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. 5:00PM Executive Session in accordance with Section § 551.087 of the Texas Government Code - Economic Development: to receive an update regarding Project Enfield.

2. Consider adoption or direction to Staff on matters discussed in Executive Session.

PRESENTATIONS

3. Receive an update from the Interim City Manager regarding the storm event that occurred on Tuesday, April 11, 2017, and provide direction to Staff.

4. Receive a Staff presentation of the Annual Report for the Main Street Program, and provide direction to Staff.

5. Receive an update from the Affordable Housing Sub Committee regarding short-term rentals, and provide direction to Staff.

6:00 PM

V. 30 Minute Citizen Comment Period

CONSENT AGENDA

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

6. Consider approval, by motion, of the following meeting Minutes:
   A) March 27, 2017 - Budget Policy Workshop
   B) March 29, 2017 - CDBG-DR Workshop
   C) March 31, 2017 - Packet Meeting
   D) April 4, 2017 - Regular Meeting

7. Consider approval of Ordinance 2017-15, on the second of two readings, amending the traffic register maintained under Section 82.067 of the San Marcos City Code by reducing the speed limit from 30 miles per hour to 25 miles per hour along the 1400 block of Highland Drive, between Holland Street and Nichols Drive, and the 100 block of Nichols Drive, between North LBJ Drive and Highland Street; and including procedural provisions.

8. Consider approval of Ordinance 2017-16, on the second of two readings, creating a designated permit area under Section 82.189 of the San Marcos City Code that allows parking by permit on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern Terminus of the street, 8:00 am to 11:00 pm every day, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

9. Consider approval of Ordinance 2017-17, on the second of two readings, creating a designated permit area under Section 82.189 of the San Marcos City Code that allows parking by permit on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 am-11:00pm, Friday to Sunday, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

10. Consider approval of Resolution 2017-65R, authorizing the submission of an application to The Office of the Attorney General, Crime Victims Services Division, for a VCLG (Victim Coordinator and Liaison Grant) in an amount not to exceed $42,000 to continue funding for the Police Department’s Victim’s Services Program, authorizing the Interim City Manager or his designee to execute any and all documents as needed to accept and implement the grant, if awarded, and to declare an effective date.

11. Consider approval of Resolution 2017-66R, approving the purchase of radar equipment for 44 police patrol vehicles for the Police Department from Applied Concepts, Inc., DBA Stalker Radar through the Houston-Galveston Area Council Cooperative Purchasing Program Contract #EF04-15 for Law Enforcement speed detection and video equipment in the total amount of $98,576.00; authorizing the Interim City Manager or his designee to execute the appropriate purchasing documents on behalf of the City and declaring an effective date.

12. Consider approval of Resolution 2017-67R, approving the purchase and installation of law enforcement equipment for fourteen new Ford Police Utility Interceptor vehicles for the Police Department from Fleet Safety Equipment, Inc. through the Texas Local...
Government Purchasing Cooperative Buyboard Contract for Public Safety and Fire
House supplies and equipment (contract #432-13) in the total purchase amount of
$180,618.57; authorizing the Interim City Manager or his designee to execute the
appropriate purchase documents on behalf of the City and declaring an effective date.

13. Consider approval of Resolution 2017-68R, approving the purchase of Sensus Water
Meters as a sole source procurement for the Public Services Department,
Water/Wastewater Utilities Division from Aqua Metric Sales Company in the estimated
amount of $2,388,261.00; authorizing the Interim City Manager or his designee to
execute the appropriate purchasing documents on behalf of the City; and declaring an
effective date.

14. Consider approval of Resolution 2017-69R, approving an agreement with TMT
Solutions, Inc. in connection with the Surface Water Treatment Plant and the
Wastewater Treatment Plant Supervisory Control and Data Acquisition Systems for the
Public Services Department in the total amount of $174,279.82 which includes five
years of support; authorizing the Interim City Manager or his designee to execute the
agreement on behalf of the City; and declaring an effective date.

15. Consider approval of Resolution 2017-70R, approving a contract with the Lower
Colorado River Authority (LCRA) providing for payment to LCRA in the amount of
$75,255 for its costs to construct a high voltage bus extension necessary for LCRA to
provide electric transmission power to a new transformer at the Hilltop Substation;
authorizing the Interim City Manager to execute said contract on behalf of the City; and
declaring an effective date.

16. Consider approval of Resolution 2017-71R, approving an agreement with Alan
Plummer Associates, Inc. for the provision of professional engineering services in
connection with the Primrose Way Water Project in the not-to-exceed amount of
$69,978.00 contingent upon the consultant’s provision of sufficient insurance in
accordance with the attached agreement; authorizing the Interim City Manager or his
designee to execute this agreement on behalf of the City; and declaring an effective
date.

17. Consider approval of Resolution 2017-72R, approving the procurement of an Oracle
Software License update and four years of associated support for the City’s Metersense
application from Mythics Inc. in the total amount of $237,030.12 through the Texas
Comptroller of Public Account’s Department of Information Resources Program
(contract DIR-TSO-2548) for Oracle branded manufacturer hardware, software and
related products; authorizing the Interim City Manager or his designee to execute the
appropriate purchasing documents on behalf of the City and declaring an effective date.

18. Consider approval of Resolution 2017-73R approving a Commercial Aviation Ground
Lease Agreement with Berry Aviation, Inc. for a tract of land at the San Marcos
Regional Airport; authorizing the City Manager to execute the Agreement; and declaring
an effective date.

PUBLIC HEARINGS - 7:00 PM

19. 7:00PM Receive a Staff presentation and hold a Public Hearing to receive comments
for or against Resolution 2017-74R, approving a Budget Policy Statement for preparation of the 2017-2018 fiscal year budget, declaring an effective date; and consider approval of Resolution 2017-74R.

NON-CONSENT AGENDA

20. Consider approval of Ordinance 2017-18, 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 CM Allen Parkway between Grove Street and IH 35 Access Road, from 8am-11pm every day, during and including the months of February through November; amending the Traffic Register to reflect such Designated Permit Area; and providing for an effective date.

21. Consider approval of Ordinance 2017-19, on the first of two readings, amending the term limit of key constituency representatives in Chapter 2, Article 3, Division 24, Section 2.370.26, San Marcos Commission on Children and Youth; including procedural provisions; and providing an effective date.

22. Consider approval of Ordinance 2017-20, on the first of two readings, amending Chapter 2, Article 5, Code of Ethics, of the San Marcos City Code; requiring Financial Disclosure Forms to be updated within 30 days following acquisition of additional interests in real property; requiring Financial Disclosure Forms to be filed by members of temporary boards, commissions, subcommittees or similar groups; and providing an effective date.

23. Consider approval of Ordinance 2017-21, on the first of two readings, amending Chapter 58 of the San Marcos City Code regarding Public Facilities, Parks and Recreation by eliminating the requirement of a verbal warning before issuance of citations for public display or consumption of alcoholic beverages in city parks, prohibiting charcoal grills in city parks, and limiting the use of shelters or tents in city parks; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

24. Consider approval of Resolution 2017-75R, amending the ethical criteria for the award of City Contracts previously adopted by Resolution 2010-145R; and declaring an effective date.

25. Consider approval of Resolution 2017-76R, approving a first addendum to the Interlocal Agreement with Hays County regarding the collection, payments and use of tax increment in Tax Increment Reinvestment Zone No. 5 (Downtown Area) that extends the term of said agreement for five years with provision for an additional extension of five years and that establishes the process for the County’s approval of project costs; authorizing the City Manager to execute this first addendum on behalf of the City; and declaring an effective date.

26. Consider approval of Resolution 2017-77R, establishing a Policy Regarding Mobile License Plate Recognition (MLPR) Data Privacy; authorizing the Interim City Manager or his designee to take such measures as necessary to implement said policy; and declaring an effective date.
27. Consider approval of Resolution 2017-78R, approving an agreement with Urban Mining Company and Urban Mining Development, LLC that provides economic development incentives for the location of a high technology manufacturing plant along Clovis Barker Road near Leah Avenue to include refunds of 75 percent of real and personal property taxes over ten years, waivers of certain development standards and the deferral of annexation for the site of the manufacturing facility and adjacent property until completion of the facility and platting; authorizing the Interim City Manager to execute the agreement; and declaring an effective date.

28. Discuss and consider appointments to the following roles on the Neighborhood Commission: Associated Student Government Representative and Sector 5 Representative, and provide direction to Staff.

29. Discuss and consider an appointment to fill a vacancy on the Economic Development San Marcos Board, and provide direction to Staff.

30. Discuss and consider an appointment to fill a vacancy on the San Marcos Youth Commission, and provide direction to Staff.

31. Discuss and consider appointments to the Citizen Utility Advisory 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 WEDNESDAY, APRIL 12, 2017 at 3:30PM

JAMIE LEE CASE, TRMC, CITY CLERK

VIII. ADDENDUM

32. Addendum:
The following items were added following the original posting on Wednesday, April 12:

Item #1 5:00PM Executive Session in accordance with Section § 551.087 of the Texas Government Code - Economic Development: to receive an update regarding Project Enfield.

Item #2 Consider adoption or direction to Staff on matters discussed in Executive Session.

Item #3 Receive an update from the Interim City Manager regarding the storm event that occurred on Tuesday, April 11, 2017, and provide direction to Staff.

ADDENDUM POSTED ON FRIDAY, APRIL 14, 2017 AT 3:30PM
5:00PM Executive Session in accordance with Section § 551.087 of the Texas Government Code - Economic Development: to receive an update regarding Project Enfield.
Consider adoption or direction to Staff on matters discussed in Executive Session.
AGENDA CAPTION:
Receive an update from the Interim City Manager regarding the storm event that occurred on Tuesday, April 11, 2017, and provide direction to Staff.

Meeting date: April 18, 2017

Department: City Manager's Office

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s):

BACKGROUND:
Mr. Charles Daniels, Interim City Manager, will provide an update regarding the storm event that occurred on Tuesday, April 11, 2017.
April 11, 2017
Storm Event
April 11 Storm Event

• Rains began around 11:40, dropping over 8 inches in some areas
• Severe Thunderstorms and Flash Flood warnings issued by NOAA
• Wind gusts up to 70mph
• Pea and dime sized hail observed
• Sunset Acres received 4 inches in less than an hour (100 to 500 yr flood event)
Precipitation for 2017-04-12 values in inches

- Zero
- Trace
- 0.01 - 0.43"  
- 0.44 - 0.86"  
- 0.87 - 2.16"  
- 2.17 - 5.19"  
- 5.20 - 7.79"  
- 7.80 - 8.66"

Locations:
- 6.62"
- 8.66"
- 7.32"
5.43” in 2 hours 100 year rainfall

3.94” in 1 hour 100-500 year rainfall

6.11” in 3 hours 100 year rainfall
70 mph winds noted in the Redwood area
Damage Reports

• Water Rescues- SMFD and SMPD involved in more than 60 water rescues
• Power Outages- San Marcos Electric 1,312 accounts affected, Bluebonnet 1,537 accounts
• Property Damage- 35 homes and 7 businesses had water damage
• Public Facilities- COSM Library, SMCISD Bonham and Bowie Elementary Schools
• Tree limbs torn and debris accumulated at high points
Willow Creek at Patton
Hail at San Marcos High School
Debris Removal

• Requesting citizens to call TDS Bulky Waste Pickup Number 1-800-375-8375 extension 2
  – Allows for 3 cubic yards
  – 4 pickups per year included free of charge
AGENDA CAPTION:
Receive a Staff presentation of the Annual Report for the Main Street Program, and provide direction to Staff.
Meeting date: April 18, 2017

Department:
City Manager’s Office - Samantha Armbruster, Main Street Program Manager

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

BACKGROUND:

Staff will provide an update on the Main Street Program, including a summary of 2016 activity and an overview of 2017 plans.
Annual Report

Tuesday, February 14, 2017
Agenda

2016 Year in Review

State of Downtown

2017 Focus and Strategy
Vision Statement

To foster a downtown that is a unique and culturally vibrant destination where local businesses thrive and people of all ages can connect, create, and celebrate.
Main Street Program 4 Point Approach

Economic - Sense of Vitality
Design - Physical - Sense of Place

Social – Sense of Activity
Promotion

Civic – Sense of Ownership
Organization
Enhancing a main street's sense of place does not happen by chance. It requires a well-organized and committed downtown organization.”

