for City of San Marcos Blanco River Flood Reduction, Structural Services

Aguirre & Fields, LP (the Sub-consultant) appreciates the opportunity to submit this letter of agreement to Halff Associates, Inc. (the Prime) for structural engineering services on the City of San Marcos Blanco River Flood Reduction Project. Per preliminary plans and discussions, the proposed effort shall include development of flood reduction alternatives and an engineering feasibility report. Documents will be submitted to the City of San Marcos for review as part of a larger flood reduction engineering effort led by Halff Associates, Inc.

I. Scope of Work
   A. Preliminary Engineering Phase 1 - Flood Reduction Alternatives (Task 2.4)
      i. Develop conceptual designs for up to three (3) structural flood wall alternatives
      ii. Prepare planning-level estimates of probable construction costs for each alternative
      iii. Provide the City of San Marcos with a technical memo summarizing each alternative
      iv. Refine initial alternatives as necessary based on input from the City of San Marcos
   B. Preliminary Engineering Phase 2 - Schematic Design (Task 3.3)
      i. Prepare schematic-level design of one (1) refined structural flood wall alternative selected
         by the City of San Marcos
      ii. Prepare schematic-level estimates of probable construction costs for selected alternative
      iii. Provide the City of San Marcos with an Engineering Feasibility Report summarizing the design
         and estimated costs of the selected alternative

II. Proposed Fee
   The proposed fees for Structural Engineering Services shall be on a not to exceed basis as follows:
   A. Preliminary Engineering Phase 1 - Flood Reduction Alternatives (Task 2.4) = $ 18,760
   B. Preliminary Engineering Phase 2 - Schematic Design (Task 3.3) = $ 11,300
   Reimbursable Costs = $ 240
   = $ 30,300

III. Schedule
   Upon NTP and receipt of alternative-level geometrics, we anticipate development of Scope Item A, Preliminary Engineering Phase 1 - Flood Reduction Alternatives, to take 3-4 months. Upon selection of the preferred alternative by the City of San Marcos and receipt of geotechnical and hydraulic recommendations, we anticipate Scope Item B, Preliminary Engineering Phase 2 - Schematic Design, to take 2-3 months.

IV. Additional Documentation
   The following documents are attached and made part of this Agreement:
Thank you for the opportunity to enter into this agreement. Upon proposal acceptance, please sign, date and return a pdf copy to Aguirre & Fields.

Signed:

Aguirre & Fields, LP:
Aguirre, LLC – General Partner

Halff Associates, Inc.

Name

Title

Date

Name

Title

Date
**Attachment A – Hourly Rates**

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November 9, 2017

TO: Eric Ratzman

FROM: Keith Dewey (Halff), Ashley McLain (Cox McLain)

RE: City of San Marcos Blanco River Environmental Assessment
AVO: 00194.170

We are pleased to submit our proposal for the above referenced project. It is our understanding that the City of San Marcos (CoSM) is seeking federal funding regarding Blanco River stream channel improvements to reduce the effects of potential future flooding. The proposed action is located east of Interstate 35 between State Highway 80 and Farm-to-Market Road 621. There are two options currently under review, with Option 1 having a total area of disturbance at about 30 acres and Option 2 having a total area of disturbance at about 25 acres. The objective of this effort is to prepare a National Environmental Policy Act (NEPA) Environmental Assessment (EA) document in accordance with 24 Code of Federal Regulations (CFR) 50 and 24 CFR 58 under the U.S. Department of Housing and Urban Development (HUD) Guidelines as well as 31 Texas Administrative Code (TAC) 363 under the Texas Water Development Board (TWDB) Guidelines.

Option 1 of the federal action under review consists of the following components:

- Installation of a 4,000 foot long by 50 foot wide raised bicycle/pedestrian trail.
- Benching totaling 4,000 feet.
- Installation of a 2,250 foot long by 400 foot wide overflow channel.
- Installation of a 600 foot long by 300 foot wide oxbow notch.

Option 2 of the federal action under review consists of the following components:

- Installation of a 4,000 foot long by 50 foot wide raised bicycle/pedestrian trail.
- Benching totaling 4,000 feet.
- Installation of a 4,000 foot long by 500 foot wide overflow channel.

Based on our understanding of the proposed action, the following scope of work has been developed. For costing purposes, this scope of work assumes the EA will determine no significant or potentially significant impacts on the environment, and the proposed action will be approved with a Finding of No Significant Impact (FONSI). Should the EA find that an Environmental Impact Statement is required, a separate scope of work and budget will be required.

A breakdown of the tasks for this proposal is provided in Section 1 of this proposal, along with relevant assumptions. The anticipated period of performance (POP) is seven (7) months. While aggressive, this is achievable within the parameters of Government response and review times outlined in Section 2. Should those times be exceeded, a POP extension and budget adjustment will be required. The proposed action budget is $65,536. A budget summary by task is outlined in Section 3 of this proposal and is based on the tasks provided in Section 1.

Please let us know if you have any questions regarding the scope of work, POP, or budget.
SECTION 1 – SCOPE OF WORK

Task 1 – Management, Kick-Off Meeting/Site Visit, Coordination Meetings, Status Reports

Subtask 1.1 Management

Project management is a core function provided for all Cox|McLain Environmental Consulting activities using a similar set of procedures and tools tailored to each specific contract or task. Project management is critical to maintaining the scope of work, schedule, and budget, as well as identifying and responding to issues that may arise. Project management processes/controls, quality assurance/quality control (QA/QC) review procedures, financial accounting and invoicing policies, and record keeping processes will be established at the outset. Records will be kept documenting costs incurred on behalf of the activity. Status reports documenting work accomplished will accompany monthly invoices.

All work products will undergo the stringent Cox|McLain Environmental Consulting QA/QC process prior to delivery so as to provide high-quality reports, memoranda, and other materials.

Subtask 1.2 Kick-Off Meeting/Site Visit

Cox|McLain Environmental Consulting will attend one (1) kick-off meeting with the CoSM and the HUD NEPA Program Manager at the city. The kick-off meeting is estimated to occur within a two (2) hour time period. It is assumed that up to two (2) Cox|McLain Environmental Consulting staff will attend the kick-off meeting. The timing of the kick-off meeting will be determined in conjunction with CoSM and HUD personnel. Following the kick-off meeting at the city, Cox|McLain Environmental Consulting staff will conduct a two (2) hour site visit of the proposed action location to document existing site conditions following the conclusion of the kick-off meeting.

Cox|McLain Environmental Consulting will assemble a list of data needs for the proposed action prior to the kick-off meeting.

Subtask 1.3 Coordination Meetings and Status Reports

It is anticipated that up to seven (7) coordination meetings will be conducted via teleconference call on a monthly basis to discuss project scoping, progress reviews, and general information exchange concerning current and future activities. Attendees at the coordination meetings will include representatives from the CoSM, HUD, up to two (2) Cox|McLain Environmental Consulting staff.

Monthly status reports for the seven (7) month POP, covering activity status will be prepared and submitted by Haif Associates. This approach enhances timely communication of results, status, progress, resolution of problems, and directives for execution of the various tasks as required.

Meetings
- One (1) kick-off meeting.
- Seven (7) coordination meetings.

Deliverables
- Data needs list (electronic version only).
- Seven (7) status reports (electronic version only).

City of San Marcos/HUD Responsibilities
- Provide requested data needs.
Task 2 – Environmental Constraints Analysis

Subtask 2.1 Draft Environmental Constraints Analysis

Cox|McLain Environmental Consulting will perform desktop research to obtain readily-available, digital environmental constraints information from appropriate local, state, and federal agencies. A high-level engineering design description of Option 1 and Option 2 under the proposed action will be developed to assist with the environmental constraints analysis. Additionally, the following environmental topics will be the focus of the environmental constraints analysis:

- Cultural resources records review to determine the extent of previous studies and identify known historical or archeological sites in the proposed action area, with the action area understood as the preferred alternative with a construction footprint of 50 acres or fewer. The work would include a search of archeological records maintained by the Texas Archeological Research Laboratory (TARL) and a review of the Texas Archeological Sites Atlas maintained by the Texas Historical Commission (THC) for cemeteries and recorded historical markers, properties, or districts listed in the National Register of Historic Places (NRHP). As a political subdivision of Texas, CoSM must notify the THC prior to commencing any project on public land that will involve 5 or more acres of ground disturbance; 5,000 or more cubic yards of earth moving; will occur in a historic district or will affect a recorded archeological site. This scope includes records research to inform the development of an Antiquities Permit for intensive archeological survey as well as the required reporting and records curation.

Upon conclusion of the desktop research, we will perform a brief one (1) day field survey of the proposed action area to verify information obtained through desktop research and to document any additional environmental constraints. Proposed action area photographs will also be taken to highlight the environmental constraints. The results of the desktop research and brief field survey will be summarized in a draft environmental constraints letter report for CoSM and HUD review. The report will consist of a short proposed action description, methodology, text summary of environmental constraints, table summarizing the identified environmental constraints and potential regulatory requirements or permitting issues, maps displaying environmental constraints information, and proposed action area photographs.

Subtask 2.2 Final Environmental Constraints Analysis

One set of non-contradictory comments on the draft environmental constraints analysis is expected from CoSM and HUD. Upon receipt of comments, Cox|McLain Environmental Consulting will revise the draft environmental constraints analysis for the design engineers to use in the further refinement of Option 1 and Option 2 of the proposed action.

Meetings
- Conference call with CoSM and HUD to review the draft environmental constraints analysis.

Deliverables
- One (1) draft environmental constraints analysis (electronic version only).
- One (1) final environmental constraints analysis (electronic version only).

City of San Marcos/HUC Responsibilities
- One set of non-contradictory comments on the draft environmental constraints analysis.
Task 3 – Draft EA and Agency Scoping Support

It is anticipated that either Option 1 or Option 2 of the proposed action will be carried forward into the EA process for clearance by CoSM and HUD. In the event that both Option 1 and Option 2 of the proposed action are carried forward into the EA process, a scope of work modification will be requested. The EA process that HUD uses is outlined in 24 CFR 50 and 24 CFR 58. Both regulations outline a checklist style EA process, this is supported by technical reports/memoranda and mapping. Because the TWDB is a cooperating agency, the EA process will also comply with 31 TAC 303, which also outlines a checklist style EA process, this is supported by technical reports/memoranda and mapping. The following scope of work, POP, and budget is based on compliance with these three regulations.

Subtask 3.3 Affected Environment and Environmental Consequences

This portion of the EA document will address the land development, socioeconomic, community facilities/services, natural features, and cultural resources impacts of the proposed action. Potential impacts cannot be determined without first understanding the existing conditions in the affected environment. For this reason, the impact analysis process involves two steps. Step one is to develop an understanding of the setting and conditions through a discussion of the existing resources. The geographic extent of the affected environment is determined by the potential for impacts, due to construction, operations, and maintenance of each alternative on the various resources. Step two incorporates details of the alternatives carried forward for analysis to enable an assessment of their impacts on the affected environment, thus yielding the environmental consequences. Direct, indirect, and cumulative impacts of the proposed action are considered under step two. The environmental topics that will be used in the EA process include the following, and are discussed in detail further below.

- **Socioeconomic**
  - Socioeconomic data at and immediately adjacent to the proposed action site will be obtained from most recent U.S. Census Bureau American Community Survey. This data will be used to determine the employment and income levels, demographic character, and the presence of minority and low-income environmental justice populations in the project area. One (1) map of the proposed action site will be prepared to show the socioeconomic characteristics.

- **Community Facilities/Services**
  - Community facilities, such as schools, hospitals, landfills, water supply, wastewater, public safety, and parks/open space uses will be documented near the proposed action site. A qualitative analysis is anticipated. One (1) map of the proposed action site will be prepared to show the community facility and services characteristics.
  - The surface transportation conditions at and immediately adjacent to the proposed action site will be determined relative to the existing facilities in the immediate area. A qualitative analysis is anticipated. One (1) map of the proposed action site will be prepared to show the transportation characteristics.

- **Cultural Resources**
  - Coordination with the Texas State Historic Preservation Officer (SHPO) and the Texas Historical Commission (THC) is anticipated for cultural resources. The coordination is expected to result in the preparation of an archaeological survey/historic property report/memorandum that documents known and anticipated cultural resources sites. A pedestrian level survey to document the presence of archeological resources is included, with the assumption that the action area footprint would encompass 50 acres or less and would necessitate intensive mechanical trenching. This scope of work assumes the CoSM will provide a tracked excavator with minimum 3-foot-wide bucket and ability to reach 12-15 feet in depth, and qualified operator for up to 20 field days. If such excavator and operator...
cannot be provided by CoSM, additional budget would be required for an excavation subcontractor. Archeological survey of the entire study area is not included, nor are archeological monitoring, testing, or data recovery; historic buildings survey; or human remains identification/coordination/removal. One (1) map of the proposed action area will be prepared to show the proposed action site’s documented archeological resources and/or historic buildings.

- Survey-level recordation of two archeological sites is assumed. Due to the prevalence of alluvium and paleo-terrace soils within the overall project area, as well as many known prehistoric sites in the region, extensive backhoe trenching (up to 20 field days) is assumed. If required, historic buildings/structures field studies or archeological monitoring, testing, and/or data recovery excavations would take place under separate scope and budget. This scope or work assumes that land is privately owned at the time of study and therefore that collection/curation of artifacts would not be required. Any required materials curation would occur under separate scope and budget.

Impact ratings are the basis for determining whether an impact is significant. The impact ratings identified below will be explained for each resource in the EA document.

- Minor beneficial impact.
- No impact anticipated.
- Minor adverse impact that may require mitigation.
- Significant or potentially significant impact requiring avoidance or modification, which may require an Environmental Impact Statement.

The duration of the potential impact will also be included in the evaluation. For the purposes of the EA document, the duration of impacts will be defined as either short-term effects or long-term effects.

Subtask 3.7 Preliminary Draft HUD Environmental Assessment and TWDB Environmental Review

One portion of the EA will consist of the HUD checklist to meet the requirements of 24 CFR 50 and 24 CFR 58. The second portion of the EA will consist of the TWDB checklist to meet the requirements of 31 TAC 363. The third portion of the EA will consist of supporting technical reports/memoranda and mapping.

Cox|McLain Environmental Consulting will perform a peer review and quality control check of the Preliminary Draft EA prior to distribution to CoSM and HUD.

Shortly after submittal, Cox|McLain Environmental Consulting will meet via conference call with CoSM and HUD personnel to discuss content and key issues. It is assumed that up to two (2) Cox|McLain Environmental Consulting staff will attend the conference call. One set of non-contradictory comments on the Preliminary Draft EA is expected from CoSM and HUD.

A two hundred (200) page Preliminary Draft EA document, with graphics (color and black/white) is assumed. It is also assumed this document will be transmitted electronically for comment. No paper copies are anticipated with the Preliminary Draft EA.

Subtask 3.8 Public Review Draft HUD Environmental Assessment and TWDB Environmental Review

Following CoSM and HUD review of the Preliminary Draft EA, the document will be turned into the Public Review Draft EA for public and agency distribution. By this point, only minor editorial changes are expected. If substantive changes are required, a scope of work modification will be requested.
Cox|McLain Environmental Consulting will perform a peer review and quality control check of the Public Review Draft EA prior to distribution to CoSM and HUD.

**Subtask 3.9 Agency Scoping Support**

Based on conversations with HUD personnel, a formal agency scoping meeting is not needed nor is a Federal Register Notice of Intent for the EA document at this time. However, public agency scoping letters will be handled by Cox|McLain Environmental Consulting. Text and/or mapping that is generated for EA document will be used to support the public agency scoping process. It is anticipated that public scoping letters will be sent to the following agencies: U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, and Texas Historical Commission.

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**Meetings**

- Conference call with CoSM and HUD personnel to discuss content and key issues of the Preliminary Draft EA.

**Deliverables**

- One (1) Socioeconomic report/memorandum.
- One (1) Community Facilities/Services report/memorandum.
- One (1) Cultural Resources (archaeological survey/historic property) report/memorandum.

**City of San Marcos/HUD Responsibilities**

- One set of non-contradictory comments on the Preliminary Draft EA.
- Share Public Review Draft EA comments.

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**Task 4 – Final EA and FNSI**

4.1 Preliminary Final HUD Environmental Assessment and TWDB Environmental Review

Upon receipt of all Public Review Draft EA comments from CoSM and HUD, one (1) comment/response matrix will be developed to ensure all issues are addressed in the Preliminary Final EA. Cox|McLain Environmental Consulting may request a conference call to discuss specific comments or inconsistencies that need to be rectified in the Preliminary Final EA. It is assumed that up to two (2) Cox|McLain Environmental Consulting staff will attend the conference call. If a conference call is not needed, Cox|McLain Environmental Consulting will address the Public Review Draft EA comments and provide a Preliminary Final EA for CoSM and HUD review to ensure the requested changes are completed to their satisfaction. One set of non-contradictory comments on the Preliminary Final EA is expected from CoSM and HUD. Cox|McLain Environmental Consulting will provide CoSM and HUD with one (1) comment/response matrix for the insertion of comments.

Cox|McLain Environmental Consulting will perform a peer review and quality control check of the Preliminary Final EA prior to distribution to CoSM and HUD.

4.3 Final HUD Environmental Assessment and TWDB Environmental Review

Following CoSM and HUD review of the Preliminary Final EA, the document will be turned into the Final EA for public and agency distribution. By this point, only minor editorial changes are expected. If substantive changes are required, a scope of work modification will be requested.
Cox|McLain Environmental Consulting will perform a peer review and quality control check of the Final EA prior to distribution to CcSM and HUD.

**Meetings**
- Conference call to discuss specific comments or inconsistencies that need to be rectified in the Preliminary Final EA.

**Deliverables**
- One (1) comment/response matrix for Public Review Draft EA (electronic version only).
- One (1) Preliminary Final EA (electronic version only).

**City of San Marcos/HUD Responsibilities**
- One set of non-contradictory comments on the Preliminary Final EA.
- One set of non-contradictory comments on the Preliminary Draft FNSI.

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**ITEMS EXCLUDED FROM SCOPE OF WORK**

Any additional services required beyond those specifically identified in this proposal are beyond the scope of work to be provided. Additional services, if requested, will be separately identified and negotiated and such additional scope and commensurate fee will be authorized under a supplemental agreement to this proposal/contract. The following items are specifically excluded from this scope of work. If these services are determined necessary after the initial project evaluation, then the services would be performed under supplemental agreement.

- Historic buildings reconnaissance or intensive level study.
- Archeological survey of more than 50 acres.
- Archeological monitoring, testing, or data recovery.
- Human remains/Cemetery coordination/identification/removal.
- Phase I Environmental Site Assessment.
- Property acquisition or negotiations.
- U.S. Army Corps of Engineers Nationwide Permit Filing.
- U.S. Fish and Wildlife Service Biological Assessment
- Scuba diving in the Blanco River.
- Filing fees, permit fees, license fees.
- Reviewing and evaluating alternate designs proposed by contractor.
- Coordination with individual property owners (beyond the Public Involvement scope above).
- Engineers certificates.

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**SECTION 2 – PERIOD OF PERFORMANCE**

Halff Associates is prepared to begin work immediately upon receipt of written authorization to proceed. There is a mandatory 30-day public comment period for review of the Public Review Draft EA, so Halff Associates is anticipating that this entire effort could take seven (7) months, as outlined below:

- Task 1 – Month 1 to Month 7
- Task 2 – Month 1
- Engineering Development of Preferred Alternative
- Task 3 – Month 2 to Month 5
- 30 Day EA Comment Period – Month 6

8401 Shoal Creek Blvd, Suite 100, Austin, TX 78757   512.338.2223
- Task 4 – Month 7

We will try to expedite this effort as much as possible, but the pace of government efforts is sometimes beyond the control of our best efforts.

SECTION 3 – BUDGET SUMMARY

The total estimated cost for this effort will be on time and materials basis, not to be exceeded without prior authorization. A breakdown of the costs for this effort are provided below.

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City of San Marcos Blanco River Environmental Assessment

Draft

Cox McLain Project Manager
Cox McLain QA/QC Reviewer
Cox McLain Sr. Env. Sci. II
Cox McLain Env. Prof. II
Cox McLain Env. Staff II
Cox McLain Env. Tech
Cox McLain Admin & Clerical

DIRECT COSTS
INDIRECT COSTS
TOTAL

Notes
SCOPE OF SERVICES
FOR
REAL ESTATE ACQUISITION SERVICES
For
City of San Marcus Blanco River Flood Reduction Project
Real Estate Acquisition Services

BASIC SERVICES

Services to be provided by ROW Contractor

1. Project Administration
   a. Communication
      (1) Provide monthly summaries of project expenses including amounts authorized, amounts paid and budget forecasting.
      (2) Maintain current status reports including contact reports of all parcel and project activities and provide monthly to City.
      (3) Prepare initial property owner contact list for use by City in distribution of ROW Contractor introduction letters.
      (4) Order and coordinate title services to determine ownership and closing statements.

2. Initial Title Deed Research
   a. Secure preliminary title commitment or preliminary title search, and five-year sales data from Independence Title Company that will be providing title insurance. Cost of preliminary title commitments will be paid by the City.
   b. Secure title commitment updates in accord with insurance rules and requirements for parcel payment submissions. Cost of title commitment updates will be paid by the City.
   c. Secure title insurance for all parcels acquired, insuring acceptable title to the City. Written approval by the City required for any exception. Cost of title insurance to be paid by the City.

3. Valuation Services
   a. The contractor will establish value for each easement parcel, without appraisal, based on a formula approved by Halff and the City using the current Appraisal District Valuation.

4. Right of Entry Services
   Secure rights of entry from designated property owners for the purpose of gaining access for surveying, environmental, field inspection of right of way and other purposes as may be determined.

15520 RR 12, Wimberley, Texas 78676 (512) 353-1075 Office (512) 392-7849 Fax
w w w . h r m r o w . c o m
City of San Marcos Blanco River Flood Reduction Project  
Real Estate Acquisition - Valuation Ph. I  
Estimated Fee Schedule  
Total Estimated Parcels – (12)

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15520 RR 12, Wimberley, Texas 78676  (512) 353-1075 Office (512) 392-7849 Fax  
[hrmrow.com](http://www.hrmrow.com)
City of San Marcos Blanco River Flood Reduction Project
Real Estate Acquisition – Right of Entry Ph. II
Estimated Fee Schedule
Total Estimated Parcels – (12)

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<td>72.0</td>
<td></td>
<td></td>
<td></td>
<td>$5,584.40</td>
<td>$5,584.40</td>
<td></td>
</tr>
<tr>
<td>TASK 3 SUBTOTAL</td>
<td>0.0</td>
<td>0.0</td>
<td>72.0</td>
<td>0.0</td>
<td>$5,584.40</td>
<td>$0.00</td>
<td>$5,584.40</td>
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<tr>
<td><strong>TASK 4 - Right of Entry Services</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$10,374.00</td>
<td>$10,374.00</td>
<td></td>
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<tr>
<td></td>
<td>104.0</td>
<td></td>
<td></td>
<td></td>
<td>$0.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>TASK 4 SUBTOTAL</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>104.0</td>
<td>$10,374.00</td>
<td>$0.00</td>
<td>$10,374.00</td>
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<tr>
<td><strong>TOTAL Estimated Hours</strong></td>
<td>96.0</td>
<td>64.0</td>
<td>116.0</td>
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<tr>
<td><strong>TOTAL Estimated Fee</strong></td>
<td>$12,220.00</td>
<td>$3,520.00</td>
<td>$9,013.28</td>
<td>$10,374.00</td>
<td>$35,128.00</td>
<td>$0.00</td>
<td>$35,128.00</td>
</tr>
</tbody>
</table>

**HOURLY RATES**

$127.30 $50.00 $77.78 $99.75
Proposal for Stream Assessment of Fluvial Geomorphology: Portions of Blanco River

Submitted to:
Halff Associates, Inc., for City of San Marcos

Date: February 16, 2018
Purpose:

To prepare a proposal to provide supplementary fluvial geomorphological information and assistance for a section of Blanco River, City of San Marcos, for Halff Associates, Inc.

Channel Evaluation Procedure:

The procedures for assessing stream stability have been put forth by many but the methodology proposed for this evaluation which has been used for decades and found to include the major steps in analysis of any river project is shown below (after Simons, Li and Associates, 1982 Engineering Analysis of Fluvial Systems):

While the flow chart indicates the necessary steps in channel evaluation and design, the current project is thought to require four stages in which the above will be incorporated. These are:
I. **Project Planning:** City, Engineers, Fluvial Geomorphologist meet to establish goals and objectives of the proposed channel assessment with regard to flood control, erosion control, water quality, habitat and overall channel stability

II. **Field Work:** Engineering team and Fluvial Geomorphologist obtain necessary field data to perform analysis on future options for channel given objectives in Stage I.

III. **Data Assessment/Modeling:** Data obtained from Engineering Team and Stage II field data is analyzed thorough conceptual and analytical models to obtain inputs for stable channel design options for input to Halff Engineers which best meet criterion established in Stage I. Stage II field work will allow assessment of vertical stability and predicted degradation and equilibrium slope, planform stability and meander migration rates, effective discharge/bankfull design flows, and prediction of effects of upstream supply reach on engineering design of downstream project study reach (Capacity Supply Analysis).

IV. **Final Design Options:** Plan preparation. Work with Engineering team to incorporate findings of analysis into potential solutions and report preparation.

**Costs Associated for the Fluvial Geomorphology Assessment:**

**Stage I**
- Initial meeting with City and Engineers (3 principals)

**Stage II**
- Reconnaissance of Lower Blanco River (2 days, 2 nights, 3 principals)
- Field work (4 days, 4 nights, 3 principals)

**Stage III**
- Data analysis from field (5 days, 3 principals)
- Report Preparation (5 days, 3 principals)

**Stage IV**
- Meeting with City on Report (3 principals)
Explanation of Costs:
Cost of mileage for trips from Waco, Tx. to the project site will be charged at $0.56 per mile. It is assumed the roundtrip mileage is 265 miles.
Per diem is charged at $200.00 per day/person which includes food, lodging and incidentals.

Principals charge 193.63/hr. or $1549.00 day
Initial and final meetings are charged at $1000.00 per visit plus mileage.
Additional meetings will be charged at the same rate.
Field Equipment (kayaks, lasers, drone, etc. furnished by principals)

Total Proposed Cost:
- Two days meetings @1000.00 plus mileage $2530.00
- 6 days Fieldwork (3 principals) including travel/per diem $29,512.00
- 10 days analysis and report preparation (3 principals) $46,470.00

Total Cost $78,512.00

Deliverables:
I. Report and related tables, photographs and supplementary information used to assist Engineering Team (Halff Associates) in preparing Engineering Report as well as agreed upon meetings to discuss progress in engineering and fluvial geomorphic analysis and/or design options.
II. Obtain aerial hi-resolution video photos of channel to derive fine scale feature extraction of bank and alluvial materials from structure from motion to aid in determination of channel stability zones.
III. Submerged Jet testing of channel erodibility (cm/hr./Pa) and critical tractive force (Pa)
IV. Bed material assessment including Wolman’s pebble counts of bars and bed material gradation, assessment of armoring potential, and assessment of design (effective) discharge and equilibrium slope of design reach.
V. Assessment of bank erodibility zones through combination of field, video, submerged jet assessment, and lab testing results of consistency and texture.
Principle contributors are:

Peter M. Allen, PhD., PG
John Dunbar, PhD., PG
Joseph White, PhD.

Notes:
1. The quotation is valid for 90 days
2. We assume access to the areas to be surveyed

I trust that this provides you with the information that you require and we look forward to the opportunity to work with you. We anticipate that mutually agreeable terms and conditions will be negotiated. Thank you for considering Specialty Devices, Inc. Please allow us to help by calling us at 972 429 7240 or contact us via email at PDHigley@specialtydevices.com.

Sincerely,
Paul D. Higley, President
Specialty Devices, Inc.
## EXHIBIT 3
Detailed Fee Schedule

### TABLE 1 - Project Administration

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Hours</th>
<th>Rate</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance with TRB1, CRANA, &amp; City</td>
<td>3</td>
<td>20.00</td>
<td>$60.00</td>
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<tr>
<td>Identifying Meetings</td>
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<tr>
<td>Environmental Project Management</td>
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<td>18.00</td>
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<tr>
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<td>Sub-consultant (Civ-Mec-Lan)</td>
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### TABLE 2 - Preliminary Engineering Phase 1

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<tbody>
<tr>
<td>Agency Coordination Meetings</td>
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<tr>
<td>Conceptual Hydrologic, hydrometrics, &amp; audits</td>
<td>8</td>
<td>16.00</td>
<td>$128.00</td>
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<tr>
<td>Initial Hydroturbation, non-linear &amp; 2D analysis</td>
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<td>16.00</td>
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<td>Sub-consultant (Hydraulic)</td>
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<td>Environmental Constraints</td>
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<td>Sub-consultant (Hydrology, Hydrogeology)</td>
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<tr>
<td>ROOF and Engineering</td>
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<td>$100.00</td>
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<tr>
<td>Site and land planning</td>
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### TABLE 3 - Preliminary Engineering Phase 2

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<td>Preliminary Design</td>
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<td>Field Investigations</td>
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<td>Feasibility Study</td>
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<td>40.00</td>
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<tr>
<td>Sub-consultant (Civil/Engr)</td>
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<td>80.00</td>
<td>$1,280.00</td>
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<tr>
<td>Sub-consultant (Hydrology, Hydrogeology)</td>
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<td>TOTAL</td>
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### TOTAL Estimated Fees

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<th>Fee</th>
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<td>TOTAL Estimated Fees</td>
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<td>$21,540.00</td>
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# BLANCO RIVERINE MITIGATION PROJECT SCHEDULE

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<th>PROJECT TASKS</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
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<tr>
<td></td>
<td>JAN</td>
<td>FEB</td>
<td>MAR</td>
</tr>
<tr>
<td>1. Initiate permitting</td>
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<tr>
<td>2. Preliminary Engineering Phase 1</td>
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</tr>
<tr>
<td>3. Prepare Concept Plans</td>
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<tr>
<td>4. Property Owner Listening Meeting</td>
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<tr>
<td>5. Evaluation of Mitigation Options</td>
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<tr>
<td>6. City Review/Input</td>
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<td>7. Address Comments</td>
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<tr>
<td>8. Conduct Open House</td>
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<td></td>
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</tr>
<tr>
<td>9. Preliminary Engineering Phase 2</td>
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</tr>
<tr>
<td>10. Scheme Design and EIR</td>
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<td></td>
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</tr>
<tr>
<td>11. City &amp; TWDB Review</td>
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<tr>
<td>12. Complete EIR</td>
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<td>13. Environmental EA Docs</td>
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<tr>
<td>14. Agency Coordination</td>
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</tr>
<tr>
<td>15. Public Comment Period</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>16. Public Hearing</td>
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<td></td>
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</tr>
<tr>
<td>17. Address Comments in EA</td>
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<tr>
<td>18. Submit EA</td>
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<tr>
<td>19. Environmental Review by TWDB &amp; HUD</td>
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</tr>
<tr>
<td>20. Address Comments to EA</td>
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<tr>
<td>21. Environmental Clearance</td>
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<td>22. Next Project Phase</td>
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<tr>
<td>23. Easement Acquisition</td>
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<tr>
<td>24. Field Surveying and Geotech</td>
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<tr>
<td>25. Final Engineering Design</td>
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<tr>
<td>26. Utility Coordination</td>
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<td>27. Utility Relocation</td>
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<tr>
<td>28. Bidding &amp; Construction</td>
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Figure 3. Potential Mitigation Options
AGENDA CAPTION:
Consider approval of Resolution 2018-38R, approving the purchase of water meters and registers from Aqua Metric Sales Company in the estimated amount of $3,248,801.50 over five years; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

Meeting date: 3/20/2018

Department: Public Services Department - T. Taggart, Executive Director (By Rachel Shelton, Purchasing Specialist, Senior)

Amount & Source of Funding
Funds Required: $3,248,801.50 FY18-22
Account Number: 22006333-53087
Funds Available: $482,000 FY108
Account Name: Supplies-Meters

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

City Council Goal: [Please select goal from dropdown menu below]
Goal #5 Maintain & Improve City's Infrastructure
Goal # 7 Maintain Fiscal Responsibility
Goal #8 Provide efficient & effective delivery of services

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:
On April 18, 2017 Resolution #2017-68R was approved by Council approving the purchase of Sensus Water Meters from Aqua Metric Sales Company as a sole source procurement for the Public Services Department, Water/Wastewater Utilities Division. 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 sole source. However, the City no longer considers Aqua Metric Sales Company to be a sole source procurement for Sensus water meters and registers due to the ability to purchase directly from the manufacturer.

On January 11, 2018, the City received one (1) bid for Water Meters and Registers (IFB 218-059). According to the terms and conditions of the bid, the City has the right to award a contract or contracts to a bidder on the basis of total low bid for each section.

The Public Services Department, Water/Wastewater Utilities Division, has reviewed all bids and recommends awarding a contract to the lowest and most responsive and responsible bidder, Aqua Metric Sales Company located in Schertz, Texas.

The water meters and registers will be used to keep up with the City’s ten-year change-out plan for existing connections as well as the substantial growth in businesses and both single-family and multi-family connections requiring new meter installations.

The estimated amount of the contract is $1,189,893.92. However, the contract does allow for additional quantities as needed. The projected requirements to keep up with the ten-year change-out plan and new installations requiring multiple sizes are estimated as follows:

FY18 - $481,437.50
FY19 - $884,369.50
FY20 - $1,076,063.50
FY21 - $336,805.50
FY22 - $470,125.50
These estimated totals do not include replacement of meters due to unforeseen damage, which should be minimal.

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

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

**Recommendation:**
Staff recommends awarding the contract to Aqua Metric Sales Company.
RESOLUTION 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF WATER METERS AND REGISTERS FROM AQUA METRIC SALES COMPANY IN THE ESTIMATED AMOUNT OF $3,248,801.50; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE 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 water meters and registers from Aqua Metric Sales Company in the estimated amount of $3,248,801.50 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 this the day of 2018.

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Section One Total Cost</th>
<th>Section Two Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirkettle Corporation dba Aqua-Metric Sales Company</td>
<td>1,099,314.57</td>
<td>90,579.35</td>
</tr>
<tr>
<td>Schertz, TX</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Meter &amp; Automation Centennial, CO</td>
<td>No Bid</td>
<td>No Bid</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

WITNESSED BY: [Signatures]

BID TABULATION
Water Meters and Registers
January 11, 2018, 2:00 p.m.

IFB 218-059
AGENDA CAPTION:
Consider approval of Resolution 2018-39R, approving the renewal of the contract with Matchpoint Water Asset Management, Inc. for Leak Detection Services for an additional one-year term in the amount of $26,475.00 making the total value of the contract $52,950.00; authorizing the City Manager or his designee to execute the appropriate documents related to the renewal of this agreement; and declaring an effective date.

Meeting date: 3/20/2018

Department: Water/Wastewater Department - Tom Taggart, Executive Director (By Charles Blue, Contract Administrator).

Amount & Source of Funding
Funds Required: $26,475
Account Number: 22006333.52230
Funds Available: $65,000
Account Name: WWW Professional Services

Fiscal Note:
Prior Council Action: No prior Council action. Original contract was less than $50,000.

City Council Goal: [Please select goal from dropdown menu below]
Goal #7 Maintain Fiscal Responsibility

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:
On March 23, 2017 the City received four (4) bids for Leak Detection Services. City Staff evaluated the submitted bids and recommendation was made to award to Matchpoint Water Asset Management, Inc. The initial contract award for Leak Detection Services (IFB 217-020) to Matchpoint Water Asset Management, Inc. was effective May 1, 2017, through April 30, 2018, and was awarded administratively as the total amount of the contract was below the $50,000 threshold. However, with this first extension, the contract total is estimated to reach approximately $52,950.

The purpose of the contract is to conduct a potable water leak detection survey on an estimated seventy-five (75) miles of the City’s two hundred seventy-five (275) mile water distribution system according to a City map of the Leak Detection Survey Area. This includes customer meter boxes, distribution valves, fire hydrants, air release valves, and any exposed section of the system. The City receives a Final Leak Detection Project Report that lists locations and descriptions of leaks identified, fire hydrants in need of repairs, and inaccurate water meters identified.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends renewal of leak detection contract.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE RENEWAL OF THE CONTRACT WITH MATCHPOINT WATER ASSET MANAGEMENT, INC. FOR LEAK DETECTION SERVICES FOR AN ADDITIONAL ONE-YEAR TERM IN THE AMOUNT OF $26,475, MAKING THE TOTAL VALUE OF THE CONTRACT $52,950.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE DOCUMENTS RELATED TO THE RENEWAL OF THIS AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The renewal of the contract with Matchpoint Water Asset Management, Inc. for leak detection services for an additional one-year term in the amount of $26,475, making the total value of the contract $52,950.00 is approved.

PART 2. The City Manager, or his designee, is authorized to execute the appropriate documents related to the renewal of this 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 day of 2018

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
February 12, 2018

Ms. Nancy S. Jones
Matchpoint Water Asset Management, Inc.
215 Racine Drive, Suite 201
Wilmington, NC 28403

RE: Contract 217-020

LETTER OF AGREEMENT

Please consider this letter an agreement between the City of San Marcos and Matchpoint Water Asset Management, Inc. to extend the current contract for Leak Detection Services (Contract #217-020) for an additional period of one year as provided in the original contract effective May 1, 2017 through April 30, 2018. This first extension period will be from May 1, 2018 through April 30, 2019.

All remaining terms and conditions of the original contract will remain in full force and effect for the duration of this agreement.

Please indicate your acceptance of this agreement by counter-signing below and returning one executed copy to the City of San Marcos Purchasing Division in the enclosed self-addressed postage-paid envelope. One original document is also provided for your records.

City of San Marcos

By:_____________________________________  By:_____________________________________
   City Manager
   Title: ___________________________________
   Printed Name: ____________________________
   Date:____________________________________

Matchpoint Water Asset Management, Inc.

By:_____________________________________
   Title: ___________________________________
   Printed Name: ____________________________
   Date:____________________________________

Contract # 217-020
This contract is entered into between San Marcos, Texas and the contractor named below, pursuant to V.T.C.A Local Government Code, 252.021 as amended, in accordance with the attached Terms, Conditions, and Provisions.

<table>
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<th>CONTRACT NO. &amp; NAME:</th>
<th>PURCHASING CONTACT:</th>
<th>CONTRACT START DATE:</th>
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<td>May 1, 2017</td>
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<tr>
<td>Leak Detection Services</td>
<td>Contract Administrator</td>
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<td></td>
<td>512-393-8164</td>
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<table>
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<tr>
<th>CONTRACT AMOUNT:</th>
<th>DELIVERY DATE OR TERM OF CONTRACT:</th>
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<tr>
<td>$26,475.00</td>
<td>May 1, 2017, through April 30, 2018</td>
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<thead>
<tr>
<th>CONTRACTOR:</th>
<th>AWARDED AS TO ITEMS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matchpoint Water Asset Management Inc.</td>
<td>Item #1 - $353.00 per mile x 75 miles</td>
</tr>
<tr>
<td>215 Racine Drive, Suite 201</td>
<td></td>
</tr>
<tr>
<td>Wilmington, NC 28403</td>
<td></td>
</tr>
<tr>
<td>Ms. Nancy S. Jones</td>
<td><a href="mailto:nancy@matchpointinc.us">nancy@matchpointinc.us</a></td>
</tr>
<tr>
<td>Telephone: 910-509-7284</td>
<td></td>
</tr>
</tbody>
</table>

REMARKS:
User Department Contract Administrator:
Tony Salinas, Water Distribution Manager
Public Services Department – Water/Wastewater Utilities Division
630 East Hopkins Street
San Marcos, Texas 78666
Office: 512-393-8024
tsalinas@sanmarcostx.gov

By execution of this contract below, contractor agrees to all its terms, conditions provisions and specifications.

<table>
<thead>
<tr>
<th>CONTRACTOR SIGNATURE:</th>
<th>CITY SIGNATURE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Nancy S. Jones</td>
<td>Cheryl Pantermuehl</td>
</tr>
</tbody>
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<tr>
<th>TYPED NAME:</th>
<th>TYPED NAME:</th>
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</thead>
<tbody>
<tr>
<td>Nancy S. Jones</td>
<td>Cheryl Pantermuehl</td>
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<table>
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<th>DATE:</th>
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<tr>
<td>CFO</td>
<td>4-26-17</td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Purchasing Manager</td>
<td>4-25-17</td>
</tr>
</tbody>
</table>
Company Representative for Emergency Contact

Tony Popolo, Field Operations Director
910-274-5095
3. TERMS AND CONDITIONS OF INVITATION FOR BIDS (IFB)

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<td>18. PAYMENTS</td>
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<tr>
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1. DEFINITIONS: In this contract:

A. **Bid Documents** means the entire packet of documents provided to bidders, including the Terms and Conditions, Specifications, Special and Supplementary Conditions, Bid Form and any addendum.

B. **Bidder** means a person or firm submitting a bid and competing for award of a contract.

C. **City** means the City of San Marcos, Texas.

D. **City Council** means the duly elected members of the City Council of the City.

E. **City Manager** means the duly appointed City Manager of the City.

F. **Contract** means the contract awarded pursuant to this solicitation.

G. **Contractor** means the bidder to which a contract award has been made by the City.

H. **County** means Hays County, State of Texas.

I. **HUB** has the meaning given by State law (Art. 601b, V.T.C.S.)

J. **Purchase Order** means the document issued by the City that creates a legal binding contract between the City and the Contractor and authorizes the Contractor authorization to ship goods pursuant to the contract.