– National Main Street Center

Events

Swing on the Square
Tour of Homes
Downtown Gallery Night
Wine Walks
Farm to Table Dinner

Empty Nesters
Kids and Families
Town and Gown

Attendees

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
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<td>2235</td>
<td>5909</td>
<td>6320</td>
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Discover Texas State Wine Walk
Passport to San Marcos
Cookies and Cocoa
Corn Dog Day
Downtown Trick or Treat
2016 Year in Review

Economic Vitality
National Recognition and Accreditation

Promotion
Sold out Events

Design
Permanent Lighting
Downtown
Groundskeeper position

Organization
Record Number of Volunteer hours logged
Media Attention

[Image of a media article]

San Marco's downtown continues upswing.

Art enthusiasts discover new treasures at Downtown Outlier.

Texas State University - The University Star - Mar 25, 2016

San Marco's main brand manager, said the hopes archives enjoyed a night of unique art while discovering...
Grant Programs – Applications received

Main Street Grant
Matching grant up to $2000 for improvements to sign, awning and facade

B.I.G. Grant
Matching grant up to $25,000 for qualifying building improvements
Volunteer Hours Logged

2013  2014  2015  2016

1545 hours  2334 hours  3606 hours  3800 hours

Pictured are the Volunteers of the Year since 2014

Volunteer Hours have increased 415% since 2012
Goal for 2017 is 4000
Armbruster, Samantha, 2/7/2017
State of Downtown
## Downtown Business Starts and Closures

<table>
<thead>
<tr>
<th>Year</th>
<th>Business Starts</th>
<th>Net Gain in Bus Starts</th>
<th>Net Gain in Jobs</th>
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<tbody>
<tr>
<td>2013</td>
<td>25</td>
<td>14</td>
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<td>22</td>
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</tr>
<tr>
<td>2016</td>
<td>18</td>
<td>8</td>
<td>115</td>
</tr>
</tbody>
</table>
New 2016 Restaurant and Business stats

10 RESTAURANTS OPENED IN DOWNTOWN

28 RESTAURANTS OPENED CITY WIDE

Relocation / Renaming of Downtown Business
- 3 businesses were renamed
- 3 business relocated out of downtown
- 1 business relocated within downtown

Business Closures
- 3 Professional Services
- 4 Retail
- 2 Restaurants
Sales Tax

City Wide Sales Tax Performance
10% increase YTD over 2015

State Wide Sales Tax Performance
-1.5% decrease YTD over 2015

Details regarding downtown Sales Tax Performance
Restaurant sales tax flat over 2015 despite increase in establishments
Increase in sales tax for retail over 2015

$qtr 1\ qtr 2\ qtr 3\ qtr 4$

2012\ 2013\ 2014\ 2015\ 2016

$0.00\ $50,000.00\ $100,000.00\ $150,000.00\ $200,000.00\ $250,000.00\ $300,000.00\ $350,000.00\ $400,000.00\ $450,000.00\ $500,000.00$
2017 Focus and Strategy
Update on Goals presented to City Council April 2016

HOLIDAY LIGHTS AND PROGRAMMING
Main Street’s Role – to plan and implement and promote!

CLEAN, SAFE, AND BEAUTIFUL
Main Street’s Role – identify resources needed, develop relationships with partners and track trends

CONSTRUCTION, TRANSPORTATION, AND PARKING MGT
Main Street’s Role – to learn of plans, update stakeholders
Focus and Strategy

**Economic Vitality**
Find new and existing ways to collect and study data that will empower Main Street to react quickly

**Promotion**
Consolidate existing Main Street events
Amplify events/promotions being Created
Strive for continued social media success

**Design**
Utilize volunteers and strategic partnerships to address beautification.
Celebrate placemaking efforts

**Organization**
Find and Connect with strategic partners that further the vision
Recognize efforts by stakeholders
2017 Event Calendar

LOVE LOCAL
EAT. SHOP. LIVE. PLAY. IN

Eating Out: Downtown San Marcos, Texas

The Most Romantic
Downtown in Texas
Questions and Discussion
AGENDA CAPTION:
Receive an update from the Affordable Housing Sub Committee regarding short-term rentals, and provide direction to Staff.

Meeting date: April 18, 2017

Department: Development Services

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): Neighborhoods & Housing

BACKGROUND:
The Affordable Housing Subcommittee has met to discuss the development of a short-term rental policy. There are currently House and Senate bills filed during the current Legislative Session relating to the regulation of short-term rentals by municipalities and counties. The subcommittee proposes waiting until the Legislature has completed their work and we know what bills have passed and how they may affect us.
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
   A) March 27, 2017 - Budget Policy Workshop
   B) March 29, 2017 - CDBG-DR Workshop
   C) March 31, 2017 - Packet Meeting
   D) April 4, 2017 - Regular Meeting

Meeting date: April 18, 2017

Department: City Clerk

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL: N/A

COMPREHENSIVE PLAN ELEMENT(s): N/A

BACKGROUND:
The following minutes are attached for review:
   A) March 27, 2017 - Budget Policy Workshop
   B) March 29, 2017 - CDBG-DR Workshop
   C) March 31, 2017 - Packet Meeting
   D) April 4, 2017 - Regular Meeting
630 E. Hopkins - Budget Policy Workshop

I. Call To Order

With a quorum present, the Budget Policy Workshop of the San Marcos City Council was called to order by Mayor Thomaides at 5:35 p.m. Monday, March 27, 2017 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 6 - Mayor John Thomaides, Mayor Pro-Tem Jane Hughson, Deputy Mayor Pro Tem Lisa Prewitt, Council Member Saul Gonzales, Council Member Ed Mihalkanin and Council Member Scott Gregson

Absent: 1 - Council Member Melissa Derrick

1. Consider approval of Ordinance 2017-14, on first and final reading, appointing Dallari Landry as an Associate Judge of the San Marcos Municipal Court of Record for a two-year term; providing for approval of this ordinance as an emergency measure on one reading; and providing an effective date.

A motion was made by Council Member Gregson, seconded by Council Member Mihalkanin, to approve Ordinance 2017-14, on first and final reading. The motion carried by the following vote:

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

Against: 0

Absent: 1 - Council Member Derrick

2. Consider approval of Resolution 2017-53R, approving an Associate Municipal Court Judge services contract with Dallari Landry; authorizing the Interim City Manager to sign the contract; and declaring an effective date.

A motion was made by Council Member Gregson, seconded by Council Member Mihalkanin, to approve Resolution 2017-53R. The motion carried by the following vote:
March 27, 2017

City Council Meeting Minutes

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

Against: 0

Absent: 1 - Council Member Derrick

3. Receive a Staff presentation and hold discussion regarding the Fiscal Year 2017-2018 Budget Policy for the City of San Marcos, and provide direction to Staff.

Heather Hurlbert, Director of Finance and Steve Parker, Assistant City Manager/CFO, provided the Council with a presentation regarding the FY 2017-18 Budget Policy for the City of San Marcos.

Staff will send out sales tax data on monthly basis.

Staff will send out vehicle lease chart.

Staff will look at other cost effective options in addition to the electric bus shuttle service in downtown area.

Staff will provide information regarding money spent, received, awarded, and grants not yet determined due to recent flood events.

Staff will bring back an item to discuss the two-way conversion of traffic on Guadalupe and N. LBJ in the downtown area and the possibility of removing this from the CIP for this budget cycle.

Staff will look further into airport funding and council has asked for at least one more bid for the restroom remodel at the Central Texas Wing of the Commemorative Air Force.

Staff provided the following dates for additional discussion on the FY 2017-18 Budget:

April 4, 2017 - Discussion item on the budget policy
April 18th - Adoption of Budget Policy
TBD in July - Budget Workshops

Staff also stated they would have additional discussions or workshops in May or June as directed by Council.

III. Question and Answer Session with Press and Public.

None.
IV. Adjournment.

Mayor Thomaides adjourned the budget policy workshop of the San Marcos City Council at 8:36 p.m.

Tammy Cook, TRMC, Deputy 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 CDBG-DR Workshop of the San Marcos City Council was called to order by Mayor Thomaides at 6:03 p.m. Wednesday, March 29, 2017 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

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

1. Receive a presentation and update regarding the Community Development Block Grant - Disaster Recovery (CDBG-DR) needs assessments, and using the data gathered to present options for Housing and Infrastructure Projects, and provide direction to Staff.

Collette Jamison, Assistant City Manager, provided the Council an introduction and overview of what the Council would be receiving during the workshop. She also provided a review of the Action Plan budget and actions completed to date.

Laurie Moyer, Director of Engineering and CIP, provided an introduction to the Council regarding the infrastructure update, and introduced Daniel Zail with AECOM to review the study. Mr. Zail provided a study overview regarding the $12.5M budget identified for infrastructure projects. He provided the current findings that showed that the project cannot handle 100-yr "regional" flooding with "local" solutions, but it can handle "local" flooding and reduce impacts of "regional" flooding. Discussion was held regarding the construction of dams, levies or canals in the Blanco River area. Mr. Zail reviewed the Recent Flood Events data for the Blanco River from 2004-2015. Staff will provide information regarding when both rivers, San Marcos and Blanco, are at flood levels. Mr. Zail reviewed infrastructure expectations and explained that the projects will provide increased protection during local rainfall events, but in larger regional events flooding will still
occur. Projects will contain 25 year storm flooding, but will not remove structures from the 100-year floodplain. To improve drainage in all the impacted areas additional funding sources will be needed, including City drainage CIP funds. Staff will bring the projects back to Council with Prioritization Matrix in April. Staff will get TXDOT elevation of frontage road and bridge information to Council. Staff noted that the Army Corp of Engineers Chief's Report will take 3 years to complete and then it has to go to Congress for approval. It could take 10 years before the project is complete.

Stacy Brown, Housing and Community Development Manager, introduced the Housing Update and reviewed the Housing Program Survey. City Staff surveyed more than 600 impacted households to determine remaining housing needs and preferences. Staff received responses from approximately 20% of households; 120 comprehensive responses received. Ms. Brown introduced Sydney Brown with AECOM to review the Housing Program Survey results. of the 120 responses received the preferences as follows: 1) rehabilitation, 2) buyout, and 3) demolition/reconstruction. The average repairs completed were $31,000 and the average repairs remaining is $17,500. Two respondents reported remained repair costs in excess of the rehab cap of $45,000. The proposed Housing Program Funding per Action Plan is $5,000,000 for Owner-Occupied (Rehab/Recon/Buyout) and $2,524,000 for Rental (1-4 Unit; Rehab/Recon/Buyout). Funds can be shifted between categories, but any shift of funding in excess of $1,000,000 requires HUD approval.

Ms. Brown provided that the program cap for Rehabilitation is $45,000, the program cap for Demolition/Reconstruction is $150,000, and the program cap for Buyout is $250,000 per home. Buyout amounts are determined by the fair market value of the home prior to the event. Ms. Brown reviewed the eligibility requirements and the prioritization criteria for both owner-occupied housing and rental housing per the Action Plan. Ms. Jamison explained that there will be an application process beginning in mid-May for the Housing Program Options. Ms. Brown continued with explanation of the Housing Implementation Tasks: Phase 1: Secure Applicant Pool, Phase 2: Site-Specific Planning Activities, Phase 3: Construction, Phase 4: Post-Construction. Staff will be evaluating the possibility of a buyout strategy. Staff will continue to look for additional grant funds. Ms. Jamison reviewed the six month timeline moving forward. Council provided consensus to proceed with the process.

III. Question and Answer Session with Press and Public.

None.
IV. Adjournment.

Mayor Thomaides adjourned the CDBG-DR Workshop of the San Marcos City Council at 7:55 p.m.

Jamie Lee Case, City Clerk                                John Thomaides, Mayor
I. Call To Order

With a quorum present, the packet meeting workshop of the San Marcos City Council was called to order by Mayor Thomaides at 12:12 p.m. Friday, March 31, 2017 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666

II. Roll Call

Council Member Derrick and Council Member Gonzales were absent.

Present: 5 - Mayor John Thomaides, Mayor Pro-Tem Jane Hughson, Deputy Mayor Pro Tem Lisa Prewitt, Council Member Ed Mihalkanin and Council Member Scott Gregson

Absent: 2 - Council Member Saul Gonzales and Council Member Melissa Derrick

1. Consider Staff briefing and Council Member discussion and questions regarding items on the agenda for the April 4, 2017 Regular City Council Meeting, to wit Items (3-21).

PRESENTATIONS

3. Staff presentation regarding the Fiscal year 2017-2018 Budget Policy for the City of San Marcos.

CONSENT AGENDA

4. Meeting Minutes:
A) March 21, 2017 - Regular City Council Meeting

5. Resolution 2017-54R, awarding a design contract for the provision of Sessom Drainage Improvements preliminary engineering, design engineering, bid and construction phase services to American Structurepoint Inc., in the estimated amount of $228,395.00; authorizing the City Manager or his designee to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

6. Resolution 2017-55R, approving the award of a construction contract to Myers Concrete Construction, LP for the Guadalupe Street sidewalk widening project (IFB 217-158) in the amount of $216,384.00 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 Interim City Manager or his designee to execute all contract documents on behalf of the City; and declaring an effective date.

7. Resolution 2017-56R approving Amendment No. 1 to Contract with the Department of State Health Services, Vital Statistics Unit (Contract No. 537-16-0027-00001) for the provision of on-line vital statistics computer services.

8. Resolution 2017-57R, approving the terms and conditions of an airport facility lease agreement with Compliance Aviation, Inc. d/b/a Blue Skies Aviation for lease of a hangar located at 1815 Airport Drive; authorizing the Interim City Manager to execute the lease agreement; and declaring an effective date.

9. Resolution 2017-58R, approving a 19-month Airport Facility Lease Agreement with Coast Flight Management and Training, Inc. for the hangar located at 1813 Airport Drive; authorizing the City Manager to execute the lease agreement; and establishing an effective date.

10. Resolution 2017-59R, approving the recommendation of the San Marcos Commission on Children and Youth to allocate $46,435.00 in 2016-2017 Fiscal Year funding for 17 youth programs that contribute to implementation of the Youth Master Plan; authorizing the Interim City Manager to take such actions as are necessary to enable such allocation of funds; and declaring an effective date.

11. Resolution 2017-60R, approving an advertising program agreement for a joint advertising program between the City and Tanger Properties Limited Partnership in an amount up to $150,000.00 per year over five years; authorizing the Interim City Manager to sign the agreement; and declaring an effective date.

12. Resolution 2017-61R, reappointing Charles P. Anderson, M.D. as the Local Health Authority; approving a letter agreement between the City and Dr. Anderson for his reappointment as the Local Health Authority; and declaring an effective date.

13. Resolution 2017-62R, approving an agreement with Deloitte & Touche, LLP for the provision of internal auditing services in the not-to-exceed amount of $1,151,694.00 contingent upon the consultant’s provision of sufficient insurance in accordance with the attached agreement; authorizing the Interim City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

PUBLIC HEARINGS

14. Staff presentation and Public Hearing to receive comments for or against Resolution 2017-63R, approving a request for a Conditional Use Permit to allow insulated metal panels as an alternative exterior material for two buildings at the Hays County Jail Complex located at 1307 Uhland Road; authorizing City Staff to issue a
Conditional Use Permit consistent with this Resolution; and declaring an effective date.

15. Staff presentation and Public Hearing to receive comments for or against Resolution 2017-64R, supporting an application by TX McCarty TH, LP to the Texas Department of Housing and Community Affairs for 2017 Housing Tax Credits for the proposed Savoy Townhome development located on McCarty Road west of Rattler Road.

NON-CONSENT AGENDA

16. Ordinance 2017-15, on the first of two readings, amending the traffic register maintained under Section 82.067 of the San Marcos City Code by reducing the speed limit from 30 miles per hour to 25 miles per hour along the 1400 block of Highland Drive, between Holland Street and Nichols Drive, and the 100 block of Nichols Drive, between North LBJ Drive and Highland Street; and including procedural provisions.

17. Ordinance 2017-16, 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 on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern Terminus of the street, 8:00 am to 11:00 pm every day, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

18. Ordinance 2017-17, 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 on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 am-11:00pm, Friday to Sunday, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

19. Appointment to fill vacancies on the Downtown Tax Increment Reinvestment Zone #5 (TIRZ #5) Board of Directors for Position 1 (Chair) and Position 5, the mutually agreed upon position between the City and Hays County.

20. Schematic design and cost estimate for the 214 E. Hutchison Project; and consider, by motion, authorizing Staff to proceed with final design and solicit bids for construction of the Project.

21. Proposed amendment(s) to the San Marcos Commission on Children and Youth Ordinance. staff.

The Council received Staff briefings and held discussion regarding items on the agenda for April 4, 2017 Regular City Council Meeting, to wit Items (3-21). Staff will ensure that financial information on agenda request forms is complete.
III. Question and Answer Session with Press and Public.

None.

IV. Adjournment.

Mayor Thomaides adjourned the packet meeting workshop of the San Marcos City Council at 12:57 p.m.

Jamie Lee Case, City Clerk                                  John Thomaides, Mayor
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 5:03 p.m. Tuesday, April 4, 2017 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

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

III. Invocation

A moment of silence was observed.

IV. Pledges Of Allegiance - United States And Texas

Austin Alexander, a 5th Grade student at Texas Preparatory School led the assembly in the pledges of allegiance.

EXECUTIVE SESSION

1. 5:00PM Executive Session in accordance with Section § 551.087 of the Texas Government Code - Economic Development: to receive an update regarding Project Enfield.

A motion was made by Mayor Pro-Tem Hughson, seconded by Council Member Mihalkanin, that Executive Session be postponed. The motion carried by the following vote:

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

Against: 0

EXECUTIVE SESSION

2. Consider adoption or direction to Staff on matters discussed in Executive Session.

A motion was made by Mayor Pro-Tem Hughson, seconded by Council Member Derrick, that Item #2 be postponed. The motion carried by the
following vote:

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

Against: 0

PRESENTATIONS

3. Receive a Staff presentation and hold discussion the regarding the Fiscal year 2017-2018 Budget Policy for the City of San Marcos, and provide direction to Staff.

Heather Hurlbert, Director of Finance, provided the Council with an update to the Council since their Budget Policy workshop. She provided that EMS will be asking for an increase of $109,000. Staff will provided the Council with a list of the positions that were approved last year that have not been filled yet. Discussion was held regarding the percentage of employee turnover and cost of living increase percentages.

6:00 PM

V. 30 Minute Citizen Comment Period

Lisa Marie Coppoletta spoke about her lack of nomination to the Charter Review Commission. She spoke about Smart Growth and how she believes that it is a dismal failure. She stated that she feels like the historic district is being gentrified. She went on to speak about the fire station that is scheduled to be built for Highpointe Trace and asked why they weren’t paying for it. She stated that the real Kissing Tree is dead and was killed by Texas State years ago.

Carina Boston Pinales encouraged the council to consider the community engagement comments that were received during the mobility HUB discussion during the fall. She mentioned that a world renowned director presented his film, The Human Scale, during that discussion and that those things need to be considered moving forward. She stated that this place has the ability to optimize our downtown, and that the current model does not reflect the citizen input.

Roland Saucedo thanked the Council for their time and made the Council aware of a recent neighborhood meeting in the Sunset Acres Neighborhood regarding the Sunset Acres Drainage Project, which is scheduled to start in 2019. He stated that there are many issues with drainage in that area and he asked that this project be moved up to the 2017 CIP.
Christine Terrell spoke about Item #19 and how the Council was previously provided options for this lot. She stated that she was surprised that the schematics that were designed were different from what was previously presented.

CONSENT AGENDA

A motion was made by Council Member Mihalkanin, seconded by Council Member Gregson, to approve the consent agenda with the exception of item #8 which was pulled and considered separately and Council Member Derrick abstained from voting on item #13. The motion carried by the following vote:

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

Against:  0

4. Consider approval, by motion, of the following meeting Minutes:
   A) March 21, 2017 - Regular City Council Meeting

5. Consider approval of Resolution 2017-54R, awarding a design contract for the provision of Sessom Drainage Improvements preliminary engineering, design engineering, bid and construction phase services to American Structurepoint Inc., in the estimated amount of $228,395.00; authorizing the City Manager or his designee to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date

6. Consider approval of Resolution 2017-55R, approving the award of a construction contract to Myers Concrete Construction, LP for the Guadalupe Street sidewalk widening project (IFB 217-158) in the amount of $216,384.00 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 Interim City Manager or his designee to execute all contract documents on behalf of the City; and declaring an effective date.

7. Consider approval of Resolution 2017-56R approving Amendment No. 1 to Contract with the Department of State Health Services, Vital Statistics Unit (Contract No. 537-16-0027-00001) for the provision of on-line vital statistics computer services.

8. Consider approval of Resolution 2017-57R, approving the terms and conditions of an airport facility lease agreement with Compliance Aviation, Inc. d/b/a Blue Skies Aviation for lease of a hangar located at 1815 Airport Drive; authorizing the Interim City Manager to execute the lease agreement; and declaring an effective date.

   A motion was made by Council Member Gregson, seconded by Mayor Pro-Tem Hughson, to approve Resolution 2017-57R. The motion carried by the following vote:
9. Consider approval of Resolution 2017-58R, approving the terms and conditions of an Airport Facility Lease Agreement with Coast Flight Training and Management, Inc. for lease of a hangar located at 1813 Airport Drive; authorizing the Interim City Manager to execute the lease agreement; and declaring an effective date.

10. Consider approval of Resolution 2017-59R, approving the recommendation of the San Marcos Commission on Children and Youth to allocate $46,435.00 in 2016-2017 Fiscal Year funding for 17 youth programs that contribute to implementation of the Youth Master Plan; authorizing the Interim City Manager to take such actions as are necessary to enable such allocation of funds; and declaring an effective date.

11. Consider approval of Resolution 2017-60R, approving an advertising program agreement for a joint advertising program between the City and Tanger Properties Limited Partnership in an amount up to $150,000.00 per year over five years; authorizing the Interim City Manager to sign the agreement; and declaring an effective date.

12. Consider approval of Resolution 2017-61R, reappointing Charles P. Anderson, M.D. as the Local Health Authority; approving a letter agreement between the City and Dr. Anderson for his reappointment as the Local Health Authority; and declaring an effective date.