K. **Purchasing Manager** means the Purchasing Manager of the City.

L. **Small Business** means a corporation, partnership, sole proprietorship or other legal entity established for the purpose of making a profit, which is independently owned and operated, has either fewer than one hundred (100) employees, or less than one million dollars ($1,000,000.00) in annual gross receipts.

M. **Texas Resident Bidder** means a bidder whose principal place of business is in this state, and includes a bidder whose ultimate parent company or majority owner has its principal place of business in this state.

2. GENERAL CONDITIONS: Bidders will submit their bids upon the following express conditions:

A. Bidders will thoroughly examine the specifications, supplemental conditions, and all other bid documents.

B. Bidders will make all investigations necessary to thoroughly inform themselves regarding performance of services as required by the bid documents. No plea of ignorance as a result of failure to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City.

C. Bidders are advised that City contracts are subject to all legal requirements under Local, State, and Federal statutes, ordinances, and regulations.

3. CLARIFICATION OR OBJECTION TO BID DOCUMENTS:

A. If a bidder wants a clarification of the bid documents, it must submit a written request to the Purchasing Manager. A request for clarification must be received by the Purchasing Manager no later than five (5) days prior to the scheduled bid opening.

B. Any objections to the bid documents will be in writing and received by the Purchasing Manager no later than five (5) days prior to the scheduled bid opening.

4. ADDENDA TO BID DOCUMENTS: Any clarification of the bid documents will be made by an addendum. Addenda to the bid documents may be issued by the Purchasing Manager in response to a request for clarification or objection, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the bid documents. All addendums can only be viewed and downloaded at [www.sanmarcostx.gov/eprocurement](http://www.sanmarcostx.gov/eprocurement).

5. PREPARATION OF BIDS: Bidders will prepare bids in accordance with the following:
A. All information required by the bid documents will be furnished. The bidder will print or type its name, in ink, and manually sign the bid sheet. The bid sheet, with original signatures, must be submitted.

B. Unit prices will be shown when called for on the bid sheet, and where there is a conflict between the unit price and total price, the unit price will govern.

C. Alternate bids will not be considered unless expressly authorized by the bid documents.

D. The City is exempt from payment of State and Local sales, excise and use taxes under section 151.309 of the Texas Tax Code.

E. By submitting a bid, each bidder certifies that it is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision (See paragraph 10 A.(3)).

6. SUBMISSION OF BIDS:

A. Bids and bid addenda will be enclosed in sealed envelopes and submitted to the Office of the Purchasing Manager. The name and address of the bidder, date of the bid opening and the bid name will be shown on the outside of the envelope.

B. Bids will be submitted on the forms provided in these bid documents. If not submitted on the forms provided, the bid will be rejected. Facsimile bids will not be accepted, but a bid already received may be amended by facsimile if the amendment is received prior to the time and date set for the bid opening and specific bid prices are not disclosed in the amendment.

C. Each bidder agrees that its price will remain firm and subject to acceptance by the City for a period of 60 calendar days from the bid opening date.

7. WITHDRAWAL OF BIDS: A bidder may withdraw a bid only by a written request received by the Purchasing Manager prior to the time set for bid opening. Bids may not be withdrawn after the time set for bid opening.

8. LATE BIDS OR AMENDMENTS: Bids and amendments received after the time set for the bid opening will not be considered.

9. REJECTION OF BIDS:

A. The City may reject a bid if:

   (1) The bidder misrepresents or conceals any material fact in the bid;

   (2) The bid does not strictly conform to the bid documents;

   (3) The bidder is delinquent in the payment of taxes to any political jurisdiction; or

   (4) It is deemed in the best interest of the City to do so.

B. The City will not be responsible for costs incurred in the preparation of a bid or to contract for its contents.

C. The City reserves the right to waive any minor informalities or irregularities in any bid.

10. ACCEPTANCE OF BID: Upon acceptance of a bid by City Council and issuance of a Contract Award by the Purchasing Manager, the successful bidder will perform the services as specified at the stated prices, within the time specified, and in accordance with all provisions of the bid documents.

11. AWARD OF CONTRACT:

A. The City will award the contract to the lowest responsible bidder or will reject all bids. In situations where identical low bids are received from responsible bidders, the City will:

   (1) Decide between the two by the drawing of lots in a manner prescribed by the City Manager; or

   (2) Decide between the two by the drawing of lots in a manner prescribed by the City.

   (3) If only one of the bidders submitting identical bids is a resident of the city, the City must select that bidder. A resident bidder is a resident of the city if the principal place of business of the bidder is located within the San Marcos city limits.

B. The City reserves the right to award a contract(s) on the basis of the low bid for each item or the total low bid. Bidders are not required to bid on all items in order to be considered responsive. Prior to making multiple awards, the City will consider the administrative expense involved. The City will only make multiple awards if they result in a minimum savings of $250.00. The City reserves the right to award a contract so that the maximum possible savings are achieved. Multiple awards will be made only when necessary to obtain all required goods, when savings offset the administrative expense, or as otherwise determined to be in the best interest of the City.

C. A contract award attached to the bid documents, including the bid sheet of the successful bidder, signed by the Purchasing Manager and returned to the successful bidder results in a binding contract without the necessity for further action by either party. The contract time will commence to run on the date of the issuance of a contract award.
D. State law (2252.002 Texas Government Code) prohibits award to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid the non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located. This provision does not apply to a contract involving federal funds.

E. In purchasing any real property or personal property that is not affixed to real property, if the City receives one or more bids from local bidders, and the bids are within five percent (5%) of the lowest responsible bid received by the City from a nonresident bidder, the city council may award the contract to the lowest responsible bidder who is a local bidder, if the City council determines in writing that the local bidder offers the City the best combination of the contract price and additional economic development opportunities for the City created by the contract award including the employment of local residents, and increased tax revenues to the City.

12. TECHNICAL REPRESENTATIVES: Any advice, approvals, or instructions given by the City’s staff, technical personnel, or other representatives to any bidder are expressions of personal opinion only and do not alter or amend the bid documents unless included in an addendum.

13. RIGHT TO ASSURANCE: Whenevr one party to this contract, in good faith, has reason to question the other party’s intent to perform, the former may demand that the other party give written assurance of intent to perform. In the event that a demand is made and no such assurance is received within 5 working days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

14. WARRANTY OF PRICE: The City will pay the price for services specified by the Successful bidder’s bid. The Successful bidder warrants its price to be no higher than the Successful bidder’s current prices for its performance of the services covered by this contract for others under similar conditions.

15. PATENTS, INDEMNIFICATION, AND INFRINGEMENT: The Successful bidder agrees to indemnify, hold harmless and defend the City, its officers, agents, and employees against all claims, suits, demands, or damages for alleged or actual infringement of patents, copyrights, or trademarks by the services furnished hereunder.

16. PROTESTS: Any protest to the City’s consideration of any bid must be submitted in writing and received by the Purchasing Manager no later than 5 calendar days after bid opening. A written reply to the protest will be sent to the protesting bidder by the Purchasing Manager. The protest must contain:
   A. Identification of the statute or procedure that is alleged to have been violated;
   B. A precise statement of the relevant facts;
   C. Identification of the issues to be resolved, and
   D. Argued party’s argument and supporting documentation.

17. DISPUTES AND APPEALS:
   A. The City Council is the final authority on issues relating to this contract. The Purchasing Manager is the City’s representative in the award and administration of this contract, and will issue and receive all documents, notices, and correspondence.
   B. If a protest is not resolved to a bidder’s satisfaction, the bidder may submit a notice of appeal to the City Council, through the Purchasing Manager, within 5 days from the bidder’s receipt of a reply to the protest. The decision of City Council is final and conclusive, and binding on all parties concerned.
   C. The Contractor will continue performance of the contract during all disputes with the City. The timely production, shipment, and delivery of goods must not be delayed or postponed pending resolution of any disputes, except as the Contractor and the City may otherwise agree in writing.

18. PAYMENTS:
   A. Payment for completed services will be made upon acceptance of the services and submission of an invoice to the address below for orders placed by the Purchasing Manager, or as placed by other authorized City departments.

   City of San Marcos, Attn: (User Department), 630 East Hopkins, San Marcos, Texas 78666

   B. For purposes of payment, time will begin upon the satisfactory performance of services or submission of an acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by the City prior to contract award.

   C. At a minimum, invoices will include: (1) name, address, and telephone number of the Contractor and similar information in the event payment is to be made to a different address, (2) the purchase order number, (3) accurate description of services rendered (4) applicable unit prices, total prices, and total invoice amount, and (5) any additional payment information called for by the contract.

19. PROMPT PAYMENT ACT: The City will comply with State law (Chapter 2251, Texas Government Code) as amended, regarding payments under this contract.

20. DISCOUNTS: Prompt payment discounts will not be considered in determining low bids and making awards.

21. GRATUITIES:
   A. The City may terminate this contract if the City's Ethics Review Commission finds, after notice and hearing, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of the contract.
B. In the event this contract is terminated under this section, the City may collect, in addition to any other damages or remedies to which it may be entitled by law, exemplary damages in an amount not less than three (3) nor more than ten (10) times the value of the gratuity offered or given to any city officer or employee.

22. OFFICIALS NOT TO BENEFIT: If a member of the City Council or any city employee has a financial interest in a company, the City may not purchase goods from the company. If an officer of the City, other than a City Council member or city employee has an ownership interest in a company, then the City may not enter into contracts with that company exceeding a cumulative amount of $7,500.00 annually. Contracts made by the City in violation of these restrictions are voidable by the City Manager or the City Council.

23. ASSIGNMENT FOR FINANCING PURPOSES: If this contract provides for payments by the City exceeding $5,000.00, the Contractor may request in writing that payments due or to become due to the Contractor be assigned to a bank or other financing institution, provided that prior written approval is obtained through the Purchasing Manager, and payment by the City is made only to one party. Any assignment not in conformity with this provision will be null and void as to the City. A fee of $100.00 per contract, per request, will be charged the Contractor for administrative costs in processing each assignment under this Paragraph. Upon payment of such fee to the City, the contract will be modified to reflect the changed payee name and address.

24. DELEGATION, SUBCONTRACTS, ASSIGNMENT, AND SET-OFF: The Contractor will not, without written consent of the City, make any contract with any other entity for furnishing any of the completed or substantially completed goods covered by this contract or assign its obligations under this contract. The City may set-off against the amount payable to any person under this contract any claim or charge it may have against the Contractor.

25. WAIVER: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by both parties.

26. CHANGE OF NAME: The Contractor is responsible for the performance of this contract. In the event the Contractor changes its name, the Purchasing Manager must be notified in writing immediately. No change in the obligation of the Contractor will be recognized until such change is approved by the Purchasing Manager. A fee of $100.00 per contract, payable to the City, will be charged the Contractor for administrative costs in processing each change under this provision. The contract will then be modified to reflect the change.

27. FORCE MAJEURE: In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

28. TERMINATION FOR DEFAULT: Failure by either party to perform any of its provisions will constitute a default and breach of contract, in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

29. TERMINATION FOR CONVENIENCE: The City reserves the right to terminate this contract upon 30 days written notice for any reason deemed by the City Council to serve the public interest. Termination for convenience will not be made when termination is authorized under any other provisions of this contract. In the event of such termination the City will pay the Successful bidder those costs directly attributable to services received by the City in compliance with the contract prior to termination. Provided, however, that no costs will be paid to the Successful bidder which are recoverable in the Successful bidder's normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder.

30. HUB POLICY: It is the City's policy that in regard to any contract entered into pursuant to this solicitation, historically underutilized businesses ("HUB'S") will be afforded equal opportunities to submit bids in response to this solicitation and will not be discriminated against on the grounds of race, color, sex, religion, national origin, age, or disability in consideration for an award. The bidder warrants that upon execution of a contract with the City, it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, disability, or national origin and will submit reports as the City may thereafter require to assure compliance.

31. ORDER OF PRECEDENCE: In the event of inconsistency between provisions of this contract, the inconsistency will be resolved by giving precedence in the following descending order:

A. The bid sheet;
B. The specifications;
C. The supplemental conditions;
D. The terms and conditions of invitation for bids (IFB);
E. Other provisions, whether incorporated by reference or otherwise, including any documents provided by the Contractor.

32. CONSTRUCTION:
A. Except as provided otherwise, words will be given their ordinary meaning. If a word is connected and used with reference to a particular trade or subject matter or is used as a term of art, the word will have the meaning given to it in that particular trade, subject matter, or art. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular unless expressly provided otherwise. The neuter gender includes the appropriate feminine and masculine genders. The term "will" is mandatory.

B. The headings at the beginning of the various provisions of this contract have been included in order to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.

C. This contract will be construed under the law of the State of Texas. Exclusive venue for any litigation under this contract is in Hays County, Texas.
33. ENTIRETY OF AGREEMENT; AMENDMENTS: This represents the entire agreement between the parties relating to the subject matter of this contract. Any prior agreements, promises, negotiations, or representations between the parties are not binding unless included in this contract. All amendments to this contract must be in writing and executed by both parties.

34. SEVERABILITY: In case any one or more of the provisions contained in this contract is held to be invalid or unenforceable in any respect by a court of proper jurisdiction, the invalidity, illegality or unenforceability will not affect any other provision of this contract, and this contract will be construed as if the invalid or unenforceable provision was not contained herein.

35. FUNDING: Funds for payment of this contract have been provided through the City budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of services covered by this contract is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. City Council expects this to be an integral part of future budgets to be approved during the period of this contract except for unanticipated needs or events which may prevent such payments against this contract. However, the City cannot guarantee the availability of funds, and enters into this contract only to the extent such funds are made available. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

36. PUBLIC INFORMATION ACT: The City of San Marcos is governed by the Public Information Act ("The Act"), Chapter 552 of the Texas Government Code. All information submitted by prospective bidders during the bidding process is subject to release under The Act.

37. NOTICES: All notices called for or required by this agreement will be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage pre-paid or by hand delivery, and will be effective five days after mailing.

Purchasing Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

38. QUALITY OF SERVICES: The successful bidder expressly warrants that all services specified in this IFB will be performed by it or its subsuccessful bidders with skill, care, and diligence and in accordance with all specifications of this IFB. The successful bidder agrees to correct any deficiencies in its provision of services upon notification by the City and without additional expense to the City.
4. BID FORM

BID NAME: LEAK DETECTION SERVICES
DUE DATE: MARCH 23, 2017, AT 2:00 P.M., C.D.T.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost per Mile</th>
<th>X Miles</th>
<th>= Total Cost</th>
<th>=Total Cost if Paid for with P-Card</th>
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<tbody>
<tr>
<td>1</td>
<td>Leak Detection Services</td>
<td>$353.00</td>
<td>75</td>
<td>$26,375.00</td>
<td>$26,375.00</td>
</tr>
</tbody>
</table>

THE UNDERSIGNED AFFIRMS THAT IT IS DULLY AUTHORIZED TO SUBMIT THIS BID, THAT THIS BID HAS NOT BEEN PREPARED IN COLLUSION WITH ANY OTHER BIDDER, AND THAT THE CONTENT OF THIS BID HAS NOT BEEN COMMUNICATED TO ANY OTHER BIDDER PRIOR TO THE OFFICIAL RECEIPT OF THIS BID. THE CITY OF SAN MARCOS RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

SIGNING THE BID FORM AFFIRMS THAT THE ORIGINAL INVITATION FOR BID DOCUMENT HAS NOT BEEN ALTERED IN ANY WAY.

BIDDER NAME: Matchpoint Water Asset Management Inc
MAILING ADDRESS: 215 Racine Dr Suite 201
CITY, STATE, ZIP: Wilmington, NC 28403
TELEPHONE NUMBER: 910-509-7284
FAX NUMBER: 910-509-7285
EMAIL ADDRESS: nancy@matchpointinc.us
AUTHORIZED REPRESENTATIVE'S NAME: Nancy S. Jones
AUTHORIZED REPRESENTATIVE’S TITLE: CFO
AUTHORIZED SIGNATURE: [Signature]
DATE: 3/21/2017
REFERENCES

Company Name: Knoxville Utilities Board, TN
Representative's Name: Ted Tyree
Mailing Address: P.O. Box 51324
City, State, Zip: Knoxville, TN 37950
Telephone Number: 865-558-2743
Email Address: ted.tyree@kub.org

Company Name: City of McKinney, TX
Representative's Name: Michael Burnside
Mailing Address: P.O. Box 517
City, State, Zip: McKinney, TX 75070
Telephone Number: 972-547-7360
Email Address: mburnside@mckinneytexas.org

Company Name: Otay Water District, CA
Representative's Name: Jake Vaca-Vek
Mailing Address: 2554 Sweetwater Springs Blvd.
City, State, Zip: Spring Valley, CA 91978
Telephone Number: 619-670-2230
Email Address: JakeV@otaywater.gov

AUTHORIZED SIGNATURE: Nancy J. Jones

* There is additional information about these references included in our proposal on page 9.
6. SPECIAL PROVISIONS

A. CONTRACT AWARD: The successful bidder will be awarded a one (1) year contract effective April 24, 2017, through April 23, 2018.

B. OPTION TO EXTEND: This contract may be extended for four (4) additional one (1) year periods provided all terms and conditions remain unchanged and in full force and effect. This option, if exercised, will be executed in the form of a Letter of Agreement signed by the Purchasing Manager to be issued not sooner than one hundred twenty (120) calendar days prior to expiration of this contract, nor later than the final day of the established contract period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will require the contract to expire on the original contract expiration date. The total period of the contract, including all extensions as a result of exercising this option may not exceed a maximum combined period of five (5) years.

C. FACTORS TO AWARD: The following criteria will be utilized in the evaluation of the bid:

1. Lowest total cost;
2. Responsibility of the bidder; and
3. Responsiveness of the bidder.

D. BASIS OF AWARD: The City of San Marcos (the “City”) reserves the right to award a contract to a bidder on the basis of total low bid. The City reserves the right to reject all bids.

E. ADDITIONAL INFORMATION: Inquiries regarding this bid will be in written form only, and must be received by 5:00 p.m. C.D.T., ten (10) calendar days prior to the bid submission deadline. Inquiries will be emailed and will include a contact name, address, and telephone number. Questions will be submitted to:

Veronica Bradshaw
Purchasing Specialist, Senior
City of San Marcos
Email: cosmpurchasing@sanmarcostx.gov

F. ADDENDA: Any changes resulting from the questions submitted affecting specifications, the scope of work, or which may require an extension to the bid due date will be reduced to writing in the form of an addendum to this solicitation. Addenda can only be viewed at www.sanmarcostx.gov/eprocurement. It is the bidder’s responsibility to check the above site to determine if the City has issued any addenda. Addenda will be issued no later than five (5) calendar days prior to the bid due date.
G. EXPERIENCE: The bidder certifies that it has a minimum of ten (10) years' experience in leak detection and has been actively and steadily engaged in this type of work for not less than ten (10) years with the water industry. The bidder will provide, with the bid, five (5) leak detection reports and GPS leak mapping projects of previous work performed within the past twenty-four (24) months.

H. BIDDER INFORMATION QUESTIONNAIRE: Bidder will submit, with the bid, the Bidder Information Questionnaire (Attachment "A") in order to be considered responsive.

I. BIDDER DEVIATION FORM: Bidder will submit, with the bid, the Bidder Deviation Form (Attachment "B"), if applicable. If the Bidder Deviation Form is not filled out and attached, it is presumed that your bid meets all specifications.

J. TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION FORM: A valid federal tax identification number will be provided to the City following notification of contract award. If the bidder fails to provide this form (Attachment "C"), the City will award to the second lowest responsive, responsible bidder.

K. INSURANCE AND LIABILITY: During the period of the resulting contract, the successful bidder will maintain, at its expense, insurance with limits not less than those prescribed below. Insurance underwriters will be acceptable to the City. With respect to required insurance, the successful bidder will:

1. Name the City (630 East Hopkins Street, San Marcos, Texas 78666) as an additional insured.

2. Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.

   Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

3. Provide the Purchasing Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.

4. Submit a Certificate of Insurance reflecting coverage as follows:

   Bodily Injury (Each person) ................................................................. $1,000,000.00
   Bodily Injury (Each accident) .............................................................. $1,000,000.00
   Property Damage .............................................................................. $1,000,000.00

   General Liability (Including Contractual Liability):
L. WORK HOURS: All work under this contract will be coordinated with the City Contract Administrator. Any changes made to the established schedule will have prior approval of the City Contract Administrator. The successful bidder will work the same eight (8) hour workday schedule as the Public Services Department, Water/Wastewater Utilities Division. The hours are normally from 8:00 a.m. – 5:00 p.m., Monday – Friday. These work hours allow for a one (1) hour lunch break, one (1) fifteen (15) minute break in the morning, and one (1) fifteen (15) minute break in the afternoon. Breaks will be taken on the job site in the field. Any deviation from the set scheduled hours will be approved in advance by the City Contract Administrator. All crewmembers will be required to keep time records of the start and end of each workday.