13. Consider approval of Resolution 2017-62R, approving an agreement with Deloitte & Touche, LLP for the provision of Community Development Block Grant - Disaster Recovery Internal Auditing Services in the not-to-exceed amount of $1,151,694.00 contingent upon the consultant’s provision of sufficient insurance in accordance with the attached agreement; authorizing the Interim City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

PUBLIC HEARINGS - 7:00 PM

14. 7:00PM Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2017-63R, approving a request for a Conditional Use Permit to allow insulated metal panels as an alternative exterior material for two buildings at the Hays County Jail Complex located at 1307 Uhland Road; authorizing City Staff to issue a Conditional Use Permit consistent with this Resolution; and declaring an effective date; and consider approval of Resolution 2017-63R.

Shannon Mattingly, Director of Development Services, provided the Council with a presentation regarding the request by Hays County.

Mayor Thomaides opened the Public Hearing at 7:14 p.m.
Gary Cutler, Hays County Sheriff, stated that they are requesting the variance to expand the jail facilities. In order for that to happen, they have to move their vehicle maintenance shop. He described that they would put up a masonry wall to act as a buffer, and he invited the Council to join him and another group that will be taking a tour tomorrow of the facility.

Will Conley, Hays County Commissioner, apologized to the Council for the presentation the first go round. He feels that they did not explain their intentions clearly. He stated that if there is anything that should be granted a variance it is this, after all it is the only jail in town. He stated that they have worked very hard to ensure that this fits on this piece of property, and not impact anything else around them. He stated that for public safety reasons they have to design it and build it a certain way, and that they are on a very tight budget. He mentioned that in order to ensure that there were not any visibility issues, they would have to add several cameras and that is not possible financially.

There being no further comments, Mayor Thomaides closed the Public Hearing at 7:20 p.m.

A motion was made by Mayor Thomaides, seconded by Council Member Gregson, that this Resolution be approved. The motion carried by the following vote:

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

Against: 0

NON-CONSENT AGENDA

15. Consider approval of Ordinance 2017-15, on the first of two readings, amending the traffic register maintained under Section 82.067 of the San Marcos City Code by reducing the speed limit from 30 miles per hour to 25 miles per hour along the 1400 block of Highland Drive, between Holland Street and Nichols Drive, and the 100 block of Nichols Drive, between North LBJ Drive and Highland Street; and including procedural provisions.

A motion was made by Council Member Mihalkanin, seconded by Mayor Pro-Tem Hughson, to approve Ordinance 2017-15, on the first of two readings. The motion carried by the following vote:
16. Consider approval of Ordinance 2017-16, 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 on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern Terminus of the street, 8:00 am to 11:00 pm every day, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

A motion was made by Council Member Derrick, seconded by Mayor Pro-Tem Hughson, to approve Ordinance 2017-16, on the first of two readings. The motion carried by the following vote:

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

Against: 0

17. Consider approval of Ordinance 2017-17, 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 on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 am-11:00pm, Friday to Sunday, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

A motion was made by Council Member Derrick, seconded by Mayor Pro-Tem Hughson, to approve Ordinance 2017-17 on the first of two readings. The motion carried by the following vote:

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

Against: 0

18. Consider approval of Resolution 2017-64R, supporting an application by TX McCarty TH, LP to the Texas Department of Housing and Community Affairs for 2017 Housing Tax Credits for the proposed Savoy Townhome development located on McCarty Road west of Rattler Road; and declaring an effective date.

A motion was made by Council Member Derrick, seconded by Council Member Gregson, to deny Resolution 2017-64R. The motion carried by the following vote:
19. Receive a Staff presentation regarding schematic design and cost estimate for the 214 E. Hutchison Project; and consider, by motion, authorizing Staff to proceed with final design and solicit bids for construction of the Project.

Kevin Burke, Economic Development Projects Coordinator, provided the Council with a Staff presentation regarding the schematic design and cost estimate for the 214 E. Hutchison Project. Discussion was held about privatization of the bike share station, funding through grants or other sources for rain harvesting and solar panels, a gathering area with seating, car charging stations instead of parking spaces, the interim step of utilizing 13 parking spaces that Staff located for possible downtown employee parking. Discussion was held regarding the pros and cons of a mobility hub vs. the 13 parking spaces, use of a portion of the community enhancement fee for the project and coming up with a lower cost solution. Staff will provide ongoing maintenance costs for the current design.

A motion was made by Deputy Mayor Pro Tem Prewitt, seconded by Council Member Derrick, to create a subcommittee to review the final design before it is considered by the council. The subcommittee will consist of Council Members Hughson, Prewitt and Derrick, 2 or 3 community members, someone from the CARTS Advisory Board, engineering staff, planning staff, Kevin Burke, and a Main Street Vitality Committee member. The motion carried by the following vote:

- For: Mayor Pro-Tem Hughson, Deputy Mayor Pro Tem Prewitt, Council Member Mihalkanin, Council Member Gonzales and Council Member Derrick (5)
- Against: Mayor Thomaides and Council Member Gregson (2)

20. Discuss and consider appointments to fill vacancies on the Downtown Tax Increment Reinvestment Zone #5 (TIRZ #5) Board of Directors for Position 1 (Chair) and Position 5, the mutually agreed upon position between the City and Hays County, and provide direction to Staff.

A motion was made by Mayor Thomaides, seconded by Council Member Derrick, to approve the appointment of Steve Parker for position 1 (Chair) and John McGlothlin for position 5 to the Downtown Tax Increment Reinvestment Zone #5 (TIRZ #5) Board of Directors. The motion carried by the following vote:

- For: Mayor Pro-Tem Hughson, Deputy Mayor Pro Tem Prewitt, Council Member Mihalkanin, Council Member Gonzales and Council Member Derrick (5)
- Against: Mayor Thomaides and Council Member Gregson (2)

A motion was made by Mayor Thomaides, seconded by Council Member Gregson, to approve the appointment of Jude Prather to fill a vacancy on the Charter Review Commission. The motion carried by the following vote:

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

Against: 0

22. Discussion regarding proposed amendment(s) to the San Marcos Commission on Children and Youth Ordinance, and provide direction to staff.

Jamie Lee Case, City Clerk, provided the Council with the San Marcos Commission on Children and Youth’s request to extend the terms of the Key Constituency members from 1 year to 2 years. Following discussion, Council provided direction to bring back an Ordinance amending the commission's Ordinance to extend the terms of the Key Constituency members to 2 year staggered terms.

VI. Question and Answer Session with Press and Public.

None.

VII. Adjournment.

Mayor Thomaides adjourned the regular meeting of the San Marcos City Council at 7:26 p.m.
AGENDA CAPTION:
Consider approval of Ordinance 2017-15, on the second of two readings, amending the traffic register maintained under Section 82.067 of the San Marcos City Code by reducing the speed limit from 30 miles per hour to 25 miles per hour along the 1400 block of Highland Drive, between Holland Street and Nichols Drive, and the 100 block of Nichols Drive, between North LBJ Drive and Highland Street; and including procedural provisions.

Meeting date:  April 4th, 2017 - 1st Reading  
               April 18th, 2017 - 2nd Reading

Department:  Public Services - Transportation Division (Sabas Avila)

Funds Required: $600  
Account Number:  10006147.53230  
Funds Available: $43,973  
Account Name:  Traffic-Signs

CITY COUNCIL GOAL:  Big Picture Infrastructure

COMPREHENSIVE PLAN ELEMENT(s): A safe well-coordinated transportation system implemented in an environmentally sensitive manner.

BACKGROUND:

Pursuant with Sec. 82.066, all regulatory signs where the authority to install is not specifically delegated to the traffic engineer, requires approval from City Council by ordinance.

Transportation Department received petition from residents live on Highland Drive and Nichols Drive to reduce the traffic speed from 30 mph to 25 mph. Highland Drive and Nichols Drive are local residential streets joints with a 90 degree bend. Both roads are approximately 30 feet wide without sidewalk. In order to improve roadway safety, City staff recommends approval of the 25 mph speed on following streets:

Highland Drive (1400 block, Holland Street to Nichols Drive); Nichols Drive (100 block, N
LBJ Drive to Highland Street).

Pursuant with 82.067- The traffic engineer shall develop and maintain a traffic register containing a record of every location in the city where any traffic control device or special regulation is made applicable, whether by ordinance or by the traffic engineer's authority established under this chapter.
ORDINANCE NO. 2017 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE TRAFFIC REGISTER MAINTAINED UNDER SECTION 82.067 OF THE SAN MARCOS CITY CODE BY REDUCING THE SPEED LIMIT FROM 30 MILES PER HOUR TO 25 MILES PER HOUR ALONG THE 1400 BLOCK OF HIGHLAND DRIVE, BETWEEN HOLLAND STREET AND NICHOLS DRIVE, AND THE 100 BLOCK OF NICHOLS DRIVE, BETWEEN NORTH LBJ DRIVE AND HIGHLAND STREET; AND INCLUDING PROCEDURAL PROVISIONS.

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

SECTION 1. Pursuant to Sections 82.003 and 82.066 of the San Marcos City Code, and on the basis of finding that reduced speed limits are reasonable and prudent, the traffic register maintained under Section 82.067 of the San Marcos City Code is amended by reducing the following speed limits:

a. From 30 miles per hour to 25 miles per hour along the 1400 block of Highland Drive, between Holland Street and Nichols Drive; and

b. From 30 miles per hour to 25 miles per hour along the 100 block of Nichols Drive, between North LBJ Drive and Highland Street.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance shall be effective upon its adoption on second reading.

PASSED AND APPROVED on first reading April 4, 2017.

PASSED, APPROVED AND ADOPTED on second reading April 18, 2017.

John Thomaides
Mayor
Highland Dr. and Nichols Dr. 25 mph Speed Zone

- Property supports the petition
- Property has no response to the petition
TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

Street Name (for Restriction:) Highland Dr. (e.g. N. LBJ Drive)
Block No.(s) (for Restriction:) (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: 25 MPH speed limit (e.g. speed humps, rumble strips, diverter, etc.)

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>COMPANY</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE 25 MPH signs (check one)</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrea Boren</td>
<td></td>
<td>1400 Highland</td>
<td>(512) 993-8797</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Mary Longe</td>
<td></td>
<td>1408 Highland Dr.</td>
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<tr>
<td>Maricole Leder</td>
<td></td>
<td>1416 Highland Dr.</td>
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<tr>
<td>Arnold Leder</td>
<td></td>
<td>1424 Highland Dr.</td>
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<tr>
<td>Michele Rowin</td>
<td></td>
<td>1424 Highland Dr.</td>
<td>512-644-9036</td>
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<tr>
<td>MARK CARTER</td>
<td></td>
<td>1424 Highland Dr.</td>
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<td>√</td>
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<tr>
<td>Dale Edwards</td>
<td></td>
<td>1439 Highland Dr.</td>
<td>512-367-0658</td>
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</tr>
</tbody>
</table>

Community Contact: Rebecca Gonzales  Address: 1400 Highland Dr.

Please Return to: Cris Gonzalez  City of San Marcos, Public Services – Transportation  512-393-8135
**TRAFFIC CALMING SURVEY**

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

<table>
<thead>
<tr>
<th>Street Name (for Restriction:)</th>
<th>Highland Dr.</th>
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<tbody>
<tr>
<td>Block No.(s) (for Restriction:)</td>
<td>(e.g. 500 block, 100 – 300 block, etc.)</td>
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<tr>
<td>Suggested Traffic Calming Measure:</td>
<td>25 MPH speed limit</td>
<td>(e.g. speed humps, rumble strips, diverter, etc.)</td>
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<th>NAME (print)</th>
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<tr>
<td>Rasburn</td>
<td></td>
<td>1441 Highland Dr.</td>
<td>512-938-3096</td>
<td>YES</td>
</tr>
<tr>
<td>Kristi Bynum</td>
<td></td>
<td></td>
<td></td>
<td>NO</td>
</tr>
<tr>
<td>Ryan Schermer</td>
<td></td>
<td>1417 Highland Dr.</td>
<td>512-740-4583</td>
<td>YES</td>
</tr>
<tr>
<td>Steven Hill</td>
<td></td>
<td>1409 Highland Dr.</td>
<td></td>
<td>NO</td>
</tr>
<tr>
<td>Ryan</td>
<td></td>
<td>1405 Highland Dr.</td>
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<td>NO</td>
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<tr>
<td>Erin Gonzalez</td>
<td></td>
<td>1405 Highland Dr.</td>
<td></td>
<td>NO</td>
</tr>
<tr>
<td>Mitchell Boren</td>
<td></td>
<td>1400 Highland Dr.</td>
<td>512-393-4705</td>
<td>YES</td>
</tr>
</tbody>
</table>

Community Contact: Rebecca Lunzis  | Address: 1441 Highland Dr. |

Please Return to: Cris Gonzalez  | Phone: 512-393-8135 |
City of San Marcos, Public Services – Transportation | |
512-393-8135 | |
TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

Street Name (for Restriction): Highland Dr. (e.g. N. LBJ Drive)
Block No.(s) (for Restriction): (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: 25 MPH speed limit (e.g. speed humps, rumble strips, diverter, etc.)

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<th>NAME (print)</th>
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<th>PHONE NUMBER</th>
<th>APPROVE 25 MPH signs (check one)</th>
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<tbody>
<tr>
<td>Catherine Girasso</td>
<td></td>
<td>1449 Highland Dr.</td>
<td>512-551-7360</td>
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</tr>
<tr>
<td>Rev. Mary Louise Breckenridge</td>
<td></td>
<td>1445 Highland Dr.</td>
<td>512-392-7000</td>
<td></td>
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</tr>
<tr>
<td>Henry W. Jensen</td>
<td></td>
<td>128 Nichols Dr.</td>
<td>512-787-8260</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gennie Cannon</td>
<td></td>
<td>1436 Highland Dr.</td>
<td>512-422-8380</td>
<td>√</td>
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</tr>
<tr>
<td>Jeff Cannon</td>
<td></td>
<td>1426 Highland Dr.</td>
<td>512-560-1985</td>
<td>√</td>
<td></td>
</tr>
</tbody>
</table>

Community Contact: Rebecca Liounis Address: 1449 Highland Dr.
Phone: (512) 551-0658

Please Return to: Cris Gonzalez City of San Marcos, Public Services – Transportation 512-393-8135
TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

Street Name (for Restriction:) Nichols (e.g. N. LBJ Drive)
Block No. (s) (for Restriction:) __________ (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: 25 MPH speed limit (e.g. speed humps, rumble strips, diverter, etc.)

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>COMPANY</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE 25 MPH signs (check one)</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Champion</td>
<td></td>
<td>127 Nichols</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Jeanne Harris</td>
<td></td>
<td>119 Nichols</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Juan M. Garcia</td>
<td></td>
<td>107 Nichols</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Janet M. Saldana</td>
<td></td>
<td>104 Nichols Dr.</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Sara Estrada</td>
<td></td>
<td>104 Nichols Dr.</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Juan M. Salinas</td>
<td></td>
<td>104 Nichols Dr.</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>

Community Contact: Rebecca Morris
Address: 1441 Highland Dr.

Please Return to: Cris Gonzalez
City of San Marcos, Public Services – Transportation
512-393-8135
The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>COMPANY</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE 25 MPH signs</th>
</tr>
</thead>
<tbody>
<tr>
<td>GREG VERRET</td>
<td>RETIRED MILITARY</td>
<td>108 Nichols Drive</td>
<td>512-618-5242</td>
<td>YES</td>
</tr>
<tr>
<td>Sandra Verret</td>
<td>RETIRESO</td>
<td>108 Nichols Drive</td>
<td>512-618-8071</td>
<td>NO</td>
</tr>
<tr>
<td>Andrew Richardson</td>
<td>Attorney</td>
<td>126 Nichols Dr</td>
<td>572-878-0894</td>
<td>YES</td>
</tr>
<tr>
<td>Kay Quinn</td>
<td>retired</td>
<td>114 Nichols Dr</td>
<td>512-878-8483</td>
<td>NO</td>
</tr>
<tr>
<td>Jay Bradley Davis</td>
<td>Honeywell</td>
<td>119 Nichols Dr</td>
<td>512-387-7508</td>
<td>NO</td>
</tr>
<tr>
<td>Nicholas Mastfield</td>
<td>Ally Financial</td>
<td>131 Nichols Dr</td>
<td>248-731-7841</td>
<td>YES</td>
</tr>
<tr>
<td>Trinidad Champion</td>
<td>RECA</td>
<td>127 Nichols Dr</td>
<td>512-392-7392</td>
<td>YES</td>
</tr>
</tbody>
</table>

Please Return to: Cris Gonzalez  
City of San Marcos, Public Services – Transportation  
512-393-8135
TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

Street Name (for Restriction): Nichols
Block No.(s) (for Restriction): 
Suggested Traffic Calming Measure: 25 MPH speed limit

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Chelsea Davis</td>
<td></td>
<td>119 Nichols Dr.</td>
<td>512-396-4117</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>Allison Ellis</td>
<td></td>
<td>115 Nichols Dr.</td>
<td>832-755-9487</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>Lauren Sorell</td>
<td></td>
<td>124 Nichols D.</td>
<td>512-275-6571</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>Marty Sorell</td>
<td></td>
<td>124 Nichols D.</td>
<td>512-287-6021</td>
<td>yes</td>
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</tr>
</tbody>
</table>

Community Contact: ___________________________ Address: ___________________________ Phone: ___________________________

Please Return to: Cris Gonzalez
City of San Marcos, Public Services – Transportation
512-383-8135
TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to reduce the speed limit at the location described below. This survey serves to assess neighborhood/business consent of the proposed traffic calming measure. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the traffic calming measure.

Street Name (for Restriction): Highland Dr. (e.g. N. LBJ Drive)
Block No.(s) (for Restriction): (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: 25 MPH speed limit (e.g. speed humps, rumble strips, diverter, etc.)

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>COMPANY</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE 25 MPH signs (check one)</th>
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<tbody>
<tr>
<td>Timothy Miller</td>
<td></td>
<td>1439 Highland Dr.</td>
<td>512-388-716</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Jack Butler</td>
<td></td>
<td>1440 Highland Dr.</td>
<td>512-271-183</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Melissa Butler</td>
<td></td>
<td>1440 Highland Dr.</td>
<td>512-548-6172</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Stacy Reichman</td>
<td></td>
<td>1444 Highland Dr.</td>
<td>512-355-847</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michelle Brethau</td>
<td></td>
<td>1444 Highland Dr.</td>
<td>512-353-0227</td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Rebecca Liouinis</td>
<td></td>
<td>1449 Highland Dr.</td>
<td>512-557-0458</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1449 Highland Dr.</td>
<td>512-557-1748</td>
<td></td>
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</tbody>
</table>

Community Contact: Rebecca Liouinis  Address: 1449 Highland Dr.
Phone: 512-557-0688

Please Return to: Cris Gonzalez
City of San Marcos, Public Services – Transportation
512-393-8135
File #: Ord. 2017-16(a), Version: 1

AGENDA CAPTION:
Consider approval of Ordinance 2017-16, on the second of two readings, creating a designated permit area under Section 82.189 of the San Marcos City Code that allows parking by permit on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern Terminus of the street, 8:00 am to 11:00 pm every day, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

Meeting date:
April 4th, 2017 - 1st Reading
April 18th, 2017 - 2nd Reading

Department: Public Services - Transportation Division (Sabas Avila)

Funds Required: $900
Account Number: 10006147.53230
Funds Available: $43,973
Account Name: Traffic-Signs

CITY COUNCIL GOAL:
Beautify and Enhance the Quality of Place

COMPREHENSIVE PLAN ELEMENT(s):
Neighborhood and Housing Goal 4: Well maintained, stable neighborhoods protected from blight or the encroachment of incompatible land uses

BACKGROUND:
Residents of 400-700 McGehee Street (from Cheatham Street to south end of the street) are requesting the installation of residential parking permits on both sides of the street, 8 am - 11 pm daily, February to November.

City staff has reviewed the request and the request meets the requirements for residential permit parking. City staff recommends parking restriction with residential parking permits, 8 am - 11 pm daily, February to November.

Pursuant with 82.067- The traffic engineer shall develop and maintain a traffic register containing a record of every location in the city where any traffic control device or special regulation is made applicable, whether by
ordinance or by the traffic engineer’s authority established under this chapter.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CREATING A DESIGNATED PERMIT AREA UNDER SECTION 82.189 OF THE SAN MARCOS CITY CODE THAT ALLOWS PARKING BY PERMIT ONLY ON BOTH SIDES OF THE 400 TO 700 BLOCKS OF MCGEHEE STREET BETWEEN CHEATHAM STREET AND THE SOUTHERN TERMINUS OF THE STREET, 8:00 A.M. TO 11:00 P.M., EVERY DAY, DURING AND INCLUDING THE MONTHS OF FEBRUARY THROUGH NOVEMBER; AMENDING THE TRAFFIC REGISTER TO REFLECT SUCH DESIGNATED PERMIT AREA; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS:

1. Section 82.189 of the San Marcos City Code authorizes the creation of a Designated Permit Area upon the request of a property owner whose property abuts the requested Designated Permit Area, the submittal of a petition and fulfillment of the requirements of Section 82.189(b) of the San Marcos City Code.

2. The San Marcos Transportation Department has received a request and a petition for the creation of a Designated Permit Area that allows parking by permit only on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern terminus of the street, 8:00 a.m. to 11:00 p.m., every day, during and including the months of February through November.

3. City Transportation Department staff recommends the creation of this Designated Permit Area within which parking will be restricted to permit parking only during the hours indicated in paragraph 2.

4. A public hearing on the application as required by Section 82.189(d) of the San Marcos City Code was held on April 4, 2017.

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

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of San Marcos.

SECTION 2. The City Council hereby approves the creation of a Designated Permit Area that allows parking by permit only on both sides of the 400 to 700 blocks of McGehee Street between Cheatham Street and the southern terminus of the street, 8:00 a.m. to 11:00 p.m., every day, during and including the months of February through November. The Designated Permit Area is depicted in the map attached hereto and incorporated herein for all purposes as Exhibit “A.”

SECTION 3. No parking shall be allowed in the Designated Permit Area at any time without a valid permit and the Traffic Register is amended to reflect such restriction.
SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. This ordinance shall be in effect upon adoption on second reading.

PASSED AND APPROVED on first reading on April 4, 2017.

PASSED, APPROVED AND ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest: 
Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney
EXHIBIT A
Map of Designated Permit Area
McGehee Street Residential Parking Zone
(8AM-11PM Daily, February-November)

- Property supports the petition
- Property has no response to the petition
- Business Property (No signature collected)
NEIGHBORHOOD SURVEY

The City of San Marcos has received a request to install Residential Parking Permit System as described below. This survey serves to assess neighborhood/business consent of the proposed Residential Parking area. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the signs.

Street Name (for Restriction): McGeehe St
Block No.(s) (for Restriction): 1
Proposed Regulation: Residential Parking Zone – Residential Permit Only
Mon-Sunday 8 AM - 11 PM
Feb-November
(e.g. N. LBJ Drive)
(e.g. 500 block, 100 - 300 block, etc.)
(e.g. NO PARKING-TOW AWAY, 2-HOUR PARKING, etc.)
(e.g. 8 AM - 5:00 P.M.)