M. HOLIDAYS: The successful bidder will observe the same holiday schedule as the City unless prior arrangements have been made with the City’s Contract Administrator for approval.

<table>
<thead>
<tr>
<th>Holiday</th>
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<tr>
<td>New Year’s Day</td>
<td>Sunday, January 1</td>
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<td>Martin Luther King Jr. Day</td>
<td>Monday, January 16</td>
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<tr>
<td>Presidents’ Day</td>
<td>Monday, February 20</td>
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<tr>
<td>Memorial Day</td>
<td>Monday, May 29</td>
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<tr>
<td>Independence Day</td>
<td>Tuesday, July 4</td>
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<tr>
<td>Labor Day</td>
<td>Monday, September 4</td>
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<tr>
<td>Veterans Day</td>
<td>Saturday, November 11</td>
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<tr>
<td>Thanksgiving Holiday</td>
<td>Thursday, November 23</td>
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<tr>
<td></td>
<td>Friday, November 24</td>
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<tr>
<td>Christmas Holiday</td>
<td>Monday, December 25</td>
</tr>
<tr>
<td></td>
<td>Tuesday, December 26</td>
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</tbody>
</table>

N. EMPLOYEES: The City reserves the right to investigate the bidder’s personnel and management to ensure the bidder’s capability to perform work under this contract.

1. All services will be performed by experienced, qualified personnel of the successful bidder using current, acceptable practices.

2. The successful bidder’s employees, permanent or temporary, will present a neat appearance and be easily recognized while performing the work. This will be accomplished by wearing appropriate identification badges or uniforms.

3. All employees of the successful bidder that are not U.S. citizens will have valid work permits. The successful bidder will follow all guidelines of equal employment
practices.

4. The City reserves the right to direct the successful bidder to remove or replace any employee for just cause.

5. The successful bidder will have an English speaking employee on site at all times while work is being performed.

6. The successful bidder will require employees to wear personal protective equipment in accordance with appropriate safety standards.

Q. INVOICING: All invoicing will maintain the item description, unit price, quantity, extended price, purchase order number (if applicable), and contract number (if applicable).

P. PAYMENTS:

1. Payment will be made by the City upon the completion of the project and acceptance of the goods and/or services called for under this contract, and submission of an original invoice to the City of San Marcos, Accounts Payable Division, 630 East Hopkins Street, San Marcos, Texas 78666, or cosmap@sanmarcostx.gov.

2. Prior to receipt of Purchase Order or Contract, the successful bidder will complete a Request for Taxpayer Identification Number and Certification Form. The City will not issue payment until the properly completed form has been received.

3. All payment terms will be "Net 30 Days" unless otherwise specified in the RFQ document. Successful bidders are encouraged to register for direct deposit payments prior to providing goods and/or services using the AP-ACH Direct Deposit form posted on the City’s website at http://www.sanmarcostx.gov/index.aspx?page=20&parent=7.

Q. PROCUREMENT CARD (P-CARD): The City has implemented a Procurement Card Program to streamline our procurement process. In order to expedite payments for our suppliers, the City has the option to make payment utilizing a Master Card (P-Card) rather than a City check. By making purchases with the P-Card, the City can more effectively control our procurement activities and achieve a significant cost savings over our current paper purchasing/payment system. See the Bid Form to insert total cost if paid with P-Card.

R. CERTIFICATE OF INTERESTED PARTIES: A proponent that will be awarded a contract that is greater than $50,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed and notarized copy of the form to the City prior to the award of the contract. A contract,
including a City-issued purchase order, will not be enforceable or legally binding until the
City receives and acknowledges receipt of the properly completed Form 1295 from the
bidder.

S. DOCUMENTATION: The bidder will submit the following documents:

1. References page (with bid).

2. Name, title, and telephone number of company representative who may be
   contacted in emergencies or performance deficiencies (with bid).

3. Certificate of insurance (after notification of award).

4. IRS W-9 Tax Form (after notification of award, if not previously provided).

5. Five (5) leak detection reports and GPS leak mapping projects of previous work
   performed within the last twenty-four (24) months (with bid).

T. SMOKING: In accordance with San Marcos Ordinance No. 2013-57, all City-owned
and rented/leased properties are smoke free properties. All contractors, subcontractors,
and their employees are prohibited from smoking while on City property. This includes
the enclosed areas of public places and workplaces, within ten (10) feet of doors and
windows, City-owned or rented/leased property, including parks and facilities. This
prohibition includes e-cigarettes and other inhaled vapor devices. The City reserves the
right to terminate a contract(s) if the Contractor is found in noncompliance. The City
reserves the right to direct the Contractor to remove or replace any employee for just
cause.

U. DISCRIMINATION: The successful bidder will ensure that employees and applicants
for employment are not discriminated against because of their race, religion, national
origin, sex, color, or age and that qualified persons are not discriminated against in
employment practices because of disabilities.

7. SPECIFICATIONS

A. SCOPE: The successful bidder will provide all labor, equipment, tools, materials,
supplies, supervision, and other items or services necessary to perform operations in
connection with the services to conduct a potable water leak detection survey on an
estimated seventy-five (75) miles of the City’s water distribution system according to a
City-provided map of the Leak Detection Survey Area and as described below:

1. Perform Acoustic Leak Survey: All service connections located inside the
customer meter box, distribution valves, fire hydrants, air release valves, or any
exposed section of the system will be individually sounded with acoustic leak
surveyor equipment to ensure a thorough survey of the water system.
2. **Confirm leak sounds at fire hydrants**: When leak sounds are identified with acoustic equipment at fire hydrants by the successful bidder, the City will flush and re-seat the fire hydrants. The successful bidder will recheck fire hydrants with acoustic equipment during the project in order to determine if repairs are necessary.

3. **GPS Leak Identification**: All leak locations will be identified in the water system by the successful bidder with sub-meter accuracy GPS receiver equipment with a minimum of thirty (30) positions per location. All leak data will be provided in thirty (30) centimeters leak location point data to the City in shape file format projected in the State Plant C.S. Texas South Central Coordinate System in NAD83 Datum. In addition, all GPS raw data will be provided in uncorrected .SSF file format.

4. **Project Data**: The successful bidder will provide daily and weekly leak survey result information reports to the City Contract Administrator. Report results will indicate the following:
   
   a. Prioritize leaks by size;
   
   b. Physical address and GPS locations of leaks;
   
   c. Description and date leaks located; and
   
   d. Progress of linear mileage of system surveyed.

5. **Water Meter Assessment**: The successful bidder will perform the following water meter assessments:
   
   a. Visual meter condition assessment of all meters; and
   
   b. Assess meter age and condition for replacement.

6. **Final Leak Detection Project Report**: The successful bidder will provide a final report, due within seven (7) calendar days of project completion, to the City Contract Administrator. The report will contain at a minimum, but not limited to, the following information:
   
   a. Listings of locations and descriptions of leaks identified;
   
   b. Listings of fire hydrants in need of repairs;
   
   c. Listings of inaccurate water meters identified with leak survey equipment; and
   
   d. Recommendations for improvements to the water system based upon project results and knowledge gained in performing similar leak detection/water conservation surveys.
B. **EQUIPMENT:** The City reserves the right to inspect the bidder's equipment to ensure the bidder's capability to perform work under this contract. The successful bidder will use only high quality equipment in good mechanical condition to conduct leak detection services. Equipment must be equal in performance to the following:

1. FCS S30 Leak Detection Surveyors;
2. Subsurface LD 7-10 or 12 Leak Surveyors; and
3. GPS Equipment: 30 centimeters or better accuracy.

C. **EQUIPMENT/SAFETY:** The safety of the successful bidder's employees and the public is of prime concern to the City. The successful bidder will take all necessary steps to ensure proper safety during the performance of the project.

1. The successful bidder will be responsible for providing and placement of barricades, tarps, plastic, flag tape, and other safety/traffic control equipment required to protect its employees, the public, surrounding areas, and equipment and vehicles;
2. The flow of vehicular traffic will not be impeded at any time during this project; and
3. Any bidders that have a history of safety problems or a high incidence of accidents will not be considered for award of contract.

D. **VEHICLES:** The successful bidder's vehicles will be identified with the successful bidder's name on both doors. Vehicles will be equipped with caution lights and cones. All equipment will be in good mechanical condition and possess a valid, current Texas Department of Transportation (TxDOT) certification.

E. **DRIVERS:** The successful bidder will have drivers with a valid State of Texas Class "C" driver's license.

F. **SECURITY AND MAINTENANCE:** The successful bidder will be responsible for reasonable protection and safeguarding all City property within the work areas during performance of this contract. Upon completion of the work period, the successful bidder will assure that the facilities and equipment are secured. The successful bidder will be briefed on area accessibility prior to the contract start date.

G. **PROPERTY DAMAGE:** The successful bidder will take special care in working areas to protect public and private property. The successful bidder will be responsible for repair of any damage caused by the successful bidder's activities to personal property at its own expense, including, but not limited to, any damaged roads, curbs, sidewalks, fencing, and yard vegetation. Repair and restoration will be to the satisfaction of the City. The site will be left in a condition satisfactory to the property owner.
H. INTERFERENCE: The successful bidder, in carrying out their services, will employ such methods or means to prevent interruption of or interference with the work of any City personnel at the site.

I. WORKMANSHIP: Where not more specifically described in any of the various sections of these specifications, workmanship will conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved. All work will be executed by personnel skilled in their respective lines of work.

J. INSPECTION: The City reserves the right to inspect the project site as well as all work performed on the City's behalf. Any deficiencies will be immediately corrected by the successful bidder at no additional cost to the City.
ATTACHMENT "A"
BIDDER INFORMATION QUESTIONNAIRE
This document will be submitted with the bid or the bid will be considered non-responsive.

Name of Company: Matchpoint Water Asset Management Inc.
Principal Office Address: 215 Racine Dr. Suite 201
Wilmington, NC 28403
Telephone Number: 910-509-7284

Form of Ownership (check one)

( ) Corporation
State of Incorporation/Registration: NC
Date of Incorporation/Registration: 7/26/2005

( ) LLC

( ) Joint Venture

( ) Partnership: If Partnership, select one of the following: ( ) Limited or ( ) General

( ) Individual

Company has been in business since: 2005

List of Partners, Principals, Corporate Officers or Owners

Name: Stephen Barry Hales
Title: President

List of Corporate Directors

Name: N/A
Title:
1. Have you had any contracts terminated for default or other performance reasons? 
   _Yes_ ☑ No If yes, explain: ____________________________________________________________

2. Has your company been convicted of a criminal offense committed in Hays County, 
   Texas involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official?
   _No_ If so, has the conviction occurred within three years immediately preceding either the date of submission of a bid, or the date of award of the contract?
   __________________________________ If so, explain: ________________________________

3. Is your company involved in pending investigation or criminal prosecution of a 
   criminal offense alleged to have been committed in Hays County, Texas involving 
   fraud, theft, bribery, kickbacks, or unlawful gifts to a public official? _No_ If so, explain: 
   ________________________________________________________________

4. Does your company have pending claims, investigations, or civil litigation involving 
   allegations of fraud, misrepresentation, or conversion? _No_ ________________________

5. Does your company have previous final judgments against the City for breach of 
   contract, fraud misrepresentation or conversion? _No_ ________________________

6. Has your company failed to timely pay/remit sales tax, property tax, or utility 
   payments to the City of San Marcos? _No_ _________________________________________

7. Has your company refused to execute a contract following an award by the San 
   Marcos City Council? _No_ _________________________________________

8. Has your company violated the anti-lobbying provisions in a current or previous 
   City of San Marcos procurement process by making contact with a member of the San 
   Marcos City Council prior to the award of a contract? _No_ If so, explain: 
   ________________________________________________________________

9. Has your company furnished unauthorized substitutions of materials not meeting 
   contract specifications in a current or previous contract with the City of San Marcos? 
   _No_
I, Nancy S. Jones, as CFO of Matchpoint Water Asset Management Inc., declare under oath that the above Statements, including any supplemental responses attached hereto, are true and correct, and that the representations made herein are accurate to the best of my knowledge and are based upon a diligent search of records. I further acknowledge that any failure to conduct a diligent search or to make a full and complete disclosure may result in cancellation of my contract by the City of San Marcos, and possibly debarment.

Signature

THIS FORM MUST BE SUBMITTED WITH YOUR BID
ATTACHMENT "B"
BIDDER DEVIATION FORM

THIS FORM MUST BE COMPLETED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE MANUFACTURER. FAILURE TO DO SO MAY CAUSE TOTAL BID TO BE REJECTED. IF NO DEVIATIONS ARE TO BE PROPOSED, INDICATE BY STATING "NO DEVIATIONS TO SPECIFICATIONS" AND SIGN IN THE APPROPRIATE SPACE.

STATEMENT OF BIDDER:

WE PROPOSE THE FOLLOWING DEVIATIONS TO THE SPECIFICATIONS:

<table>
<thead>
<tr>
<th>PAGE #</th>
<th>SECTION</th>
<th>EXCEPTION</th>
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<td><strong>NO DEVIATIONS TO SPECIFICATIONS</strong></td>
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NOTE: IF ADDITIONAL PAGES ARE NEEDED, ATTACH TO THE BACK OF THIS PAGE AND **NOTE** "SEE PAGE 2-DEVIATIONS" ON THIS PAGE.

[Signature]
FIRM NAME

[Signature]
SIGNATURE OF REPRESENTATIVE
ATTACHMENT “C”

W-9
Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Name as shown on your income tax return
Matchpost Water Asset Management Inc

Business name, if different from above

Check appropriate box: □ Individual/sole proprietor □ Corporation □ Exempt payee
□ Partnership □ Limited Liability Company

Other tax classification

Address number, street, and apt or suite no.
108 Racine Dr Suite 201

Wilmington, NC 28403

City, state, and ZIP code

Requestor’s name and address (optional)

List account number(s) (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For a corporation, this is your employer identification number (EIN); however, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply.
3. I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here

Signature of U.S. person

Date:

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien, to provide your correct TIN to the person requesting it (the requester) and, when applicable:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued); and
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners’ share of effectively connected income.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester’s form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

• An individual who is a U.S. citizen or U.S. resident alien,
• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
• An estate (other than a foreign estate), or
• A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners’ share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

• The U.S. owner of a disregarded entity and not the entity.

Cat. No. 10231X
Form W-9 (Rev. 10-2007)
• The U.S. grantor or other owner of a grantor trust and not the trust, and
• The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if he or she stays in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (stated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income under Article 9 of the treaty. The student must attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester.
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details).
3. The IRS tells the requester that you furnished an incorrect TIN.
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see Special rules for partnerships on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for failing to satisfy certification. Willfully failing to satisfy certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return on the "Name line." You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.
Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:
1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Exempt payees that may be exempt from backup withholding include:
6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian,
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

<table>
<thead>
<tr>
<th>IF the payment is for . . .</th>
<th>THEN the payment is exempt for . . .</th>
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<tbody>
<tr>
<td>Interest and dividend payments</td>
<td>All exempt payees except for 9</td>
</tr>
<tr>
<td>Broker transactions</td>
<td>Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker</td>
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<td>Barter exchange transactions and patronage dividends</td>
<td>Exempt payees 1 through 5</td>
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<tr>
<td>Payments over $5000 required to be reported and direct sales over $5,000</td>
<td>Generally, exempt payees 1 through 7</td>
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</tbody>
</table>

1See Form 1096-MISC, Miscellaneous Income, and its instructions.
2However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1096-MISC are not exempt from backup withholding: medical and health care payments, attorneys’ fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see How to get a TIN below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see Limited Liability Company (LLC) on page 2), enter the owner’s SSN (or EIN, if the owner has one). Do not enter the disregarded entity’s EIN. If the LLC is classified as a corporation or partnership, enter the entity’s EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately.

To apply for an SNN, get Form SS-4, Application for Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester.

For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-8. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see Exempt Payees on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below:
1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered inactive during 1983. You must give your correct TIN, but you do not have to sign the certification.
2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:
- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the "ASC toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-908-3778.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common method is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at, spam@ftc.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT (438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of securities, cancellation of debt, or contributions you made to an IRA, or Archer MSA, or HSA. The IRS use the number for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to other states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal non-tax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payees must generally withhold 26% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN or to a payee. Certain penalties may also apply.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
George Chadwick-Insurance
3301 Wrightsville Avenue
Wilmington, NC 28403-4155
Mickey Southlander, CIC, AAI

CONTACT
Carol Palmer
910-762-2489
FAX
910-763-8006
EMAIL
cpalmer@chadwickinsurance.com

INSURED
Matchpoint Inc & Matchpoint
Water Asset Management Inc
215 Racine Drive Ste 201
Wilmington, NC 28403

INSURER (A)
Liberty Mutual Fire Insurance

INSURER (B)
First Liberty Insurance Corp

INSURER (C)
Ohio Casualty Insurance

INSR E: 

INSR F:

COVERAGES

CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR TYPE OF INSURANCE RISD WVD POLICY NUMBER POLICY EFF POLICY EXP LIMITS
A X COMMERCIAL GENERAL LIABILITY 09/01/2016 09/01/2017 $1,000,000
UBER EXCESS LIABILITY CLAIMS-MADE 09/01/2016 09/01/2017 $5,000,000
B X WORKERS COMPENSATION AND EMPLOYEE LIABILITY 01/30/2017 01/30/2018 $1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CITYSM1

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

M. S. SOUTHERLAND

© 1988-2014 ACORD CORPORATION. All rights reserved.
A. This addendum will be considered a part of the Leak Detection Services bid (IFB 217-020). Where provisions of this addendum differ from those of the original bid, this addendum will govern.

B. QUESTIONS:

1. Of the 75 miles of pipe, what is the size, type, and pressure?
   
   Answer: Pipe sizes vary from 6" to 16". Pipe type: AC, CI, DI, PVC pipes. Approx. 75-100 psi.

2. What is the size and material breakdown by mileage for the pipe being surveyed?
   
   Answer: Unknown, varies from one area to next.

3. What is the approximate age range of the pipe in this system?
   
   Answer: Age varies depending on area could range from 2 years to 60 years old.

4. Would you allow contractors to work on weekends?
   
   Answer: Typically not allowed.

5. Are the service connections (including curb stops) located in pits and easily accessible?
   
   Answer: Yes.

6. Do the service connections or curb stops in the survey area have locking lids?
   
   Answer: No.

7. How many meters are estimated to be within the survey area that will need to be visually inspected and reported on?
   
   Answer: Approx. 11,480 meters in the system about 1/4 of the city is surveyed in the 75 miles. Exact count in each ¼ would vary slightly.
8. Do you have GIS data available for the contractors to utilize for system information once awarded?

   Answer: Yes

9. What is the estimated water loss percentage for this system or area?

   Answer: 15%

10. When was the last leak detection survey conducted on this system or area?

    Answer: A lead detection survey is conducted yearly on approximately 75 miles of the system.

11. Can you any supply the documentation or findings from the last survey?

    Answer: The last survey report can be made available upon submitting a Public Information Request through the following link: http://www.ci.san-marcos.tx.us/index.aspx?page=1250

12. What are the results from previous bids if any for this scope of work?

    Answer: Previous bid results can be found at www.sanmarcostx.gov/eprocurement, selecting “Expired” from the solicitation dropdown list, and searching on the term “leak detection”.

13. What is the density of connections per mile of the proposed survey area and the overall amount of connections within it?

    Answer: Unknown. The survey area has not been determined.

14. What is the general expectation for suspected hydrant leaks to be flushed and reseated by the utility once reported?

    Answer: Once identified hydrants should be flushed within 2 – 3 days by City crew.

15. For contractors that are not located in the state of Texas, will the expectation for a TxDOT certification be waived? If not, how can this be secured for out of state contractors?

    Answer: Yes, this will be waived.

16. For contractors that are not located in the state of Texas, will the expectation for a Texas driver’s license be waived if the contractors hold class C licenses from other states?

    Answer: As long as the drivers hold valid driver’s licenses from their state of residence, this requirement will be waived.
17. What are the City's schedule expectations for the work to commence and be completed by?

*Answer:* No start set, to be discussed and agreed upon with the selected vendor, but no later than 2 to 3 months after award. End date typically 3 months from start.

Sincerely,

Rachel Shelton  
Purchasing Specialist, Senior
AGENDA CAPTION:
Consider approval of Resolution 2018-40R, approving a contract with TXI Operations, LP, d/b/a Martin Marietta for the sale of reclaimed water; authorizing the City Manager to execute the appropriate documents related to this contract on behalf of the City and declaring an effective date.