We the undersigned are residents and/or property owners of the proposed designated permit area described in this application. We understand that: (i) if this area is designated, certain restrictions will be placed upon on-street parking within the area; (ii) residents and/or residential property owners of the area will be entitled to obtain a limited number of parking permits exempting their vehicles from such parking restrictions, but if a resident and/or property owner owns a vehicle without having a permit displayed, that vehicle will be subject to the parking restrictions; (iii) parking permits will be issued for a term of one year and require replacement each year; (iv) the cost of the annual parking permits will be paid by the residents and/or property owners. This restriction will be valid for a minimum of one year.

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE RESTRICTION (check one)</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnny Garcia</td>
<td>410 McGeehe St</td>
<td>978-7435</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Charles Jones</td>
<td>336 Drive</td>
<td>393-2642</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Diana Smith</td>
<td>500 McGeehe St</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dan M. Cruz Jr</td>
<td>515 McGeehe St</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Krista Best</td>
<td>326 Cheatham Ste</td>
<td>853-1960</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Bryan Peralo</td>
<td>520 McGeehe</td>
<td>841-7922</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Belinda V. Braye</td>
<td>39 McGeehe St</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nicky Tucker</td>
<td>700 McGeehe St</td>
<td>733-4221</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebecca Hernandez</td>
<td>721 McGeehe St</td>
<td>856-7479</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Alan Lee</td>
<td>501 McGeehe</td>
<td>713-9428</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>612</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Craig Klinkenberg</td>
<td>608 McGeehe</td>
<td>512-423-1548</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Roland Badoen</td>
<td>523 McGeehe</td>
<td></td>
<td></td>
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</table>

San Marcos
Hopkins
arco, Texas 78666
File #: Ord. 2017-17(a), Version: 1

AGENDA CAPTION:
Consider approval of Ordinance 2017-17, on the second of two readings, creating a designated permit area under Section 82.189 of the San Marcos City Code that allows parking by permit on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 am-11:00pm, Friday to Sunday, during and including the months of February through November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

Meeting date: April 4th, 2017 - 1st Reading
April 18th, 2017 - 2nd Reading
Department: Public Services - Transportation Division (Sabas Avila)

Funds Required: $900
Account Number: 10006147.53230
Funds Available: $43,973
Account Name: Traffic-Signs

CITY COUNCIL GOAL:
Beautify and Enhance the Quality of Place

COMPREHENSIVE PLAN ELEMENT(s):
Neighborhood and Housing Goal 4: Well maintained, stable neighborhoods protected from blight or the encroachment of incompatible land uses

BACKGROUND:
Residents of 300-400 Grove Street (from Mckie Street to CM Allen Parkway) are requesting the installation of residential parking permits on both sides of the street, Friday to Sunday 8 am - 11 pm, February to November.

City staff has reviewed the request and the request meets the requirements for residential permit parking. City staff recommends parking restriction with residential parking permits, Friday to Sunday 8 am - 11 pm, February to November.

Pursuant with 82.067- The traffic engineer shall develop and maintain a traffic register containing a record of every location in the city where any traffic control device or special regulation is made applicable, whether by ordinance or by the traffic engineer's authority established under this chapter.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CREATING A DESIGNATED PERMIT AREA UNDER SECTION 82.189 OF THE SAN MARCOS CITY CODE THAT ALLOWS PARKING BY PERMIT ONLY ON BOTH SIDES OF EAST GROVE STREET BETWEEN MCKIE STREET AND CM ALLEN PARKWAY, 8:00 A.M. TO 11:00 P.M., FRIDAY TO SUNDAY, DURING AND INCLUDING THE MONTHS OF FEBRUARY THROUGH NOVEMBER; AMENDING THE TRAFFIC REGISTER TO REFLECT SUCH DESIGNATED PERMIT AREA; AND PROVIDING FOR AN EFFECTIVE DATE.

on both sides of Grove Street between Mckie Street and CM Allen Parkway, 8:00 a.m. to 11:00 p.m. Friday to Sunday during and including the months of February through November

RECITALS:

1. Section 82.189 of the San Marcos City Code authorizes the creation of a Designated Permit Area upon the request of a property owner whose property abuts the requested Designated Permit Area, the submittal of a petition and fulfillment of the requirements of Section 82.189(b) of the San Marcos City Code.

2. The San Marcos Transportation Department has received a request and a petition for the creation of a Designated Permit Area that allows parking by permit only on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 a.m. to 11:00 p.m., Friday to Sunday, during and including the months of February through November.

3. City Transportation Department staff recommends the creation of this Designated Permit Area within which parking will be restricted to permit parking only during the hours indicated in paragraph 2.

4. A public hearing on the application as required by Section 82.189(d) of the San Marcos City Code was held on April 4, 2017.

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

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of San Marcos.

SECTION 2. The City Council hereby approves the creation of a Designated Permit Area that allows parking by permit only on both sides of East Grove Street between Mckie Street and CM Allen Parkway, 8:00 a.m. to 11:00 p.m., Friday to Sunday, during and including the months of February through November. The Designated Permit Area is depicted in the map attached hereto and incorporated herein for all purposes as Exhibit “A.”

SECTION 3. No parking shall be allowed in the Designated Permit Area at any time without a valid permit and the Traffic Register is amended to reflect such restriction.
SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. This ordinance shall be in effect upon adoption on second reading.

PASSED AND APPROVED on first reading on April 4, 2017.

PASSED, APPROVED AND ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case  Michael J. Cosentino
City Clerk  City Attorney
EXHIBIT A
Map of Designated Permit Area

Grove Street Residential Parking Zone
(Friday - Sunday, 8AM-11PM February-November)
The City of San Marcos has received a request to install Residential Parking Permit System as described below. This survey serves to assess neighborhood/business consent of the proposed Residential Parking area. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the signs.

**Proposed Regulation:** Residential Parking Zone - Residential Permit Only

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE RESTRICTION (check one)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnny Garvin</td>
<td>920 Madison St.</td>
<td>878-7438</td>
<td>YES</td>
</tr>
<tr>
<td>Johnny Brown</td>
<td>320 E. Grove St.</td>
<td>748-2976</td>
<td>NO</td>
</tr>
<tr>
<td>Nancy Dietz</td>
<td>327 E. Grove</td>
<td>214-928</td>
<td>V</td>
</tr>
<tr>
<td>Elizabeth Rod</td>
<td>329 E. Grove</td>
<td>396-0140</td>
<td>V</td>
</tr>
<tr>
<td>John Sanchez</td>
<td>332 E. Grove</td>
<td>619-3979</td>
<td>V</td>
</tr>
<tr>
<td>David Tazmin</td>
<td>315 E. Grove</td>
<td>6632-2249</td>
<td>V</td>
</tr>
<tr>
<td>Leslie Smith</td>
<td>324 E. Grove</td>
<td>360-2200</td>
<td>V</td>
</tr>
<tr>
<td>Jim White</td>
<td>61 Main St.</td>
<td>187-998</td>
<td>V</td>
</tr>
<tr>
<td>J. Gilbert Torres</td>
<td>311 E. Grove</td>
<td>512-742-3014</td>
<td>V</td>
</tr>
<tr>
<td>SHANNON ALVIS</td>
<td>412 CMA Allen</td>
<td>512-714-5426</td>
<td>V</td>
</tr>
<tr>
<td>Dona D. Adams</td>
<td>500 McKenzie St.</td>
<td>512-55-7440</td>
<td>V</td>
</tr>
</tbody>
</table>
AGENDA CAPTION:
Consider approval of Resolution 2017-65R, authorizing the submission of an application to The Office of the Attorney General, Crime Victims Services Division, for a VCLG (Victim Coordinator and Liaison Grant) in an amount not to exceed $42,000 to continue funding for the Police Department’s Victim’s Services Program, authorizing the Interim City Manager or his designee to execute any and all documents as needed to accept and implement the grant, if awarded, and to declare an effective date.

Meeting date:  April 18, 2017

Department:  Police

Funds Required:  N/A
Account Number:  N/A
Funds Available:  N/A
Account Name:  N/A

CITY COUNCIL GOAL:  Provide for the Efficient and Effective Delivery of Services

COMPREHENSIVE PLAN ELEMENT(s):  N/A

BACKGROUND:
Article 56.04 of the Texas Code of Criminal Procedure requires that each local law enforcement agency designate a crime victim liaison.  The Crime Victims Services Division of the Texas Office of the Attorney General administers a grant program through which funds are allocated to local law enforcement agencies on a biannual basis for the purpose of funding these programs.  The San Marcos Police Department participates in this grant program and has partially funded its victim services program with these grant funds since the program’s inception.  The current grant period will expire at the end of August 2017, and the purpose of this resolution is to allow for grant funding to continue beginning September 1, 2017.  The deadline for applications is April 19, 2017.
RESOLUTION NO. 2017- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE ATTORNEY GENERAL, CRIME VICTIMS SERVICES DIVISION, FOR A VICTIM COORDINATOR AND LIAISON GRANT IN AN AMOUNT NOT TO EXCEED $42,000.00 TO CONTINUE FUNDING FOR THE POLICE DEPARTMENT’S VICTIM’S SERVICES PROGRAM; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY AND ALL DOCUMENTS AS NEEDED TO ACCEPT AND IMPLEMENT THE GRANT, IF AWARDED; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The submission of an application to the Office of the Attorney General, Crime Victims Services Division, for a Victim Coordinator and Liaison Grant in an amount not to exceed $42,000.00 to continue funding for the Police Department’s Victim’s Services Program is hereby approved.

PART 2. The City Manager or his designee is authorized to execute any and all documents as needed to accept and implement said grant, if awarded, on behalf of the City.

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
OFFICE OF THE ATTORNEY GENERAL
CRIME VICTIM SERVICES DIVISION

Other Victim Assistance Grants (OVAG)
Victim Coordinator and Liaison Grants (VCLG)

FY 2018-2019 Grant Application Kit

REGISTRATION DEADLINE:
5:00 p.m. CDT Wednesday, March 29, 2017

APPLICATION DEADLINE:
5:00 p.m. CDT Wednesday, April 19, 2017

This Kit contains the following:

I. General Instructions
II. Definitions (Output Definitions and General Definitions)
III. Specific Instructions for Tabs in Excel Workbook
IV. Certifications and Assurances
V. Required Documents

NOTE: Be sure to download the Excel workbook, which is also part of the Application Kit. The Excel workbook is a separate electronic file. See additional instructions in this Kit.
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I. GENERAL INSTRUCTIONS

Other Victim Assistance Grant (OVAG) Program
Victim Coordinator and Liaison Grant (VCLG) Program

How to Obtain an Application Kit
The Office of the Attorney General (OAG) has posted the Application Kit on the OAG’s agency website at https://www.texasattorneygeneral.gov/cvs/grants-and-contracts. Updates and other helpful reminders about the Application process will also be posted at this location. Potential Applicants are encouraged to refer to this site regularly.

This Application Kit provides the information and forms necessary to prepare an Application for funding through the OAG Crime Victim Services Division (CVSD) for the OVAG and the VCLG Programs.

- An Applicant must register on-line their intent to apply for each grant opportunity.
- A separate Application must be submitted for each grant opportunity.
- An Applicant may submit an Application for either one OVAG or one VCLG, but not both.
- Applicants seeking funding for a VCLG purpose area are limited to registering and applying for VCLG funding only.
- If eligible, an OVAG Applicant may also apply for one Sexual Assault Prevention and Crisis Services (SAPCS)-State (in a separate Application kit). Note: the SAPCS-State Application has the same deadline as OVAG.

Applicant Registration (Open March 10, 2017 to March 29, 2017)
All Applicants are required to complete the on-line Applicant Registration in order to apply for FY 2018-2019 grants. To register go to: https://www.texasattorneygeneral.gov/cvs/grants-and-contracts.