Meeting date: 3/20/2018

Department: Public Service - Water/Wastewater Utility (Tom Taggart)

Amount & Source of Funding
Funds Required: NA
Account Number: NA
Funds Available: NA
Account Name: NA

Fiscal Note:
Prior Council Action: The original contract with TXI Operations, LP for the sale of reclaimed water by the City to TXI Operations was entered into in March of 2007 for a term of 10 years. This agreement is for the same terms and conditions as the previous contract minus sections concerning the construction of a pipeline and delivery facilities, which were completed under the original contract. Pricing during this term will be at the then prevailing rate as set by Council (at this date- $1.56/1000 gal.) Annual revenue from this contract at current usage is approximately $95,000. Please note: This item is not related to the leasing the City’s right to withdraw Edwards Aquifer Groundwater.

City Council Goal: [Please select goal from dropdown menu below]
Goal # 7 Maintain Fiscal Responsibility
Goal #9 Protect & Preserve San Marcos River and Edwards Aquifer Recharge Zone

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

Choose an item.

Background Information:
The City has been supplying reclaimed water to the TXI quarry and Kiln facility on S. Hunter for approximately 5 years. TXI was acquired by Martin Marietta after the original 2007 contract was executed. This contract for reclaimed water for the facility is not related to the prior EAA groundwater lease agreements with the City of San Marcos that Martin Marietta utilized to provide water at quarry facilities in New Braunfels and Bexar County.

Under the original contract TXI reimbursed the City for extending the reclaimed water pipeline from Old Bastrop Road at Francis Harris, 2.7 miles to their cement manufacturing facility on Hunter Road along with other necessary improvements to the reclaimed water system. Today, Martin Marietta uses an average of just under 5 million gallons per month of reclaimed water at the prevailing rate of $1.56 per 1,000 gallons. This contract will continue to provide Martin Marietta with a guaranteed maximum quantity of reclaimed water up to 700,000 gallons per day which they can take at smaller quantities at their discretion. The contract term is for 10 years.

Council Committee, Board/Commission Action:
Council previously approved a similar contract for sale of reclaimed water to TXI in 2007

Alternatives:
None identified with equal benefit

Recommendation:
Staff recommends approval and execution of this contract.
RESOLUTION 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CONTRACT WITH TXI OPERATIONS, LP, DBA MARTIN MARIETTA FOR THE SALE OF RECLAIMED WATER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE DOCUMENTS RELATED TO THIS CONTRACT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. On March 6, 2007, the City awarded a contract to TXI Operations, LP, dba Martin Marietta “Martin Marietta” for the sale of reclaimed water and for assisting in the necessary improvements of the reclaimed water pipeline.

2. All necessary improvements of the reclaimed water pipeline have been completed.

3. The original March 6, 2007 contract will be expiring and the City wishes to continue selling reclaimed water to Martin Marietta.

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

PART 1. The contract with Martin Marietta for the sale of reclaimed water is approved.

PART 2. The City Manager is authorized to execute appropriate documents related to this contract 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 day of , 2018.

John Thomaides
Mayor

Attest:
Jamie Lee Case,
City Clerk
This Retail Water Supply Contract (“Contract”) is entered into on ________________, 2018 (the “Effective Date”) between TXI Operations, LP, a Delaware limited partnership doing business as Martin Marietta (hereinafter, “Martin Marietta”) and the City of San Marcos, Texas, a municipal corporation (the “City”).

Recitals

WHEREAS, Martin Marietta operates a cement manufacturing facility and an adjacent limestone quarry, crushing, and processing facility (the “Martin Marietta Facility”) in Comal County, Texas that requires a supply of water for operating purposes; and

WHEREAS, the City owns and operates a wastewater treatment plant (the “WWTP”) with a capacity capable of supplying to Martin Marietta the amount of reclaimed water specified in this Contract; and

WHEREAS, Martin Marietta has investigated the suitability of using reclaimed water from the WWTP in the Martin Marietta Facility for operating purposes, and has satisfied itself as to this suitability; and

WHEREAS, the City desires to sell and Martin Marietta desires to purchase reclaimed water under the terms and conditions specified in this Contract; and

NOW, THEREFORE, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the City and Martin Marietta agree as follows:

Article 1. Provision of Reclaimed Water by the City

Section 1.01. Quantity of Water to be Supplied. The City agrees to provide to Martin Marietta, and Martin Marietta agrees to purchase from the City, reclaimed water produced each day at the WWTP for use at the Martin Marietta Facility for operating purposes. The reclaimed water will be delivered at a location (the “Point of Delivery”) on the Martin Marietta property boundary to be designated by mutual agreement of the City and Martin Marietta. The City will make available to Martin Marietta up to 700,000 gallons of reclaimed water each day (the “Maximum Quantity”), which may be taken in smaller quantities at Martin Marietta’s sole discretion without lessening the guaranteed amount for any subsequent day, through the delivery facilities to be constructed under this Contract (the “Delivery Facilities”), at the rate described in Section 3.01, subject to Section 4.04 related to uncontrollable circumstances. Martin Marietta may purchase additional quantities of reclaimed water from the City in excess of the Maximum Quantity at the same price to the extent they are available from production at the WWTP and deliverable through the Delivery Facilities. The water shall be delivered in a consistent delivery pressure range, at a flow rate of up to 487 gpm. Higher flow rates may be allowed by the City if system conditions permit.
Section 1.02. Quality of Water to be Supplied. The City agrees that the reclaimed water supplied under this Contract will conform to the standards for Type I reclaimed water contained in Title 30, Part I, Section 210.33 of the Texas Administrative Code.

The City agrees that it will sample the reclaimed water as may be required by Title 30, Part 1, Section 210.34 of the Texas Administrative Code or other applicable regulation; and shall provide the results of such sample to Martin Marietta, by email or facsimile. In the event the City learns of sample results which may pose a hazard to health or wellbeing of Martin Marietta workers or equipment beyond those known to exist with Type I reclaimed water, the City will notify Martin Marietta of such results immediately.

Section 1.03. Metering Equipment. The City will obtain and install metering equipment which meet the City’s standard specifications for measuring within a tolerance of 2% (the “Accuracy Tolerance”) the quantity of reclaimed water. The metering equipment will be installed at Martin Marietta’s property line, which is defined as the “Point of Delivery.” The metering equipment shall also include devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Point of Delivery, to prevent the backflow of water or the contamination of water in the City's distribution system, and to protect and secure the metering equipment and other devices.

Section 1.04. Maintenance and Testing of Metering Equipment.

A. The City will maintain the metering equipment within the Accuracy Tolerance, and will test the metering equipment for accuracy at least once every 12 months.

B. Martin Marietta may have the metering equipment independently tested at its own cost with 48 hours notice to the City. The City may attend any such test. If a test shows an inaccuracy in the metering equipment, the City will adjust the monthly billing of a period extending back to the time when the inaccuracy began if such time is ascertainable, or if such time is not ascertainable, for a period extending back to the last test of the metering equipment or 120 days, whichever is shorter, in accordance with the percentage of inaccuracy found during the test, whether above or below the correct volume. In the event the meter fails to register for any period, the City will calculate the usage during the time of meter failure to be the amount of reclaimed water furnished during the same period of the previous year, or as otherwise mutually agreed upon by the parties. The City will recalibrate or replace any inaccurate metering equipment at its expense.

Section 1.05. Billing. The City will furnish Martin Marietta with an itemized monthly billing statement showing the volume of reclaimed water supplied in 1,000 gallon increments and the amounts due.

Article 2. Delivery Facilities

Section 2.01. Operation and Maintenance of Delivery Facilities. The City will be responsible for operation and maintenance of the Delivery Facilities. The City will comply with all applicable laws,
regulations, and ordinances relating to the Delivery Facilities, the reclaimed water and the City’s other duties set forth in this Contract, at the City’s sole cost and expense.

Section 2.02. Connections to Delivery Facilities. The City will ensure that any connections made to the Delivery Facilities to serve other customers are equipped in such a way that the City is able to comply with its supply obligations to Martin Marietta under this Contract. In the event of an uncontrollable circumstance set forth in Section 4.04 below which reduces reclaimed water available below the Maximum Quantity Martin Marietta shall not be cut back from its usage of reclaimed water to a greater percentage than any and all other customers of the City, or the City itself.

Section 2.03. On-Site Facilities of Martin Marietta. Martin Marietta will be responsible for construction and maintenance of all facilities on Martin Marietta’s property needed to transport the reclaimed water from the Point of Delivery to the points on Martin Marietta’s property where the reclaimed water will be used.

Article 3. Payments for Reclaimed Water and Other Terms of Supply

Section 3.01. Payment. Martin Marietta will pay to the City at the City’s billing offices in San Marcos, Texas, within 15 days after receipt of the itemized statement each month at the prevailing reclaimed water rates determined by the City’s governing body. In addition, Martin Marietta will pay to the City the amounts of all federal and state, and local taxes, fees, and charges that may apply to the provision of reclaimed water under this Contract. Regardless of the actual amount of reclaimed water used by Martin Marietta each month, Martin Marietta will pay a minimum monthly amount based on the price for 120,000 gallons per day at the applicable rate. This minimum amount will be recalculated annually based on the prevailing reclaimed water rate. This Minimum monthly amount will be reduced on a pro rata basis, however, for each full day in a month in which the supply of Reclaimed water is reduced below 120,000 GPD or ceases without fault of Martin Marietta.

Section 3.02. Compliance with City’s Regulations. Martin Marietta will comply with the City’s ordinances and regulations governing the use and supply of reclaimed water that are currently in effect and as they may be adopted or amended from time to time, provided that, if any future City ordinances or regulations result in a reasonably necessary expenditure by Martin Marietta or an increased operating cost to Martin Marietta, the City will allow Martin Marietta to recoup its expenditures or increased operating costs by direct offset against the amounts due to be paid by Martin Marietta hereunder.

Section 3.03. Primary Supply. Martin Marietta agrees to use the City as its primary source of reclaimed water for the Martin Marietta Facility’s operating purposes, provided the City is not in default under this Contract.

Section 3.04. Reduction or Cessation of Supply of Reclaimed Water: Notice. Except under emergency, when notice will be given as soon as practicable, the City will notify Martin Marietta thirty days prior to undertaking scheduled maintenance of the Delivery Facilities that will require a reduction or cessation of supply of reclaimed water to the Martin Marietta Facility. The City will notify Martin Marietta as soon as possible of any unscheduled maintenance or failure of the Delivery Facilities that has caused or will cause a reduction or cessation of supply of reclaimed water to the
Martin Marietta Facility. The City will notify Martin Marietta at least 90 days prior to any other reduction or cessation by the City of supply of reclaimed water to the Martin Marietta Facility that is authorized by this Contract, unless the reduction or cessation is a suspension under Section 4.03.B below, or is based upon a default by Martin Marietta under Section 4.03.C below.


Section 4.01. Regulatory Compliance. The obligations of Martin Marietta and the City under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the “Laws and Regulations”), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, as amended.

A. The City is responsible for compliance with the Laws and Regulations that apply to the WWTP.

B. The City is responsible for compliance with the Laws and Regulations that apply to the construction of the Delivery Facilities, and the maintenance of the Delivery Facilities after completion and acceptance by the City.

C. Martin Marietta is responsible for compliance with the Laws and Regulations that apply to the use of the reclaimed water at the Martin Marietta Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the “O&M Plan”) for Martin Marietta’s use of the reclaimed water. The initial O&M Plan will be attached hereto as Exhibit A, prior to commencement of water delivery. Martin Marietta may modify this O&M Plan or adopt a new O&M Plan, subject to regulatory approval and compliance with all Laws and Regulations.

Section 4.03. Term; Termination.

A. The Initial Term of this Contract is five (5) years commencing on the Effective Date. This Contract may be renewed or extended for additional renewal terms with the mutual consent of the parties.

B. The City may suspend the supply of reclaimed water under this Contract, without terminating the Contract, in the following circumstances:

1. Martin Marietta fails to pay any amount billed by the City to Martin Marietta under Section 1.04 of this Contract, unless Martin Marietta has notified the City in writing of a bona fide dispute concerning the bill prior to the deadline in the City’s billing notice.

2. Martin Marietta fails to comply with any of the Laws and Regulations that apply to Martin Marietta’s use of the reclaimed water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code, as amended.

C. The failure or refusal of a party to comply with any term, provision, or covenant of this Contract will constitute a default by that party. In addition, if Martin Marietta becomes insolvent, or
commences, or has commenced against it, proceedings in bankruptcy, this will constitute a default by Martin Marietta. This Contract may be terminated by either party upon a default by the other party. In the event of a default by a party, the other party will give the defaulting party written notice of default, and, if the defaulting party fails to cure or remedy the default within 30 days following receipt of notice, this Contract will terminate immediately without further notice to the defaulting party. The City’s acceptance of Martin Marietta’s monthly payments subsequent to the occurrence of any event of default will be as compensation for the provision of reclaimed water, and will in no way constitute a waiver by the City of its right to exercise any remedy provided for any event of default.

Section 4.04. Uncontrollable Circumstances.

A. In this Contract, “Uncontrollable Circumstance” means any act, event, or condition beyond the control of a party that prevents the party from performing an obligation under this Contract.

B. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance.

C. An act, event or condition is not beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party.

D. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party’s obligations under the Contract.

Section 4.05. Independent Contractors. Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

Section 4.06. Assignment. This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. Martin Marietta may, with prior written notice to the City, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Martin Marietta Facility that will continue the operation of the Martin Marietta Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Martin Marietta Facility.

Section 4.08. Taxes. Martin Marietta is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract, except that no municipal taxes or fees which would otherwise be due to the City of San Marcos shall be payable over and above the consideration stated in this Contract.

Section 4.09. Amendments. This Contract may be amended only through a written amendment executed by the parties. The term “will” in this Contract is mandatory.
Section 4.10. Governing Law and Venue. This Contract is governed by the laws of the State of Texas.

Section 4.11. Severability. If any material portion of this Contract is found by a court to be invalid or unenforceable for any reason, either Party shall have the option of terminating this Contract on a going forward basis.

Section 4.12. Order of Precedence. In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence. To the extent that this Contract conflicts with City ordinances regarding flow, pressure, and availability of reclaim water, the terms of this Contract prevail.

Section 4.13. Nondiscrimination. In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Delivery Facilities, Martin Marietta will not unlawfully discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

Section 4.14. Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, Texas Government Code, Martin Marietta certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 4.15. Section 2252 Compliance. Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 4.16. Notice. All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed fax transmission, by overnight mail or by courier, to the following address for the respective party:

To City: City Manager
City of San Marcos
630 East Hopkins Street
San Marcos, TX 78666
Fax No. 512/396-4656

To Martin Marietta: Plant Manager
Martin Marietta Hunter Cement
7781 FM 1102
New Braunfels, TX 78132
Fax No. 512-____________

With a copy to:
Martin Marietta Legal Department
2710 Wycliff Road
Raleigh, NC 27607
Fax: 919-783-4535

In witness whereof, the parties have caused this Contract to be duly executed in multiple counterparts, each of which will constitute an original.

City of San Marcos

By:____________________________
   Burt Lumbreras, City Manager

TXI Operations, LP, dba Martin Marietta

By:____________________________________
   Signature

____________________________
Printed name, title

Attested:

____________________________
Jamie Lee Case, City Clerk
RETAIL RECLAIMED WATER SUPPLY CONTRACT

This Retail Reclaimed Water Supply Contract (“Contract”) is entered into on ______________, 2007 (the “Effective Date”) between TXIMartin Marietta Operations, LP, a Delaware business trust (“TXIMartin Marietta”) and the City of San Marcos, Texas, a municipal corporation (the “City”).

Recitals

WHEREAS, TXIMartin Marietta operates a cement manufacturing facility and an adjacent limestone quarry, crushing, and processing facility (the “TXIMartin Marietta Facility”) in Comal County, Texas that requires a supply of water for operating purposes; and

WHEREAS, the City owns and operates a wastewater treatment plant (the “City Treatment PlantWWTP”) with a capacity capable of supplying to TXIMartin Marietta the amount of reclaimed water specified in this Contract; and

WHEREAS, TXIMartin Marietta has investigated the suitability of using reclaimed water from the City Treatment PlantWWTP (the “Reclaimed Water”) in the TXIMartin Marietta Facility for operating purposes, and has satisfied itself as to this suitability; and

WHEREAS, the City desires to sell and TXIMartin Marietta desires to purchase Reclaimed Water under the terms and conditions specified in this Contract; and

NOW, THEREFORE, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the City and TXIMartin Marietta agree as follows:

Article 1. Provision of Reclaimed Water by the City

Section 1.01. Quantity of Water to be Supplied. The City agrees to provide to TXIMartin Marietta, and TXIMartin Marietta agrees to purchase from the City, Reclaimed Water produced each day at the City Treatment PlantWWTP for use at the TXIMartin Marietta Facility for operating purposes. The Reclaimed Water will be delivered at a location (the “Point of Delivery”) on the TXIMartin Marietta property boundary to be designated by mutual agreement of the City and TXIMartin Marietta. The City will make available to TXIMartin Marietta up to 700,000 gallons of Reclaimed Water each day (the “Maximum Quantity”), which may be taken in smaller quantities at TXIMartin Marietta’s sole discretion without lessening the guaranteed amount for any subsequent day, through the delivery facilities to be constructed under this Contract (the “Delivery Facilities”), at the rate described in Section 3.01, subject to Section 4.04 related to uncontrollable circumstances. TXIMartin Marietta may purchase additional quantities of Reclaimed Water from the City in excess of the Maximum Quantity at the same price to the extent they are available from production at the City Treatment PlantWWTP and deliverable through the Delivery Facilities. The water shall be delivered in a consistent delivery pressure range, at a flow rate of up to 487 gpm. Higher flow rates may be allowed by the City if system conditions permit.

Commented [Au1]: Or increasing?
Commented [Au3]: Should the pressure range parameters be set forth here?
Commented [Au4]: Or should we be contractually tied to a pressure range?
Section 1.02. Quality of Water to be Supplied. The City agrees that the Reclaimed Water supplied under this Contract will conform to the standards for Type I reclaimed water contained in Title 30, Part I, Section 210.33 of the Texas Administrative Code.

The City agrees that it will sample the Reclaimed Water as may be required by Title 30, Part 1, Section 210.34 of the Texas Administrative Code or other applicable regulation, and shall provide the results of such sample to TXIMartin Marietta, by email or facsimile. In the event the City learns of sample results which may pose a hazard to health or wellbeing of TXIMartin Marietta workers or equipment beyond those known to exist with Type I reclaimed water, the City will notify TXIMartin Marietta of such results immediately.

Section 1.03. Metering Equipment. The City will obtain and install magnetic metering equipment and devices which meet the City’s standard specifications for measuring within a tolerance of 2% (the “Accuracy Tolerance”) the quantity of Reclaimed Water. The metering equipment will be installed at TXIMartin Marietta’s property line, which is defined as the “Point of Delivery.” The metering equipment shall also include devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Point of Delivery, to prevent the backflow of water or the contamination of water in the City's distribution system, and to protect and secure the metering equipment and other devices.

Section 1.04. Maintenance and Testing of Metering Equipment.

A. The City will maintain the metering equipment within the Accuracy Tolerance, and will test the metering equipment for accuracy at least once every 12 months.

B. TXIMartin Marietta may have the metering equipment independently tested at its own cost with 48 hours notice to the City. The City may attend any such test. If a test shows an inaccuracy in the metering equipment, the City will adjust the monthly billing of a period extending back to the time when the inaccuracy began if such time is ascertainable, or if such time is not ascertainable, for a period extending back to the last test of the metering equipment or 120 days, whichever is shorter, in accordance with the percentage of inaccuracy found during the test, whether above or below the correct volume. In the event the meter fails to register for any period, the City will calculate the usage during the time of meter failure to be the amount of Reclaimed Water furnished during the same period of the previous year, or as otherwise mutually agreed upon by the parties. The City will recalibrate or replace any inaccurate metering equipment at its expense.

Section 1.05. Billing. The City will furnish TXIMartin Marietta with an itemized monthly billing statement showing the volume of Reclaimed Water supplied in 1,000 gallon increments and the amounts due.
Article 2. Delivery Facilities

HAVE THE DELIVERY FACILITIES ALREADY BEEN CONSTRUCTED? IS THAT WHY MOST OF THIS SECTION HAS BEEN DELETED?

Section 2.01. Construction of Delivery Facilities. The City will be responsible for securing engineering services, acquiring needed rights-of-way and easements, and securing construction services for the Delivery Facilities for the transmission of Reclaimed Water from the City’s existing 18-inch reclaimed water pipeline to the Point of Delivery. The City will have plans and specifications for the Delivery Facilities prepared by a professional engineer registered in Texas, and the City will submit these plans and specifications for review and approval by the Texas Commission on Environmental Quality (“TCEQ”). The Delivery Facilities will include metering equipment provided by the City. TXI will be responsible for the design, construction and maintenance of facilities on its property. It is anticipated that these improvements will include approximately 4,000 linear feet of pipeline, a ground storage tank, a booster pump station, and telemetry to send a tank level signal to the control valve and the City’s Supervisory Control and Data Acquisition (“SCADA”) system.

Section 2.02. Oversizing of Delivery Facilities. The City may construct the Delivery Facilities with a capacity exceeding TXI’s needs for the TXI Facility. The City will be responsible for the additional construction cost of any such oversizing requested, with the additional cost being the difference in alternative bids submitted by the construction contractor for the Delivery Facilities, one for the size required for TXI, and the other for the size requested by the City.

Section 2.03. TXI Payment of Delivery Facilities Cost.

A. Engineering Services. TXI agrees to reimburse the City for the costs incurred by the City for engineering services associated with the design and construction of the Delivery Facilities. The engineer selected by the City to perform the engineering services (the “Engineer”) will be a professional engineer registered in the State of Texas. Prior to entering into a contract with the Engineer, the City will provide TXI a copy of the negotiated scope and fee proposal for the services. After TXI has reviewed, and at its sole discretion, agreed in writing to the fees set forth in such negotiated scope and fee proposal (the “Engineering Fees”) TXI will pay the Engineering Fees to the City prior to the City Council award of the engineering services contract. The City agrees to use the funds provided by TXI under this paragraph only for the costs described. The City will provide to TXI a copy of each paid monthly itemized invoice for the Engineer. Any Change in Services request for the Engineer will be provided to TXI for review prior to City approval, unless the cost for the Change in Services will be borne entirely by the City. TXI will pay to the City any additional fee amount related to a Change in Services (BUT ONLY to the extent such Change in Services has been approved in writing by TXI) within 15 days of the receipt of the Change in Services. In the event a Change in Services is required due to reasons other than a change approved by TXI, the cost of the Change in Services will be paid by the City.

B. Easement Acquisition. TXI agrees to pay to the City, within 10 days of the Effective Date, the amount of $50,000 as a deposit towards the costs for the City’s acquisition of easements.
related to the Delivery Facilities. These costs will consist of 1) costs for right-of-way agent services, 2) cash compensation costs to property owners, 3) the value of non-cash compensation (such as replacement fencing, driveway improvements, etc.) connected with the acquisitions, 4) a policy of title insurance, and 5) eminent domain costs, if needed, including the costs and fees for an appraiser and attorney (cumulatively, the “Easement Costs”). The City agrees to use the funds provided by TXI under this paragraph only for the described Easement Costs. The City will provide a monthly report to TXI of funds expended from this deposit. The City will refund to TXI any of the deposit amount which remains within 30 days of the completion of easement acquisition. If additional funds are needed to pay the costs described, the City will provide one or more itemized invoices to TXI for the costs, and TXI will pay the amount of each such invoice to the City within 30 days, provided the total amount expended on the Easement Costs is either approved in advance by TXI, does not exceed 10% above the fair market value of the real property included in the easement, is the outcome of legal action under eminent domain proceedings, or the cumulative amount expended on the Engineering Fees, Easement Costs, and an estimate of the Construction Costs does not exceed the maximum amount set forth in Section 2.03D below.

C. Construction. The “Construction Costs” for the Delivery Facilities will consist of 1) construction costs payable to the construction contractor, 2) the costs for inspection services during construction, 3) the costs for right-of-way agent services to coordinate construction activities with landowners, and 1) the cost of professional testing services related to the construction. The City will secure bids for construction of the Delivery Facilities using a sealed bid process. The City will notify TXI of the contractor to which the City intends to award the construction contract, the amount of the proposed bid award, and whether the bid award will include oversizing as described in Section 2.02 above. The notice will include a copy of the tabulation of bids (including alternate bids), and an estimate of the cost of inspection, landowner coordination and testing services. TXI agrees to pay to the City, within 30 days of the date of this notice, the amount of the proposed bid award (less any amount for oversizing for which the City is responsible under Section 2.02 above) and the estimated cost of inspection, landowner coordination and testing services. The City agrees to use the funds provided by TXI under this paragraph only for the construction, inspection, landowner coordination, and testing services costs. The City will provide a monthly report to TXI of funds expended by the City for Construction Costs. The City will notify TXI of any change orders that result in a change in the Construction Costs, and will provide TXI with an opportunity to review and provide comment regarding such change orders before approval by the City. If TXI requests a change order that increases the Construction Costs, TXI will pay the amount of the increase to the City in a timely manner before the City executes the change order. Upon completion of the Delivery Facilities and final payments by the City, the City will provide a summary of the Construction Costs to TXI. The summary will be accompanied by a refund if the final amount of costs for which TXI is responsible is less than the sum of amounts previously paid by TXI to the City, or by an itemized invoice if the final amount of costs for which TXI is responsible is more than the sum of amounts previously paid by TXI to the City. TXI will pay to the City the amount of any such invoice within 30 days of the invoice date.

D. Estimate of Engineering, Easement, and Construction Costs; Failure to Complete Delivery Facilities. Prior to receiving any funds from TXI, the City shall provide TXI an estimate in writing of the total Engineering Fees, Easement Costs, and Construction Costs (the “Total Cost Estimate”). TXI shall be permitted, in its sole and exclusive discretion to terminate this Contract
without liability if it does not approve of the Total Cost Estimate, before giving the City written authorization to proceed. After such written authorization by TXI, the City shall use its best efforts to keep the total amount of such expenses equal to or less than the Total Cost Estimate. In the event that actual total amount of such expenses is more than 50% greater than the Total Cost Estimate, such amount exceeding 50% over the Total Cost Estimate shall be paid by the City and shall not be reimbursed by TXI. In the event the City does not have the ability to fund such excess, TXI may at its option pay such excess and offset it against amounts otherwise due to the City under this Contract until the excess has been offset in its entirety. In the event the City fails to complete the Delivery Facilities to the extent required to deliver Reclaimed Water to TXI at the TXI facility, or the City otherwise does not deliver Reclaimed Water to TXI in breach of this Contract, the City will refund to TXI all of the Engineering Fees, the Easement Costs, and the Construction Costs previously paid by TXI. In the event the City delivers a portion of Reclaimed Water required under this Contract but ceases to deliver water in breach of this Contract, the City will refund a pro-rated amount of the Engineering Fees, Easement Costs, and Construction Costs, based on the amount of water delivered to the total obligation of water delivery under this Contract.

E. No Continued TXI Liability or Responsibility for Delivery Facilities. The City shall have the exclusive control and responsibility for the design and implementation of the Delivery Facilities, it being understood that TXI’s review, comment and approval of costs or other features does not constitute or imply approval of construction, design, or implementation methods, procedures, or safety standards by TXI, nor shall such approval relieve the City of its responsibilities to comply with the ongoing terms of this Contract. After completion of the Delivery Facilities, TXI shall have no further duty to pay for maintenance, testing, or improvements to the Delivery Facilities which may be required for any reason, and such further duty being the sole responsibility of the City.

Section 2.04. Easements and Permits. Subject to TXI’s obligations under Section 2.03.B above, the City will be responsible for obtaining all easements and permits needed for the Delivery Facilities. In the event the City is unable to obtain a needed easement through voluntary conveyance by a property owner, the City may use its eminent domain authority to obtain the easement. The exercise of the power of eminent domain will be at the sole discretion of the City, provided that if the City is not successful in completing construction of the Delivery Facilities to the TXI Facility, it shall be required to repay certain amounts to TXI as set forth above in Section 2.03D.

Section 2.05. TXI Inspection of Construction. TXI will have the right to inspect the Delivery Facilities during the process of construction, and upon completion. The City will ensure that TXI representatives are provided with reasonable access to construction sites for this purpose.

Section 2.061. Operation and Maintenance of Delivery Facilities. The City will be responsible for operation and maintenance of the Delivery Facilities. The City will comply with all applicable laws, regulations, and ordinances relating to the Delivery Facilities, the Reclaimed Water and the City’s other duties set forth in this Contract, at the City’s sole cost and expense.

Section 2.082. Connections to Delivery Facilities. The City will ensure that any connections made to the Delivery Facilities to serve other customers are equipped in such a way that the City is able to comply with its supply obligations to TXI under this Contract. In the event of an uncontrollable circumstance set forth in Section 4.04 below which reduces Reclaimed Water in the system, the City shall promptly notify TXI in writing of the details of the circumstances and the City’s proposed actions to reduce or control the circumstances.
Water reclaimed water available below the Maximum Quantity TXIMartin Marietta shall not be cut back from its usage of Reclaimed Water reclaimed water to a greater percentage than any and all other customers of the City, or the City itself.

Section 2.093. On-Site Facilities of TXIMartin Marietta. TXIMartin Marietta will be responsible for construction and maintenance of all facilities on TXIMartin Marietta’s property needed to transport the Reclaimed Water reclaimed water from the Point of Delivery to the points on TXIMartin Marietta’s property where the Reclaimed Water reclaimed water will be used.

Article 3. Payments for Reclaimed Water and Other Terms of Supply

Section 3.01. Payment. TXIMartin Marietta will pay to the City at the City’s billing offices in San Marcos, Texas, within 15 days after receipt of the itemized statement each month—(a) an initial rate of $1.21 per 1,000 gallons of Reclaimed Water furnished (the “Initial Rate”), for a period of ten years beginning with the completion and acceptance of the Delivery Facilities, and (b) thereafter, at the prevailing reclaimed water rates determined by the City’s governing body.

In addition, TXIMartin Marietta will pay to the City the amounts of all federal and state, and local taxes, fees, and charges that may apply to the provision of Reclaimed Water. Regardless of the actual amount of Reclaimed Water used by TXIMartin Marietta each month, TXIMartin Marietta will pay a minimum monthly amount based on the price for 120,000 gallons per day at the applicable rate (e.g. in a 31 day month this is $4,501.20). This minimum monthly amount will be recalculated annually based on the prevailing reclaimed water rate. This Minimum monthly amount will be reduced on a pro rata basis, however, for each full day in a month in which the supply of Reclaimed Water is reduced below 120,000 GPD or ceases without fault of TXIMartin Marietta.

Section 3.02. Compliance with City’s Regulations. TXIMartin Marietta will comply with the City's ordinances and regulations governing the use and supply of Reclaimed Water that are currently in effect and as they may be adopted or amended from time to time, provided that, if any future City ordinances or regulations result in a reasonably necessary expenditure by TXIMartin Marietta or an increased operating cost to TXIMartin Marietta, the City will allow TXIMartin Marietta to recoup its expenditures or increased operating costs by direct offset against the amounts due to be paid by TXIMartin Marietta hereunder.

Section 3.03. Primary Supply. TXIMartin Marietta agrees to use the City as its primary source of reclaimed water for the TXIMartin Marietta Facility’s operating purposes, provided the City is not in default under this Contract.

Section 3.04. Reduction or Cessation of Supply of Reclaimed Water.; Notice. Except under emergency, when notice will be given as soon as practicable, the City will notify TXIMartin Marietta thirty days prior to undertaking scheduled maintenance of the Delivery Facilities that will require a reduction or cessation of supply of Reclaimed Water to the TXIMartin Marietta Facility. The City will notify TXIMartin Marietta as soon as possible of any unscheduled maintenance or failure of the Delivery Facilities that has caused or will cause a reduction or cessation of supply of Reclaimed Water to the TXIMartin Marietta Facility. The City will notify TXIMartin Marietta at least 90 days prior to any other reduction or cessation by the City of
supply of Reclaimed Waterreclaimed water to the TXIMartn Marietta Facility that is authorized by this Contract, unless the reduction or cessation is a suspension under Section 4.03.B below, or is based upon a default by TXIMartn Marietta under Section 4.03.C below.

**Article 4. Miscellaneous Provisions**

**Section 4.01. Regulatory Compliance.** The obligations of TXIMartn Marietta and the City under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the “Laws and Regulations”), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, as amended.

A. The City is responsible for compliance with the Laws and Regulations that apply to the City Treatment PlantWWTP.

B. The City is responsible for compliance with the Laws and Regulations that apply to the construction of the Delivery Facilities, and the maintenance of the Delivery Facilities after completion and acceptance by the City.

C. TXIMartn Marietta is responsible for compliance with the Laws and Regulations that apply to the use of the Reclaimed Waterreclaimed water at the TXIMartn Marietta Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the “O&M Plan”) for TXIMartn Marietta’s use of the Reclaimed Waterreclaimed water. The initial O&M Plan will be attached hereto as Exhibit A, prior to commencement of water delivery. TXIMartn Marietta may modify this O&M Plan or adopt a new O&M Plan, subject to regulatory approval and compliance with all Laws and Regulations.

**Section 4.03. Term; Termination.**

A. The Initial Term of the Contract is was ten (10) years commencing on the Effective Date. With the mutual consent of the parties, this contract is being renewed for a second term of 5 years. This Contract may be renewed or extended for additional renewal terms with the mutual consent of the parties.

B. The City may suspend the supply of Reclaimed Waterreclaimed water under this Contract, without terminating the Contract, in the following circumstances:

1. TXIMartn Marietta fails to pay any amount billed by the City to TXIMartn Marietta under Section 1.04 of this Contract, unless TXIMartn Marietta has notified the City in writing of a bona fide dispute concerning the bill prior to the deadline in the City’s billing notice.

2. TXIMartn Marietta fails to comply with any of the Laws and Regulations that apply to TXIMartn Marietta’s use of the Reclaimed Waterreclaimed water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code, as amended.
C. The failure or refusal of a party to comply with any term, provision, or covenant of this Contract will constitute a default by that party. In addition, if TXIMartin Marietta becomes insolvent, or commences against it, proceedings in bankruptcy, this will constitute a default by TXIMartin Marietta. This Contract may be terminated by either party upon a default by the other party. In the event of a default by a party, the other party will give the defaulting party written notice of default, and, if the defaulting party fails to cure or remedy the default within 30 days following receipt of notice, this Contract will terminate immediately without further notice to the defaulting party. The City’s acceptance of TXIMartin Marietta’s monthly payments subsequent to the occurrence of any event of default will be as compensation for the provision of reclaimed water, and will in no way constitute a waiver by the City of its right to exercise any remedy provided for any event of default.

Section 4.04. Uncontrollable Circumstances.

A. In this Contract, “Uncontrollable Circumstance” means any act, event, or condition beyond the control of a party that prevents the party from performing an obligation under this Contract.

B. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance.

C. An act, event or condition is not beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party.

D. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party’s obligations under the Contract.

Section 4.05. Independent Contractors. Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

Section 4.06. Assignment. This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. TXIMartin Marietta may, with prior written notice to the City, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the TXIMartin Marietta Facility that will continue the operation of the TXIMartin Marietta Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the TXIMartin Marietta Facility.

Section 4.08. Taxes. TXIMartin Marietta is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract, except that no municipal taxes or fees which would otherwise be due to the City of San Marcos shall be payable over and above the consideration stated in this Contract.
Section 4.09. Amendments. This Contract may be amended only through a written amendment executed by the parties. The term “will” in this Contract is mandatory.

Section 4.10. Governing Law and Venue. This Contract is governed by the laws of the State of Texas.

Section 4.11. Severability. If any material portion of this Contract is found by a court to be invalid or unenforceable for any reason, either Party shall have the option of terminating this Contract on a going forward basis.

Section 4.12. Order of Precedence. In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence. To the extent that this Contract conflicts with City ordinances regarding flow, pressure, and availability of reclaim water, the terms of this Contract prevail.

Section 4.13. Nondiscrimination. In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Delivery Facilities, TXIMartin Marietta will not unlawfully discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

Section 4.14. Notice. All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed fax transmission, by overnight mail or by courier, to the following address for the respective party:

To City: City Manager
City of San Marcos
630 East Hopkins Street
San Marcos, TX 78666
Fax No. 512/396-4656

To TXIMartin Marietta: Plant Manager
TXIMartin Marietta Hunter Cement
7781 FM 1102
New Braunfels, TX 78132
Fax No. 512-__________

With a copy to:
TXIMartin Marietta Legal Department
1341 West Mockingbird Lane
Dallas, Texas 75247
Fax: 972-647-3320
In witness whereof, the parties have caused this Contract to be duly executed in multiple counterparts, each of which will constitute an original.

<table>
<thead>
<tr>
<th>City of San Marcos</th>
<th>Martin Marietta Hunter Cement</th>
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<tbody>
<tr>
<td>By: Dan O'Leary, Burt Lumberas, City Manager</td>
<td>By: Signature</td>
</tr>
<tr>
<td>Attest: Shelley Goodwin, Jamie Lee Case, Interim City Clerk</td>
<td>Signature</td>
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</tbody>
</table>

Printed name, title
RESOLUTION 2007-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND ALAN PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES IN CONNECTION WITH THE TXI RECLAIMED WATER LINE PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THIS 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 between the City and Alan Plummer Associates, Inc. for engineering services in connection with the TXI Reclaimed Water Line Project is approved.

PART 2. The City Manager, Dan O’Leary, 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 3rd day of April 2007.

Susan Narvaiz
Mayor

Attest:

Shelley Goodwin
Interim City Clerk
PROFESSIONAL ENGINEERING SERVICES AGREEMENT

This Agreement is made this the 4th day of April, 2007, between the City of San Marcos, Texas ("City"), 630 East Hopkins, San Marcos, Texas 78666 and Alan Plummer Associates, Inc. 6300 La Calma, Ste. 400, Austin, Texas 78752 ("Engineer") for the provision of professional engineering services in connection with the TXI Reclaimed Water Line Project (the "Project").

The City and the Engineer agree as follows:

ARTICLE 1
ENGINEER’S SERVICES AND RESPONSIBILITIES

1.1 STANDARDS OF PERFORMANCE

1.1.1 Engineer will be responsible for the proper, accurate and adequate design and preparation of plans and specifications and other construction contract documents and for construction administration for the Project. The Project generally includes the construction of a 12-inch (in.) diameter reclaimed water pipeline. The proposed pipeline will connect to an existing 18-in. reclaimed waterline serving the Hays Energy Power Plant. The new reclaimed waterline will extend service to the TXI plant southwest of San Marcos. The total length of proposed pipeline is approximately 13,500 linear feet. At the delivery point, a reclaimed water meter and control valve will be installed. In addition, a fourth reclaimed water pump will be added at the wastewater treatment plant to provide additional head capacity. TXI will be responsible for the design and construction of facilities on its property. It is anticipated that these improvements will include approximately 4,000 linear feet of pipeline, a ground storage tank, a booster pump station, and telemetry to send a tank level signal to the control valve and the City’s SCADA system. The Engineer proposes to provide the City of San Marcos with design and construction phase services in three separate phases.

1.1.2 The Consultant’s Basic Services consist of the services described in Sections 1.2 through 1.4 and include normal civil engineering services as well as those engineering services to be performed through the following consulting disciplines as subcontractors to the Consultant:

   (1)  Geotechnical Engineering - Professional Service Industries, Inc.
   (2)  Surveying – Macias & Associates, Inc.

1.1.3 The performance of all services by the Engineer in connection with this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws governing their respective consulting disciplines. In performing all services under this Agreement, the Engineer will use that degree of care and skill ordinarily exercised for similar projects by professional Consultants who possess special expertise in the types of services involved under this Agreement.
1.1.4 No work under this Agreement will be subcontracted by the Engineer without prior written approval from the City. Any work or services subcontracted under this Agreement shall be specified by separate written Agreement and shall be subject to each provision of this Agreement.

1.1.5 Any provisions in this Agreement pertaining to the City’s review, approval and/or acceptance of written materials prepared by the Engineer and/or its subconsultants, contractors, and subcontractors in connection with this Agreement will not diminish the Consultant’s responsibility for the materials.

1.1.6 Engineer will perform all of its services in coordination with the City. The Engineer will advise the City of data and information the Engineer needs to perform its services, and the Engineer will meet with City representatives at mutually convenient times to assemble this data and information.

1.2 PHASE 1 – PRELIMINARY ENGINEERING

The Engineer will:

1.2.1 Assemble a Project team comprised of the City’s representatives and the Consultant’s representatives. The Engineer will meet with the Project team to set the design and production schedule and parameters for all subsequent work, to verify the components within which all Project participants must perform, and to identify all parties and significant deadlines involved in the comprehensive schedule strategy. Based on this information, the Engineer will prepare a detailed schedule of its work for the Project addressing each component of the work to be done, indicating the points of involvement of all project participants. The Engineer will conduct weekly progress meetings between the Project team and the Contractor once the construction contract is executed.

1.2.2 Assist the City in connection with the City’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

1.2.3 Meet with City staff and representatives from TXI to define system operations expectations. This will include demand characteristics, peak demands, diurnal fluctuations, and pressure requirements of the receiving system/tank. The Engineer will also coordinate system controls and operations requirements, including flow metering, control valve operation, tank level reporting, etc. It is anticipated that two meetings will be required.

1.2.4 Based on the results generated in Subsection 1.2.3, the Engineer will re-evaluate the proposed system to size the pipeline appropriately for the operational expectations. The Engineer will also evaluate the need for system pumping modifications based on pressure requirements at design flows.
1.2.5 Evaluate alternative alignments for the proposed pipeline considering overall length, potential conflicts, ease of construction, and easement requirements.