- The deadline to register is 5:00 p.m. CDT Wednesday, March 29, 2017.
- After registering, Applicants will receive a Unique Application Number (UAN).
- The UAN will be used by the OAG to track the receipt of Applications and related documents from registered Applicants.
- OVAG Applicants only: After completing the registration for an OVAG grant, if eligible, the Applicant will be able to also submit a registration for a SAPCS-State funding opportunity. The Applicant will receive a separate UAN for each funding opportunity for which the Applicant registers.

The UAN assigned must be included on all documents submitted to the OAG.

On-line Registration is required. If registration is not completed by 5:00 pm CDT Wednesday, March 29, 2017 then an Application will not be accepted and is not eligible for funding.
Application Submission – Deadline is 5:00 p.m. CDT Wednesday, April 19, 2017
Please Note: Hard copy Applications will not be accepted. Only email submissions in the manner described will be reviewed.


The Applicant must submit an OVAG or VCLG Application to be received by the OAG no later than 5:00 p.m. CDT on Wednesday, April 19, 2017 to be considered for funding.

To meet the deadline, the Application must be submitted via email ONLY (no hard copies) as follows:

- **All applicants** must submit one (1) Application including the following:
  - One (1) MS Excel Workbook saved in Excel version 97 or newer will be accepted. A Portable Document Format (PDF) of the Excel workbook is not sufficient.
  - The following documents scanned into one* PDF:
    - “Statements Supporting Submission of the Application to the Office of the Attorney General” containing signatures.
    - “Resolution of Governing Body” containing signatures. (Please note that the Authorized Official must be designated by signature of the governing body. If the Authorized Official is also a member of the governing body, they must be designated by another member’s signature. The Authorized Official cannot sign the Resolution designating the Authorized Official.)
    - Job Description(s) for each position requested on the proposed budget in PDF.
    - Support Document(s) (See definition on page 19), if required by the Applicant to achieve the goals of the proposed project as described in the Application.

* If the Applicant does not have the capability to scan the documents (excluding the Excel Workbook) into one PDF, the OAG will accept these documents as separate PDFs. No Microsoft Word or other format documents are acceptable.

- The Application (Excel Workbook and required PDF documents) must be sent to the following email address: **grants@oag.texas.gov**
- One auto-reply message, per entity will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278 to ensure Application receipt.

*The OAG accepts no responsibility for delays in submission, electronic or otherwise. Applicants are strongly advised to allow for and anticipate any such delays by submitting the Application as early as possible.*
For security purposes, the OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery, same day courier service or any other hard copy method of delivery.

Proof of submitting a document by email is not proof that the OAG received the information. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278 to ensure Application receipt.

Please contact the OAG at (512) 936-1278 if there are any questions about the method of delivery. The OAG will not consider or fund an Application if it is not filed by the due date, in the manner required.

**Required Software and Capabilities**

*Microsoft Excel* 97 or newer version is required to complete the Application and apply for a grant. Please note that not all versions of Microsoft Excel are the same. If an error message is received, save as .xls, instead of .xlsx. *Adobe Reader* is required to access the Application Instructions. *Adobe Reader* can be downloaded for free at [www.adobe.com](http://www.adobe.com). In order to submit the required documents, Applicants will need to have the capability to scan documents.

**Availability of Funds**

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

**Grant Contract Period - Up to Two Years**

The term of this grant contract is up to two years from September 1, 2017 through August 31, 2019, subject to and contingent on funding and approval by the OAG. If the grant contract period extends for more than one state fiscal year, the grantee will be required to submit additional documentation relating to the second fiscal year of the grant contract period, including an updated budget. The OAG may base its decision for the second fiscal year funding amounts on the grantee’s first year performance, including but not limited to: the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the project in meeting its goals.

**Eligible Applicants**

**OVAG**

The following entities are eligible to apply under the OVAG Program:

- Local units of government;
- Non-profit agencies with 26 U.S.C. § 501(c)(3) status; or
- State agencies, including universities.

Non-profit Applicants with 26 U.S.C. § 501(c)(3) status must be in good standing with the Comptroller of Public Accounts and “in existence” with the Secretary of State.
VCLG
The following entities are eligible to apply under the VCLG Program:

- A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund a victim assistance coordinator (VAC) position, or part of a position, for a victim assistance coordinator, as defined in Article 56.04 (a) and (b) of the Texas Code of Criminal Procedure.
- A local law enforcement agency, defined as the police department of a municipality or the sheriff’s department of any county, may apply for a grant to fund a crime victim liaison (CVL) position or part of a position, for a crime victim liaison, as defined in Article 56.04 (c) and (d) of the Texas Code of Criminal Procedure.

Eligible Budget Categories
- Personnel
- Fringe Benefits
- Professional & Consultant Services
- Travel
- Equipment
- Supplies
- Other Direct Operating Expenses

Ineligible Costs
Ineligible costs include, but are not limited to:

- Payment for overtime, out-of-state travel, dues, or lobbying
- Purchasing food and beverages except as allowed under Texas State Travel Guidelines
- Purchasing or leasing vehicles
- Purchasing promotional items or recreational activities
- Paying for travel that is unrelated to the direct delivery of services that supports the OAG funded program
- Paying consultants or vendors who participate directly in writing a grant application
- Paying any portion of the salary or any other compensation for an elected government official
- Payment of bad debt, fines or penalties
- Purchasing any other products or services the OAG identifies as inappropriate or unallowable
- Payments for sexual assault medical forensic examinations
- Payments for medical care
- Payments for costs that have been reimbursed by the Crime Victims’ Compensation Program
- Any unallowable costs set forth in state or federal cost principles
Ineligible Activities (not reimbursable)
Ineligible activities include, but are not limited to:

- Research centered activities (does not include evaluation conducted for program improvement)
- Prosecution centered activities for offender related activities, such as witness coordination, expert witness fees, or prosecutor salaries
- Law enforcement centered activities, such as investigators or patrol officers
- Probation activities that assist an offender
- Offender-related activities, such as mediation or alcohol/drug abuse counseling
- Crime prevention activities, such as, Crime Stoppers, Dare, Neighborhood Watch. Awareness activities such as Take Back the Night, Watch your Drink campaigns are allowable.
- Public Awareness Campaigns- defined as a planned series of media/materials buys that are general in nature and intended to achieve a particular aim (e.g. My Strength Campaign, Speak Up Speak Out Campaign, No More Campaign, etc.) See Education in the definition section for allowed awareness activities.
- Activities performed by Sexual Assault Nurse Examiners (SANEs), or other medical professionals, related to conducting sexual assault medical forensic examinations, including fees or salaries. This does not include professional fees for SANEs or medical professionals who provide victim services training for an organization.

Funding Levels
For each fiscal year of the two-year grant term, the following are the minimum and maximum amounts the OAG will reimburse toward each project funded by this grant. Applications requesting an amount below the minimum or above the maximum may not be considered. If the Application is awarded, the budget may be adjusted by the OAG to fit within the minimum and maximum amounts.

<table>
<thead>
<tr>
<th>Type of Project</th>
<th>Minimum Amount</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year 2018</td>
<td>Fiscal Year 2019</td>
</tr>
<tr>
<td>OVAG Project</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>OVAG Statewide Project</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>VCLG Project</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

Match Requirements
There are no match requirements for the OVAG or VCLG projects.

Volunteer Requirements
- The OVAG Program has a volunteer requirement for non-profit Applicants. Governmental Applicants are encouraged, but not required, to use volunteers in some capacity to support the mission of the organization.
- The VCLG Program does not have a volunteer requirement.
**Assistance with Restitution Requirements**
Prosecutor-based victim assistance programs applying for VCLG or OVAG funds will be required to provide the following services in FY 2018-2019:

- Assistance in making restitution requests; and
- Collaboration with the OAG to ensure restitution is ordered in the appropriate amount to be paid back to the Compensation to Victims of Crime Fund after compensation has been paid to or on behalf of the victim as required by Article 42.037 (a) of the Texas Code of Criminal Procedure.
- Prosecutors will be required to report on assistance in making restitution requests in the OAG performance report.

**State and Federal Requirements**
All Applicants should review and be familiar with the OAG administrative rules governing the OVAG and VCLG Programs. These rules are published in “1 Texas Administrative Code, Chapter 60,” found at:


In addition to the OAG’s administrative rules, Applicants should be familiar with the Uniform Grant Management Standards (UGMS) and relevant Code of Federal Regulations (CFR) that relate to state, and if applicable, federal grant funding.

- [https://www.comptroller.texas.gov/purchasing/docs/ugms.pdf](https://www.comptroller.texas.gov/purchasing/docs/ugms.pdf) (Please note: The Texas Comptroller’s office is currently working on revising UGMS. The release of the revised version may occur before or after this application kit has been released.)
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 can be found at: [http://www.ecfr.gov](http://www.ecfr.gov)

**Contact Information**
Assistance with technical questions about the Application Kit is available via:

- Email: grants@oag.texas.gov
- Phone: (512) 936-1278

Email is the preferred method for submitting questions. Each person submitting a question should include their name, the name of the organization, an email address, a phone number and if applicable, the Unique Application Number. Please note that OAG staff cannot assist with writing Applications.

**OVAG Program Requirements**
The purpose of the OVAG Program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.
OVAG Purpose Areas: Grant contracts awarded under this Application Kit may be used for victim related services or assistance for the following purposes:

- Providing direct victim services including, but not limited to, counseling, crisis intervention, assistance with Crime Victims’ Compensation, legal assistance, victim advocacy, emergency housing assistance, and information and referral;
- Providing outreach or training to help identify crime victims who might not otherwise be reached and provide or refer them to needed services;
- Connecting crime victims to services for the purpose of supporting or assisting in their recovery;
- Training professionals and volunteers to improve their ability to inform victims of their rights, to assist victims in their recovery, or to establish a continuum of care for victims; or
- Other support for victim related services or assistance as determined by the OAG.

OVAG Staffing Requirements: The funding priority for the OVAG Program is to support positions that provide victim related services or assistance and in particular to provide direct victim services.

- A minimum of 75% of an Applicant’s budget must be allocated to the Personnel and Fringe Benefits budget categories. This requirement applies to all Applicants. The OAG may grant an exception to this requirement for projects that demonstrate a need as described in Tab C, Budget Calculation.
- An Applicant that requests 85% or more of the total grant amount in the Personnel and Fringe budget categories will be given additional consideration in scoring.
- An Applicant is limited to no more than ten positions.
- Position titles listed on the budget must match exactly to the job description.
- Each position listed on the budget can only be associated with one employee. If job sharing, list each position on the budget separately as many times as necessary regardless of time allocated to grant. (i.e. Advocate if shared between three personnel each position must be listed on three separate lines under the Personnel budget category and three separate job descriptions must be submitted, one for each position).
- Job descriptions are required and must be submitted for all positions requesting funding. Job descriptions must reflect activities that relate to the project’s goals and must be appropriately proportionate to the time spent on activities funded by the OVAG grant.

OVAG Direct Victim Services Staff: Unless otherwise indicated in this Application Kit, all Applicants must provide one grant funded person working at least twenty hours per week or two grant funded persons working at least ten hours each per week providing direct victim services. All Applicants must provide “Assistance with Crime Victims’ Compensation,” “Assistance with Texas SAVNS,” and “Information and Referral”. Direct Victim Services are defined in the Definitions section of this Application Kit.

At least one grant funded person providing direct victim services will be required to complete OAG training on Crime Victims’ Compensation, Presumptive Eligibility, and Address Confidentiality within the first year of the grant execution date. One grant funded person providing direct victim services must always be current on the OAG training requirement. If for example, the grant funded person providing direct victim services that initially completed the
training is no longer employed by the agency, another grant funded person providing direct victim services must complete the training. The training requirement may be completed either by attending an OAG conference or training in person (offered by Regional Coordinators or in Austin at the State Office), or via an online course offered by the OAG. This requirement will be in effect for the entire two year grant cycle.