1.2.6 Prepare a Technical Memorandum that includes the results of Subsections 1.2.2, 1.2.3, and 1.2.4 as well as updated opinion of probable cost.

1.2.7 Engineer will prepare and submit a Reclaimed Water Use Notification to the Texas Commission on Environmental Quality (“TCEQ”) which will be consistent with the requirements of 30 TAC Chapter 210.

1.3 **PHASE 2 – DESIGN SERVICES**

The Engineer will:

1.3.1 Meet with the City’s Project Manager periodically or as needed to update the City on the progress of work.

1.3.2 Head the Project team and coordinate the integration of design, surveying, right of way issues, traffic control, utility Engineering, permitting, and other services as previously approved.

1.3.3 Assist the City in the preparation of construction contract documents using City forms based on the approved design development documents and any further adjustments authorized by the City in the scope, quality or budget of the Project. These contract documents will include detailed plans and technical specifications required for the Project to be accurately bid and efficiently constructed.

1.3.4 Use its best professional judgment to create technical documents that comply with applicable construction and development codes, local regulations and ordinances and other federal and state regulations which are known or which should reasonably be known to the Engineer.

1.3.5 Ensure that no reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Engineer.

1.3.6 Obtain approval from the City Inspector(s) of all technical plans and specifications necessary for successful completion of the Project prior to allowing the construction contract to be let for bid.

1.3.7 Obtain a field topographic survey necessary to complete the design of the proposed improvements. The Engineer will base this survey on the Texas State Grid Coordinate System and will have horizontal accuracy of 0.05 feet and vertical accuracy of 0.10 feet. The design survey shall cover the proposed alignment with a width of 50 feet (25-feet on either side of the centerline). As part of this survey, the Engineer will tie all visible topographic features, including but not limited to existing property and easement corners, mail boxes, meter boxes,
valve stems, utilities and appurtenances, roadways, back of curbs, lip of gutters, sidewalks, driveways, landscape features, structures, railroads, and trees 6-inches in diameter and greater.

1.3.8 Engineer will have easement descriptions prepared for up to five parcels. Easement documents will be prepared in a form acceptable to the City.

1.3.9 Obtain and review the results of a geotechnical investigation of the subsurface conditions at the site of the proposed improvements. This subsurface investigation will include ten subsurface borings carried to a total depth of 10-feet and four borings to a total depth of 20-feet.

1.3.10 Complete the design calculations necessary to prepare detailed construction drawings which are anticipated to include design calculations, alignment stationing, vertical grades, bedding requirements, and pipe material requirements.

1.3.11 Complete detailed construction drawings for the proposed improvements. The Engineer will prepare drawings which are 22"x34" with a horizontal scale of 1" = 50' and a vertical scale of 1' = 5'. These construction drawings will include plan views, profiles, sections and details necessary to clearly define the intent of the improvements. The Engineer will prepare drawings which define the limits of construction, required construction sequencing, environmental protection requirements, and identified contractor staging areas. The Engineer will provide five (5) copies of preliminary construction drawings (95 percent) for review. Following the City’s review, the Engineer will make appropriate revisions and submit one (1) revised final copy of the construction drawings.

1.3.12 Prepare detailed construction specifications, the construction checklist, and bid form to be used for bidding the project and executing the work. The Engineer will prepare documents in accordance with the current City of San Marcos Technical Specifications and will submit two (2) copies of the draft documents to the City for review. Following the City’s review, the Engineer will complete the appropriate revisions and submit one (1) revised final copy of the technical specification document.

1.3.13 Develop an opinion of probable construction cost for the authorized project at the 100 percent complete stage for City review and approval.

1.3.14 Assist the City in the submittal of plans for review by TCEQ. It is anticipated that approval from the TCEQ will involve administrative review only. In addition, the Engineer will submit the plans to the Texas Department of Transportation (“TxDOT”) for approval of the use of state right-of-way. Finally, the plans will be submitted to the railroad to obtain a permit to cross the railroad right-of-way.

1.3.15 Review the design of the on-site improvements developed by TXI for consistency with the overall system improvements and to coordinate the delivery point.

1.3.16 Assist the City in the distribution of the bid documents to prospective bidders and to plan APAI-TXI Contract
rooms and the issuance of addenda (if any) following City’s prior approval.

1.3.17 Assist the City in obtaining bids, tabulating bids, preparing bid tabulation forms, and in awarding the contract for construction following the City’s approval of the construction contract documents and of the latest detailed final cost estimate of the Project.

1.3.18 Assist the City in reviewing the Statement of Bidder’s Qualifications, financial statements of bidders, lists of bidders’ proposed subcontractors, and all other documents required to be submitted with the bids.

1.3.19 Make a written recommendation to the City regarding award of bid; and assist the City in conducting a pre-bid conference and answer all questions of prospective or potential bidders and City’s staff and make all necessary clarifications and interpretations of the construction contract documents.

1.3.20 Have no authority to issue a Notice to Proceed to any Contractor.

1.4 PHASE 3 – CONSTRUCTION PHASE SERVICES

The Construction phase of this Project will commence with the award of the construction contract and will terminate when the Project is accepted by the City. The Engineer will:

1.4.1 Provide administration of the construction contract as set forth in the construction documents unless otherwise provided in this Agreement and incorporated in the construction contract documents. Engineer will not pursue a course of conduct which might jeopardize any of the City’s rights hereunder. Minor deviations from the construction contract documents that do not affect the validity of performance bond(s) are permitted.

1.4.2 Be a representative but not an agent of the City during the construction phase, and advise and consult with the City and provide progress reports and advice to the City in writing; forward the City’s instructions to the Contractor unless (1) Engineer is unavailable by telephonic communication or otherwise to issue instructions necessary for the proper progress and acceptance of work; (2) jeopardy to life and/or property exists; and/or (3) lack of instructions and/or unavailability of Engineer will result in, in City’s opinion, harm to City, in which case instructions may be forwarded directly to the Contractor by the City; have authority to act on behalf of the City only to the extent provided herein and in the construction contract documents unless otherwise modified by written instrument in accordance with Section 12.1. Any instructions issued directly by City to Contractor will be promptly communicated to the Engineer if the Engineer was unavailable at the time of issuance of instructions.

1.4.3 Assist the City in conducting a pre-construction conference with the Contractor, members of City’s staff, representatives of affected utility providers, and federal and state agencies having jurisdiction over the Project (including City inspectors) in order to establish construction schedules and to identify key representatives of the parties and lines of communication.
1.4.4 Assist the City in ensuring that all applicable permits and approvals have been obtained from the appropriate agencies prior to construction.

1.4.5 Make on-site inspections of the Project at least monthly to ensure familiarity with the progress and quality of the work, to determine if the work is proceeding in acceptable conformance with the construction contract documents, and to review the work with the City’s designated representatives. On the basis of such on-site inspections by the Consultant, the Engineer will keep the City informed of the progress and quality of the work through written status reports and through meetings with the City’s representative; and will also be reasonably available to perform site visitations at the specific request of the City by the next business day after a request is made.

1.4.6 In performing all services, including inspections, not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the construction contract documents unless such acts or omissions are due to the negligence of the Engineer or are acts or omissions under the Consultant’s control. However, Engineer will exercise its authority on behalf of City in accordance herewith and particularly during the construction phase so that all work performed by the Contractor results in a Project completed in accordance with the construction contract documents, and during any phase should the Engineer become aware of the Contractor’s utilization of means, methods, techniques, sequences and/or procedures of construction which, in Consultant’s opinion, will not result in completion of the Project in accordance with the construction contract documents; or which are unsafe, Engineer will immediately inform the City and will take all necessary action which the Engineer is authorized under this Agreement to take to correct the matter.

1.4.7 At all times have access to the work wherever it is in preparation or progress.

1.4.8 Determine the amounts owing to the Contractor based on its on-site professional inspections and on evaluations of the Contractor’s applications for payment including comparisons of Contractor’s monthly cost reports with its applications for payment and make recommendations for payment that constitute a representation by Engineer to the City. based on the Consultant’s on-site inspections as provided in subsection 1.4.5 and on the data comprising the Contractor’s application for payment, that the work has progressed to the point indicated; that, to the best of the Consultant’s knowledge, information and belief, the quality of the work is in acceptable conformance with the construction contract documents (subject to an evaluation of the work for conformance with the construction contract documents upon substantial completion, subject to the results of any subsequent tests required by or performed under the construction contract documents, subject to minor variations from the construction contract documents correctable prior to completion, and subject to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However,
the issuance of a Certificate for Payment will not be a representation that the Engineer has made any examination to ascertain how and for what purpose the Contractor has used the monies paid by the City.

1.4.9 Have authority to reject work which does not conform to the construction contract documents. Whenever, in the Consultant’s reasonable opinion, it is necessary or advisable for the proper implementation of the intent of the construction contract documents, and with the approval of the City, the Engineer will have authority to require special inspection or testing of the work in accordance with the provisions of the construction contract documents, whether or not such work is then fabricated, installed or completed. The Engineer will review the work and results of all testing laboratories as required by the construction contract documents.

1.4.10 Review and make all decisions regarding the approval or taking of other appropriate action upon the Contractor’s submittals, including but not limited to, shop drawings, product data and samples, schedule of values and progress schedule. Such action will be taken with reasonable promptness, but generally not to exceed 15 days or such period of time as will not cause delay of the Project.

1.4.11 Prepare minor changes in the plans and specifications as directed by the City; and prepare necessary change orders in triplicate originals for approval by the City and execution in accordance with the construction contract documents. Engineer will not issue change orders not previously approved in writing by City, and no course of conduct on the part of Engineer or City will amend, waive or alter this provision.

1.4.12 Conduct professional inspections to determine the dates of substantial completion and final completion for the Project, to evaluate the work for acceptable conformance with the construction contract documents and in light of any subsequent tests performed as described in Subsection 1.4.8 to verify that any minor deviations from the construction contract documents as described in Subsection 1.4.8 have been corrected and that the reasons for any specific qualifications in any and all previous certificates for payment as described in Subsection 1.4.8 hereof are either no longer valid or the condition(s) and/or problem(s) have been corrected; shall receive and review written warranties and related documents required by the construction contract documents and assembled by the Contractor; will issue final certificates for payment or take other appropriate action; and will make a written recommendation to the City regarding City’s acceptance of the Project.

1.4.13 Require the submission by the Contractor, and subcontractors performing work on the Project site, of periodic wage rate payment reports and, with the City’s assistance, verify compliance with federal and state wage rate requirements for the Project; and notice the City of any noncompliance, or of the failure by the Contractor or subcontractor’s to make submissions.

1.4.14 Prepare, or cause to be prepared, and submit to the City a set of reproducible record drawings showing significant changes in the work made during the construction phase.
1.4.15 Ensure that all notices and signs required and provided by the City are posted in the appropriate locations at the Project site by the Contractor.

1.4.16 Participate in a walk-through with the City upon receipt of notification from the construction contractor that construction is complete. In addition, the Engineer will provide input to the City so that the City can prepare a punch list of items requiring corrective action by the construction contractor. Following the completion of the corrective actions, the Engineer will accompany representatives of the City on a final walk-through of the project. After determining that the corrective actions have been completed, the Engineer will recommend acceptance of the project and approval of the contractor’s final payment. In addition, the Engineer will send a letter to TCEQ indicating that the construction has been completed in general accordance with the approved plans and specifications.

1.4.17 Prepare a record set of drawings based on compiled change orders and drawings of field changes provided by the contractor. The Engineer will provide the City with a Certificate of Completion, signed and sealed by a Professional Engineer at the conclusion of the record drawing review. Record drawings will be provided in digital image format (TIFF) and hard copy format.

1.4.18 Prior to the end of the one year warranty period, review the completed Project with the City and the Contractor and have all deficient items corrected. The extent of the duties, responsibilities and limitations of authority of the Engineer as the City’s representative during construction will not be modified or extended after the construction contract documents have been authorized by the City to be competitively bid without written consent of the City and the Engineer and with notice to the Contractor.

1.5 ADDITIONAL SERVICES/CHANGE IN SERVICES

1.5.1 Since the Consultant’s compensation is a fixed fee for Basic Services, including minor deviations from those described in this Agreement, compensation to the Engineer for Additional Services will only be for substantial deviations from the scope of services described in this Agreement. The Engineer will submit a written estimate of fees to the City and obtain the City’s authorization before initiating any additional services.

1.5.2 Each material change (deletion or addition) in the services to be provided by Engineer must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment A. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Section 15.2 of this Agreement. The approval of the City’s governing body is necessary for all additional services the compensation for which exceeds $25,000.

ARTICLE 2
THE CITY’S RESPONSIBILITIES

The City will:
APAI-TXI Contract
2.1 Provide full information to the Engineer regarding the City’s requirements for the Consultant’s services under this Agreement. The City will furnish the Engineer with copies of official City design standards and construction standards, and other data and information in the City’s possession needed by the Engineer at the Consultant’s request.

2.2 Designate Laurie Anderson, Director of Environment and Engineering as the City’s Project Manager and authorized representative to act on the City’s behalf with respect to this Agreement. The City will examine the documents and information submitted by the Engineer and promptly render responses to the Engineer on issues requiring a decision by the City.

2.3 Provide access to and make all necessary provisions for the Engineer to enter public and private property as required for the Engineer to perform its services under this Agreement.

2.4 Be responsible for the cost of printing and binding of the bid documents.

2.5 Bear all costs incidental to this Article.

ARTICLE 3
CONSTRUCTION COST

3.1 DEFINITION

3.1.1 The construction cost will be the total cost or estimated cost to the City of all elements of the Project designed or specified by the Consultant.

3.1.2 The construction cost will include at current market rates, including a reasonable allowance for overhead and profit, the cost of any equipment which has been designed, specified, selected or specially provided for by the Consultant, except that used materials and equipment will be included as if purchased new for the Project.

3.1.3 Construction cost does not include the compensation of the Engineer and the Consultant’s consultants, or other costs which are the responsibility of the City as provided in Article 2.

3.2 RESPONSIBILITY FOR CONSTRUCTION COST

3.2.1 Evaluations of the City’s Project budget and detailed cost estimates, if any, prepared by the Consultant, will represent the Consultant’s best judgment as a design professional familiar with the construction industry.

3.2.2 A fixed limit of construction cost for this Project will be established by the City’s representative after consulting with the Consultant. The Engineer will be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, and types of construction are to be included in the construction contract documents, to make
reasonable adjustments in the scope of the Project and to include in the construction contract documents alternate bids to adjust the construction cost to the fixed limit. The fixed limit of construction cost may be increased by the City.

3.2.3 If the lowest bona fide bid exceeds the Consultant’s most recent approved cost estimate established as a condition of this Agreement, the City will (1) give written approval of an increase in such fixed limit, (2) authorize re-bidding of the Project within a reasonable time, or (3) cooperate in revising the Project scope and quality to reduce the construction cost. During the development of the Project through the phases described by Article 1 of this Agreement and prior to the City’s final approval of construction contract documents, the Engineer will monitor the established probable construction cost in relation to the established fixed limit.

If necessary, the Engineer will implement construction cost savings measures or otherwise endeavor to limit probable construction cost to the level of available funds set by the City.

ARTICLE 4
REIMBURSABLE EXPENSES

4.1 Reimbursable expenses, including such things as expenses for plotting, reproduction of documents, auto travel mileage, delivery charges, long distance communications and freight are included in the Consultant’s basic services compensation. Reimbursable expenses in excess of the $6,000.00 cap are to be charged to the City by the Engineer at cost.

ARTICLE 5
PAYMENTS TO THE CONSULTANT

5.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

Payments for Basic Services will be made to Engineer monthly following receipt by City of Consultant’s invoices and appropriate payment requisitions. The amounts of these invoices will be based upon the extent of work completed by the Engineer on a percentage basis within each phase of services, in accordance with Article 15 of this Agreement, less any disputed amounts, pending resolution thereof.

5.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Consultant’s Additional Services as defined in Section 1.5 will be made monthly upon presentation of the Consultant’s statement of services rendered or expenses incurred, less any disputed amounts, pending resolution thereof and an Authorization of Change in Services form executed by the Engineer and the City.
ARTICLE 6
CONSULTANT’S RECORDS

6.1 All expense records of Engineer will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

6.2 The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Engineer which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

6.3 The Engineer will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

ARTICLE 7
OWNERSHIP AND USE OF DOCUMENTS

7.1 All documents prepared by Engineer in connection with this Agreement will become the property of the City whether any project related to this Agreement is executed or not. City agrees such documents are not intended or represented to be suitable for reuse for another project by City or others. Any such reuse by City or those who obtained said documents from City without written verification or adaptation by the Engineer will be without liability or legal exposure to the Consultant.

7.2 The Engineer will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years except in the event that the Engineer goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

ARTICLE 8
TERM OF AGREEMENT

8.1 The term of this Agreement begins on the effective date established in the first paragraph of the Agreement and will end upon the Consultant’s completion, and the City’s acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 8.2 or 8.3 below. The Project must be completed no later than sixteen months from the date of execution of this Agreement.

8.2 This Agreement may be terminated by either party upon 15 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

8.3 This Agreement may be terminated at will by the City upon at least 15 days prior written
notice to the Consultant.

8.4 In the event of termination as provided in this Article, the Engineer will be compensated for all services performed to termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant’s delivering to the City all information and materials developed or accumulated by the Engineer in performing the services described in this Agreement, whether completed or in progress. The expense of reproduction of these items will be borne by the City.

**ARTICLE 9**

**INSURANCE AND INDEMNITY**

9.1 The Engineer will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property. This obligation by Engineer will not be limited by reason of the specification of any particular insurance coverage in this Agreement.

9.2 The Engineer will procure and maintain at Consultant’s expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Engineer or Consultant’s agents, subcontractor or employees. Before commencing the work the Engineer will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Engineer has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 days written notice will have been given to the City, and will name the City as an additional insured on all coverages except workers’ compensation and professional liability. The kinds and amounts of insurance required are as follows:

**Workers’ Compensation Insurance:** In accordance with the provisions of the Workers’ Compensation Act of the State of Texas.

**Liability Insurance:** (1) Commercial general liability insurance with a combined single limit of $500,000 for each occurrence and $500,000.00 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than $250,000.00 for injuries to any one person, $500,000 on account of any one accident and in an amount of not less than $250,000.00 for property damage and (3) professional liability coverage to cover lawful claims arising in connection with this Project in the combined single limit amount of at least $500,000.00.

The stated limits of insurance required by this Paragraph are minimum only—they do not limit the Consultant’s indemnity obligation, and it will be the Consultant’s responsibility to APAI-TXI Contract
determine what limits are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. The City’s acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Engineer from compliance with these requirements.

ARTICLE 10
MISCELLANEOUS PROVISIONS

10.1 This Agreement is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

10.2 As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

10.3 The Engineer will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

10.4 The Engineer hereby affirms that Engineer and Consultant’s firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of this Agreement.

10.5 In performing the services required under this Agreement, the Engineer will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability or ancestry. The Engineer agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age or disability or ancestry. A breach of this covenant may be regarded as a default of the Engineer of the Agreement.

10.6 All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term “will” is mandatory in this Agreement.

10.7 Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.
10.8 All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

10.9 In performing all services under this Agreement, the Consultant, its subcontractors, successors and assigns will comply with all local, state and federal laws.

10.10 The City’s execution and performance under this Agreement will not act as a waiver by the City of any immunity from suit to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

10.11 The City of San Marcos is governed by the Texas Public Information Act (the “Act”), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Engineer shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

10.12 The captions or headings included in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.

10.13 In the event that the performance by either the City or the Engineer of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

10.14 In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Engineer will not waive the City’s ability to enforce the Agreement after that time.

ARTICLE 11
SUCCESSORS AND ASSIGNS

11.1 The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Engineer will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.
ARTICLE 12
EXTENT OF AGREEMENT

12.1 This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Engineer and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. The Consultant’s expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. Except as to a change in the scope of services, the compensation for which does not exceed $25,000, this Agreement may be amended only by separate written instrument approved by the City’s governing body and signed by both the City and Consultant.

12.2 Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

12.3 In the event of any conflict between the Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

ARTICLE 13
OTHER DUTIES AS SET FORTH IN THE CONSTRUCTION DOCUMENTS

13.1 Engineer will have such other duties and responsibilities and limitations of authority as agreed to by Engineer in writing and as are set forth in the construction contract documents for the Project. However in the event of conflict, dispute, or discrepancy between the provisions of this Agreement and the construction contract documents, the more restrictive and/or burdensome with respect to the Consultant’s role and responsibility will govern and control.

ARTICLE 14
NOTICES

14.1 Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:
City Manager
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Fax: 512-396-4656

To the Consultant:
Stephen J. Coonan, P.E., Principal
Alan Plummer Associates, Inc
6300 La Calma, Ste. 400
Austin, Texas 78752
Fax: 512-452-2325
ARTICLE 15
BASIS OF COMPENSATION

15.1 The City will compensate the Consultant, in accordance with Article 5, Payments to the Consultant, and the other terms and conditions of this Agreement, as follows:

15.2 The total of all fees and expenses to be paid to Engineer for Basic Services as described in Sections 1.1 through 1.4 is a fixed fee of $192,500.00. This compensation is divided among the Basic Services and Reimbursable Expenses as follows:

| PHASE 1 – PRELIMINARY ENGINEERING | $ 20,000.00 |
| PHASE 2 - DESIGN SERVICES | $131,500.00 |
| PHASE 3 – CONSTRUCTION SERVICES | $ 35,000.00 |
| REIMBURSEABLE EXPENSES | $ 6,000.00 |

TOTAL FEE: $192,500.00

15.3 Compensation for Additional Services of the Engineer shall be computed based on the Consultant’s standard hourly rates:

- Principal: $195.00
- Senior Project Manager: $150.00
- Project Manager: $120.00
- Senior Project Engineer: $100.00
- Project Engineer: $ 90.00
- Engineer-in-Training: $ 80.00
- Senior Technician: $ 95.00
- Technician: $ 70.00
- Senior Clerical: $ 70.00
- Clerical: $ 62.00

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

City of San Marcos

Dan O’Leary, City Manager

Alan Plummer Associates, Inc.

By: [Signature]

APAI-TXI Contract
Stephen J. Coonan
(Printed or typed name)

Principal
(Title)

Date: __/__/__

Date: __/__/__

Attest:

By: ____________________________
(Signature)

James S. McNitt
(Printed or typed name)

Student Engineer
(Title)
ATTACHMENT A

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

PROJECT: TXI Reclaimed Water Line Project
CONSULTANT: Alan Plummer Associates, Inc.

<table>
<thead>
<tr>
<th>AUTHORIZATION NO:</th>
<th>ORIGINAL CONTRACT DATE:</th>
<th>DATE OF CHANGE:</th>
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WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

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<td>Net increase/decrease in contract amount:</td>
<td>$_________________</td>
</tr>
<tr>
<td>Revised contract amount:</td>
<td>$_________________</td>
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Requested by:
Alan Plummer Associates, Inc.

by:_________________________ Date:_____________________

___________________________
Printed name, title

Approved by:
City of San Marcos:

by:_________________________ Date:_____________________

by:_________________________
Dan O’Leary, City Manager

APAI-TXI Contract
AGENDA CAPTION:
Consider approval of Resolution 2018-41R, approving the award of a construction contract to Santa Clara Construction, Ltd. for the Cheatham Street Waterline Bore Improvements project in the amount of $527,775.00 contingent upon the contractor’s timely submission of sufficient bonds and insurance in accordance with the City’s construction contract documents for the project; authorizing the City Manager or his designee to execute all contract documents on behalf of the City and declaring an effective date.

Meeting date: 3/20/2018

Department: Capital Improvements

Amount & Source of Funding
Funds Required: $527,775.00
Account Number: C27
Funds Available: $1,829,083
Account Name: Cheatham St Imp & Blanco River WL B

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

City Council Goal: [Please select goal from dropdown menu below]
Goal #5 Maintain & Improve City's Infrastructure
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 - 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:
On February 15, 2017, the City received eight (8) bids for the Cheatham Street Waterline Improvements project. Bids were evaluated by K Friese + Associates to ensure they were responsive and responsible. After evaluating the bids, K Friese + Associates recommends awarding a construction contract to the low bidder, Santa Clara Construction, Ltd. In the amount of $527,775.00.

The project’s scope includes the replacement of undersized water mains along Cheatham Street from CM Allen Pwk, to Riverside Drive. Approximately 715 ft. of 12-inch watermain will be installed and approximately 580 feet of waterline will be bored under the San Marcos River to connect the new water lines on both sides of the river. This will create an additional loop in the water system improving pressures/flows. The project is estimate to take four months to complete.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends approval of this agreement.
RESOLUTION 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT TO SANTA CLARA CONSTRUCTION, LTD. FOR THE CHEATHAM STREET WATERLINE BORE IMPROVEMENTS PROJECT IN THE ESTIMATED AMOUNT OF $527,775.00 CONTINGENT UPON THE CONTRACTOR’S TIMELY SUBMISSION OF SUFFICIENT BONDS AND INSURANCE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE DOCUMENTS RELATED TO THE RENEWAL OF THIS AGREEMENT; 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 to Santa Clara Construction, Ltd. for the Cheatham Street Waterline Bore Improvements Project in the estimated amount of $527,775.00 contingent upon the contractor’s timely submission of sufficient bonds and insurance is approved.

PART 2. The City Manager, or his designee, is authorized to execute the appropriate documents related to the renewal of this 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 day of 2018

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
February 23, 2018

Mr. Kirk Abbott, P.E.
Project Engineer, Capital Improvements Department
City of San Marcos
630 E. Hopkins Street
San Marcos, Texas 78666

Sent Via: E-Mail

Re: Cheatham Street Waterline Bore Improvements - Recommendation of Award

Dear Mr. Abbott,

On February 15th, 2018, bids were received and opened at 630 East Hopkins Street, San Marcos, Texas, for the Cheatham Street Waterline Bore Improvements project. Eight bids were received as shown in the summary tabulation below.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Total Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santa Clara Construction, Ltd.</td>
<td>$527,775.00</td>
</tr>
<tr>
<td>Austin Underground, Inc.</td>
<td>$536,658.00</td>
</tr>
<tr>
<td>Boretex LLC</td>
<td>$547,227.55</td>
</tr>
<tr>
<td>MA Smith Contracting Co. Inc.</td>
<td>$596,259.15</td>
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<td>M&amp;C Fonseca Construction Co., Inc.</td>
<td>$613,748.40</td>
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<td>Aaron Concrete Contractors, L.P.</td>
<td>$642,285.31</td>
</tr>
<tr>
<td>Denbow Company, Inc.</td>
<td>$684,915.90</td>
</tr>
<tr>
<td>Prota Construction Inc and Prota Inc, JW</td>
<td>$694,000.00</td>
</tr>
</tbody>
</table>

We have reviewed the Statement of Bidder’s Qualifications submitted by Santa Clara Construction, Ltd. and verified project references, and believe they have the experience to complete the Cheatham Street Waterline Bore Improvements project within the timeframe in the contract. We recommend that the Cheatham Street Waterline Bore Improvements contract be awarded to the low bidder, Santa Clara Construction, Ltd. in the amount of $527,775.00.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Gregory T. Blackburn, P.E.
Project Engineer

Attachment
### Santa Clara Construction, Ltd.

**Name of Project:** Comanche 24" Water Transmission Main  
**Location:** San Marcos, Texas

**Owners Name & Address:** City of San Marcos  
**Owners Contact Person:** Shawn Condor  
**Phone/Fax:** 512-483-9353

**Initial Contact Price:** $2,644,987  
**Final Contract Price:** $2,804,659.92

**Contract Start Date:** 7/12/2012  
**Contract Substantial Completion Date:** 10/11/2013  
**Actual Substantial Completion Date:** 4/20/2013

**Contract Time:** 456 ( X ) Calendar Days  
( ) Working Days

---

If contract time extensions were added to the contract as a result of Bidder's responsibilities, provide a short explanation of each.

---

### Project Description and why it is comparable to this Contract:

This project consisted of installation of approximately 6600 LF of 24" DI water transmission main and 1300 LF of 12" DI Water main with associated appurtenances. The line was approximately 50/50 in existing busy streets near Texas State University and nearby off-road undeveloped areas. The entire project was in hard rock, necessitating use of heavy rock breaking equip.

An altitude control valve was installed, with telemetry and control equipment for use by City of San Marcos water utility.

Also included was a creek crossing and repair of the foundations of an existing suspended line, various revegetation, and significant pavement restoration. The pavement restoration scope was increased at the City's request from a trench patch to full lane full depth replacement. This project demonstrates ability to work in hard rock areas, working in busy existing streets with numerous existing utilities nearby, and working in an existing creek area.

---
**Name of Project:** Goodnight Ranch Vertex Blvd 24-Inch Water Line Project  
**Location:** Austin, Texas

**Owners Name & Address:** City of Austin  
P.O. Box 1088, Austin, Texas 78767/ Goodnight Ranch, LP

**Owners Contact Person:** Phillip Jaeger  
Larry Hannahan  
**Phone/e-mail:** 512-972-9231 philip.jaeger@austintexas.gov  
512-402-6871 lhanrahan@ci.austintexas.com

**Initial Contact Price:** $575,479.00  
**Final Contract Price:** $

**Contract Start Date:** 10/17/2014  
**Date of Notice to Proceed:** 

**Contract Time:** 120 (X) Calendar Days  
( ) Working Days

**Contract Substantial Completion Date:**

**Anticipated Substantial Completion Date:**

If contract time extensions were added to the contract as a result of Bidder's responsibilities, provide a short explanation of each.

---

**Project Description and why it is comparable to this Contract:**  
Furnish and install approximately 1751 LF of 24-inch ductile iron pipe and associated appurtenances.
SANTA CLARA CONSTRUCTION, LTD.
9811 Anderson Mill Road, Ste 201
Austin, Texas 78750
Phone (512)250-8310  Fax (512)250-8371

PROJECT INFORMATION

Awarded: 1/13/16 Agreement 3/31/16
NTP: 6/6/2016
Start Date: 6/21/16
Substantial:
Final:
Closed:

Project/Contract Name: Renewing Austin- NW Brentwood - Karen & Payne Area Neighborhood Water System Upgrades

Contract Number: CLMC568  Job No. 224
Location:
Street Address: Various locations- Karen & Payne Area Neighborhood
City: Austin
State: Texas  Zip: 78757
Phone:

Owner’s Name:
Name: City of Austin
Address: P.O. Box 1088
City: Austin
State: TX  Zip: 78767
Project Engineer: Dario Octaviano  E-mail: dario.octaviano@austintexas.gov
Phone 512-974-7607  Fax:

Inspector:
E-Mail:
Phone  Mobile:

Bonding Company:
Name: The Hanover Insurance Company  Bond#: 1034766
Address: 440 Lincoln Street
City: Worcester
State: MA  Zip: 01653-0002
Phone 512-454-9500  Fax 512-454-9502

Surety Agent
Name: David Ballew
Address: 3802 Manchaca Road
City: Austin
State: Texas  Zip: 78704
Phone 512-454-9500  Fax 512-454-9502

Total Bid Initial: $2,434,207.00  Days: For Substantial: 270
Final: $  For Final: 30

Description:
Installing approx. 9820 LF of 8-inch diameter DI, 230 LF of 6-inch diameter DI water mains
including fire hydrants, valves, 158 2-inch HPDE water service connections, 5 WW manholes
2 WW service connections, and miscellaneous work and appurtenances along with overlay
in designated areas prescribed in construction plan.
SANTA CLARA CONSTRUCTION, LTD.
9811 Anderson Mill Road, Ste 201
austin, Texas 78750
Phone(512)250-8310 Fax(512)250-8371

Awarded: 2/2/16 Agreement 3/31/16
NTP: 4/30/2016
Start Date: 5/3/2016

PROJECT INFORMATION

Project/Contract Name: Southeast Allandale Neighborhood Water and Wastewater Improvements-Rebid

Contract Number: CLMC5388
Job No: 226

Location:
Street Address: Various locations
City: Austin
State: Texas Zip: 78731

Owner’s Name:
Name: City of Austin
Address: P.O. Box 1088
City: Austin
State: TX Zip: 78767

Project Engineer:
Name: Dennis Crabill E-mail: dennis.crabill@austintexas.gov
Phone: 512-974-7232 Fax:

Inspector:
Name: Esteban Baster E-Mail: esteban.baster@austintexas.gov
Phone: 512-228-8002 Mobile:

Bonding Company:
Name: The Hanover Insurance Company Bond#: 1034765
Address: 440 Lincoln Street
City: Worcester
State: MA Zip: 01653-0002
Phone: 512-454-9500 Fax: 512-454-9502

Surety Agent
Name: David Ballew
Address: 8140 N. Mopac Expy., Bldg 1, Suite 100
City: Austin
State: Texas Zip: 78759
Phone: 512-454-9500 Fax: 512-454-9502

Total Bid Initial: $3,816,832.50 Days: For Substantial: 540
Final: $ For Final: 30

Description:
Replacement of existing 2" & 6" CI WL with 9139 LF proposed 8" PVC C-900 WL. 3075 LF 8"
PVC SDR 26 WWL, the abandonment of 592 LF of 6" CI or 8" concrete lines, and the installation
of new private WW services at 13 houses. New WWL, approx. 1069 LF out of the total 3075 LF WW
Lines will be located along Chiapero Tr. With redirected flow direction connecting to an existing
WW Manhole at W. 45th street.
SANTA CLARA CONSTRUCTION, LTD.
9811 Anderson Mill Road, Ste 201
Austin, Texas 78750
Phone(512)250-8310
Fax(512)250-8371

Awards:
9/18/2017
NTP:
9/18/2017
Start Date:
9/18/2017
Substantial:

Final:
Closed:

**PROJECT INFORMATION**

<table>
<thead>
<tr>
<th>Project/Contract Name:</th>
<th>30&quot; Oak Street Water Transmission Main</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Number:</td>
<td>TNP Project WEA 12621 Job No. 236</td>
</tr>
<tr>
<td>Location:</td>
<td>From S. Weiland Street to Dubellette G.S.T.</td>
</tr>
<tr>
<td>City:</td>
<td>Weatherford</td>
</tr>
<tr>
<td>State:</td>
<td>Texas Zip: 76086</td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
</tbody>
</table>

| Owner's Name:          | Weatherford Municipal Utility Board   |
| Name:                  |                                       |
| Address:               | 303 Palo Pinto Street PO Box 255      |
| City:                  | Weatherford                           |
| State:                 | Texas Zip: 76086                       |
| Project Manager:       | Bill Smith E-mail: wsmith@weatherfordtx.gov |
| Phone:                 | 817-598-4033 Fax:                     |

| Inspector:             | Ricky Bullock E-Mail: rbullock@weatherfordtx.gov |
| Name:                  |                                       |
| Phone:                 | 817-598-4033 Mobile: 817-613-7985         |
| Fax:                   | 817-598-4140                            |

| Bonding Company:       | The Hanover Insurance Company Bond#: 1056948 |
| Name:                  |                                       |
| Address:               | 440 Lincoln Street                     |
| City:                  | Worcester                              |
| State:                 | MA Zip: 01653-0002                     |
| Phone:                 | 512-454-9500 Fax: 512-454-9502          |

| Surety Agent           | David Ballew                           |
| Name:                  |                                       |
| Address:               | 3802 Manchaca Road                    |
| City:                  | Austin                                 |
| State:                 | Texas Zip: 78704                       |
| Phone:                 | 512-454-9500 Fax: 512-454-9502          |

| Description:           | Construction of approximately 8300 LF of 30" water line and associated appurtenances, and 3900 LF of sanitary sewer line. |
| Total Bid Initial:     | $4,196,682.00                          |
| Final:                 | $                                      |
| Days:                  | For Substantial: 320 cal. Days         |
| For Final:             | 320 cal. Days                          |
# BID TABULATION

**Cheatham Street Waterline Bore Improvements**  
February 15, 2018, at 2:00 P.M.

**IFB 218-007**

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Total Bid</th>
<th>Bid Bond</th>
<th>SBQ</th>
<th>Addendum #1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santa Clara Construction, Ltd. Austin, Texas</td>
<td>$527,775.00</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Denbow Company Inc Dripping Springs, Texas</td>
<td>$684,915.90</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>M&amp;C Fonseca Construction Co., Inc. Granite Shoals, Texas</td>
<td>$613,748.40</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Prota Construction Inc and Prota Inc, JV Austin, Texas</td>
<td>$649,000.00</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Boretex LLC Spicewood, Texas</td>
<td>$547,227.55</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Austin Underground, Inc. Lago Vista, Texas</td>
<td>$536,658.00</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Aaron Concrete Contractors, L.P. Austin, Texas</td>
<td>$674,285.31</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>MA Smith Contracting Co Inc. Austin, Texas</td>
<td>$596,259.15</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

WITNESSED BY: [Signatures]
AGENDA CAPTION:
Consider approval of Resolution 2018-42R, approving and authorizing the City Manager to execute a wholesale electric power purchase agreement with AEP Energy Partners, Inc. to supply wind energy to the San Marcos Electric Utility; declaring the agreement to be a competitive matter of the San Marcos Electric Utility under Section 552.133 of the Texas Government Code; and declaring an effective date.
Meeting date: 3/20/2018

Department: Public Services-Electric Utility (Tom Taggart-Exec. Director)

Amount & Source of Funding
Funds Required: Competitive Power Exemption
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: Previous PPA for CSO with various providers

City Council Goal: [Please select goal from dropdown menu below]
Goal # 7 Maintain Fiscal Responsibility
Goal #8 Provide efficient & effective delivery of services
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
**File #:** Res. 2018-42R, **Version:** 1

**Master Plan:** [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]

Choose an item.

**Background Information:**
This PPA will provide electric power to the San Marcos Electric Utility from a wind energy source owned by AEPEP.

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

N/A

**Alternatives:**

Other PPA options exist but at other terms, prices, and sources

**Recommendation:**

Approve the PPA contract agreement
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A WHOLESALE ELECTRIC POWER PURCHASE AGREEMENT WITH AEP ENERGY PARTNERS, INC. TO SUPPLY WIND ENERGY TO THE SAN MARCOS ELECTRIC UTILITY; DECLARING THE AGREEMENT TO BE A COMPETITIVE MATTER OF THE SAN MARCOS ELECTRIC UTILITY UNDER SECTION 552.133 OF THE TEXAS GOVERNMENT CODE; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The San Marcos City Council approves the terms and conditions of a Master Power Purchase and Sale Agreement and Confirmation Letter (collectively referred to as the “Agreement”) with AEP Energy Partners, Inc. to supply wind energy to the San Marcos Electric Utility (SMEU).

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

PART 3. The City Council hereby finds that the Agreement constitutes a utility-related competitive matter of the San Marcos Electric Utility (SMEU) that would, if disclosed, give advantage to competitors or prospective competitors of SMEU. Pursuant to Section 552.133 of the Texas Government Code, the Agreement is exempt from public disclosure and shall not be released or otherwise made public unless the City of San Marcos is directed to do so by the Attorney General of the State of Texas or a court of competent jurisdiction. A redacted version of the Agreement shall be made available upon request.

PART 4. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on March 20, 2018

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGENDA CAPTION:
Discuss and consider appointments to fill two vacancies on the Library Board, and provide direction to Staff.

Meeting date: 3/20/2018

Department: City Clerk

Background Information:
After appointments were made on March 6, 2018, I received information that Donnelle Gooch and Adelaide McAninch will be unable to serve at this time. Staff is requesting two appointments to fill these vacancies.

The following applicants have provided applications for consideration:

1. Samantha Bagley (3rd Choice)
2. Kathryn Brady (2nd Choice)
3. Ariel Emmerson (2nd Choice)
4. Debra Harvey (2nd Choice)
5. Leah Danyelle Hennington (3rd Choice)
6. Lauren Mikiten (1st Choice)
7. Stephanie Nelson (2nd Choice)
8. Priscilla Leder (1st Choice)
Members whose term expire on 02/28/2018

Applicants Preference is listed as only or 1st, 2nd, 3rd

<table>
<thead>
<tr>
<th>Library Board (Need 2)</th>
<th>Eligible</th>
<th>Current Applications on File</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacant</td>
<td>2/28/2020</td>
<td>Priscilla Leder (1st) ETJ Resident Arts</td>
</tr>
<tr>
<td>Vacant</td>
<td>2/28/2020</td>
<td>Lauren Mikiten (1st) resident Main Street, Arts</td>
</tr>
<tr>
<td>Jayne Baker</td>
<td>3/1/2017</td>
<td>Stephanie Nelson (2nd) resident Animal, Arts</td>
</tr>
<tr>
<td>Karen Munoz</td>
<td>3/1/2017</td>
<td>Ariel Emmerson (2nd) resident Arts, Parks</td>
</tr>
<tr>
<td>Martha Moore, ETJ</td>
<td>3/1/2017</td>
<td>Debra Harvey (2nd) resident Arts</td>
</tr>
<tr>
<td>Joanne Engel, ETJ</td>
<td>3/6/2018</td>
<td>Kathryn Brady (2nd) resident Main Street, Arts, EDSMA Arts</td>
</tr>
<tr>
<td>Joan Nagel</td>
<td>3/6/2018</td>
<td>Leah Danyelle Hennington (3rd) ETJ Resident Veterans, Arts</td>
</tr>
</tbody>
</table>

5 members must be residents of the City

a strikethrough indicates not eligible or no appt needed at this time