The direct victim services staff requirements applies to all Applicants, including those that rely upon volunteers or contracted staff to deliver direct victim services. The OAG may grant an exception to this requirement for projects that demonstrate a need as described in Tab C, Budget Calculation.

**OVAG Administrative Services:** Funds for administrative personnel may be requested with the following restrictions (see definitions page for definition of Administrative Services).
- The Applicant may not include more than three personnel providing administrative services.
- The OAG will consider any position that has hours listed on the budget in the Administrative Column on Tab C Budget Calculation as one of the three allowed administrative personnel.
- The combined total number of hours for all administrative services cannot exceed fifteen hours per week.

**OVAG Non-Profit Volunteer Requirement:** All non-profit (non-governmental) OVAG Applicants are required to use volunteers in some way to support the mission of their organization. If the organization does not currently utilize volunteers, a plan must be provided explaining how a volunteer program will be developed and implemented during the grant term.

If the Applicant currently uses volunteers, they must identify the role of a volunteer within the organization and describe program components related to recruitment, retention and training of volunteers.

**OVAG Statewide Project:** A statewide project is one that actively offers or provides victim related services or assistance in six or more Council of Government (COG) regions. *Note: Public Awareness Campaigns are not eligible in this kit.*

**VCLG Program Requirements**
The purpose of the VCLG program is to fund the mandated positions described in the Texas Code of Criminal Procedure, Article 56.04, specifically Victim Assistance Coordinators (VAC) in prosecutor offices and Crime Victim Liaisons (CVL) in law enforcement agencies.

In addition to the duties imposed in the Texas Code of Criminal Procedure, Article 56.04 (and more specifically the duties associated with ensuring crime victims’ rights described in Article 56.02), VACs and CVLs are also expected to promote and educate the community and other professionals about victim rights and services in an effort to identify crime victims and provide or refer them to needed services.
**VCLG Staffing Requirements:** An Applicant for the VCLG Program must request funding for a position that will perform the duties of a VAC or a CVL.

- A minimum of 75% of an Applicant’s budget must be allocated to the Personnel and Fringe Budget categories.
- An Applicant that requests 85% or more of the total grant amount in the Personnel and Fringe Benefits budget categories will be given additional consideration in scoring.
- The Applicant must, at minimum, provide one VAC or CVL position working twenty hours per week or two positions working at least ten hours each per week in the Applicant’s budget.
- An Applicant is limited to no more than ten positions.
- Positions titles listed on the budget must match exactly to the job description.
- Each position listed on the budget can only be associated with one employee. If job sharing, list each position on the budget separately as many times as necessary regardless of time allocated to grant. (i.e. Victim Liaison if shared between three personnel each position must be listed on three separate lines under the Personnel budget category and three separate job descriptions must be submitted, one for each position).
- Job descriptions are required and must be submitted for all positions requesting funding. Job descriptions must reflect activities that relate to the project’s goals and must be appropriately proportionate to the time spent on activities funded by the VCLG grant.

**VCLG Direct Victim Services Staff:** Unless otherwise indicated in this Application Kit, all Applicants must provide one grant funded person working at least twenty hours per week or two grant funded persons working at least ten hours each per week providing direct victim services. All Applicants must provide “Assistance with Crime Victims’ Compensation,” “Assistance with Texas SAVNS,” and “Information and Referral”. Prosecutor based Applicants must also provide “Assistance with Restitution”. Direct Victim Services are defined in the Definitions section of this Application Kit.

At least one grant funded person providing direct victim services will be required to complete OAG training on Crime Victims’ Compensation, Presumptive Eligibility, and Address Confidentiality within the first year of the grant execution date. One grant funded person providing direct victim services must always be current on the OAG training requirement. If for example, the grant funded person providing direct victim services that initially completed the training is no longer employed by the agency, another grant funded person providing direct victim services must complete the training. The training requirement may be completed either by attending an OAG conference or training in person (offered by Regional Coordinators or in Austin at the State Office), or via an online course offered by the OAG. This requirement will be in effect for the entire two year grant cycle.

The direct victim services staff requirements applies to all Applicants, including those that rely upon volunteers or contracted staff to deliver direct victim services. The OAG may grant an exception to this requirement for projects that demonstrate a need as described in Tab C, Budget Calculation.
**VCLG Administrative Services:** Funds for administrative personnel may be requested with the following restrictions (see definitions page for definition of Administrative Services).
- The Applicant may not include more than three personnel providing administrative services.
- The OAG will consider any position that has hours listed on the budget in the Administrative Column on Tab C-Budget Calculation as one of the three allowed administrative personnel.
- The combined total number of hours for all administrative services cannot exceed fifteen hours per week.

**Review Process**
The OAG will review each complete Application filed by the deadline by an eligible Applicant.
- At any time during the review process, an OAG staff member may contact the Applicant for additional information.
- All areas of the budget are subject to review and approval by the OAG. Decisions related to the budget are based on both eligibility and reasonableness.

**Scoring**
The Application will be scored on information provided by the Applicant including, but not limited to:
- Organization Summary (20% of overall score)
- Project Summary and Description of Need (20% of overall score)
- Assessment and Evaluation (5% of overall score)
- What Will Be Done (30% of overall score)
- Financial Questions (20% of overall score)
- Comprehensive Scoring Criteria (5% of overall score)

**Grant Decisions**
During the grant review and award process, the OAG may take into consideration other factors including whether the Applicant has demonstrated acceptable past performance as a grantee in areas related to programmatic and financial stewardship of grant funds.

The OAG may choose to award a grant contract from a different OAG funding source than that for which the Applicant applied.

The OAG is not obligated to award a grant at the total amount requested and/or within the budget categories requested. The OAG reserves the right to make awards at amounts above and/or below the stated funding levels.

All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.
**Funding Priority**
The OAG reserves the right to consider all other appropriations or funding an Applicant currently receives when making funding decisions. The OAG may give priority to Applicants that do not receive other sources of funding, including funding that originates from the OAG.

The OAG reserves the right to give priority to currently funded organizations and projects that provide direct victim services with grant funds, or that provide information and education about victim rights in their community.

**Grant Award Notification**
The Applicant shall be notified in writing of the OAG’s decision regarding a grant award.

The OAG may utilize a grant contract document and/or a notice of grant document once a decision is made to award a grant. The Applicant will be given a deadline to accept the grant award and to return the appropriate document to the OAG within the time prescribed by the OAG. An Applicant’s failure to return the signed document, via DocuSign, to the OAG within the prescribed time period will be construed as a rejection of the grant award, and the OAG may de-obligate funds.

**Special Conditions**
The OAG may assign special conditions at the time of the award. Until satisfied, these special conditions may affect the Applicant’s ability to receive funds. If special conditions are not resolved, the OAG may de-obligate funds up to the entire amount of the grant award.

**Reporting Requirements**
If an Application is funded, grantees will be required to report to the OAG quarterly, in the manner and schedule as determined by the OAG. Quarterly statistical reports are due no later than the 30th day of each month following the end of the quarter. The four quarters end on the last day of the month of November, February, May and August. Reporting on grant project activities such as outputs and outcomes via quarterly Performance Reports will be required. If reports are not submitted by the established dates, this may affect the Applicant’s ability to receive reimbursement.

**Method of Payment**
OAG grants are paid on a cost-reimbursement basis.
II. DEFINITIONS

OUTPUT DEFINITIONS

Accompaniment – to hospitals, law enforcement offices, prosecutors’ offices and courts – in-person support, assistance and provision of information about crime victims’ rights during the survivors’ interaction with medical or criminal justice professionals at hospitals, law enforcement offices, prosecutors’ offices and courts. To qualify as an Accompaniment to a Hospital, a minimum of 45 minutes must be spent with the survivor.

Advocacy – in-person or via telecommunication assistance provided on behalf of a victim to third parties (e.g., schools, employers, law enforcement agencies, housing authorities, health care professionals, prosecutors; offices, CVC).

Assistance with Crime Victims’ Compensation – assistance provided to a victim or claimant, as defined by Texas Code of Criminal Procedure Art 56.32 (a) (2) and 56.32 (a) (11), that may include explaining Crime Victims’ Compensation (CVC) forms, processes, or completing the appropriate forms. Providing general information on CVC should be counted under “Information and Referral.”

Assistance with Texas Statewide Automated Victim Notification Service (SAVNS) – assistance provided to a victim explaining Texas SAVNS and/or registering or accessing information. Providing general information on Texas SAVNS should be counted under “Information and Referral.”

Assistance with Restitution – at a minimum, those duties required under Texas Code of Criminal Procedure, Articles 56.02, 56.04, and 56.08, which include notice of right to restitution and a written notification of the general restitution process within 10 days after the date that an indictment or information is returned against a defendant. Assistance with Restitution may also include assisting victims with calculating losses; gathering documentation/receipts; reviewing victim impact statements for potential restitution requests; contacting CVC to determine if funds have been expended on victim’s behalf; and providing restitution information and CVC reimbursement requests for the prosecution.

Assistance with Victim Impact Panels – assistance provided to a victim to prepare a victim to present on a Victim Impact Panel.

Assistance with Victim Impact Statements – assistance provided to a victim explaining the Victim Impact Statement identified in Art. 56.03 Code of Criminal Procedure and/or completing the appropriate forms. Providing general information on Victim Impact Statements should be counted under “Information and Referral”.

Crisis Intervention – in person or via telecommunication assistance provided to a victim to reduce stress and provide immediate, short-term support to reduce the impact of the crime.
**Direct Victim Services** – include but are not limited to providing the following activities:

- Accompaniment (to Hospitals, Law Enforcement Offices, Prosecutors’ Offices and Courts)
- Advocacy
- Assistance with Crime Victims’ Compensation
- Assistance with Restitution
- Assistance with Texas SAVNS
- Assistance with Victim Impact Panels
- Assistance with Victim Impact Statements
- Crisis Intervention
- Emergency Funds
- Follow up with Victim
- Groups (Support, Therapeutic)
- Information and Referral
- Individual Counseling
- Peer Support Services
- Legal Assistance
- Lodging
- Transportation
- Other Direct Victim Services

**Education** – For purposes of this grant includes the following:

- Outreach – includes but is not limited to public speeches, information booths, media interviews, public service announcements, newsletters, articles, editorials, and website visits conducted for the purpose of generally informing the public about crime related topics and available victim services.
- Training – includes general training sessions, video conference training sessions, and computer based training sessions conducted to train on a certain topic. Training is designed to increase knowledge on crime related topics, impact the skills of individuals interacting with victims, including victim service training, or to improve the overall response to victimization. Training may be provided internally to volunteers and staff, or externally to the public. Note: Victim related activities historically identified as Structured Education should be included under this category.

**Emergency Funds** – funds that the Applicant will provide directly to victims for items needed immediately following a crime and that would not otherwise be paid for by the Crime Victims’ Compensation Program.

**Follow-up with Victim** – in person, telephone or written communication, initiated by the advocate that occurs as a follow-up to an initial meeting with the victim—to provide or offer services such as emotional support, empathetic listening and checking on progress.

**Individual Counseling** – provided to a victim by a licensed professional and uses one-on-one psychological and/or therapeutic methods of treatment for a minimum of 45 minutes.
**Information Booth** – Events where organizations staff booths to provide information to the general public about different topics. This may include but is not limited to community fairs, conferences, or other public gatherings.

**Information and Referral** – all forms of contact with victims in which services and available support (provided by the Applicant or the community) are identified and/or offered. This service may be provided in addition to or along with other Direct Victim Services such as Advocacy, Peer Support Services, Assistance with Crime Victims’ Compensation, etc.

**Legal Assistance** – assistance provided to a victim with criminal or civil legal issues, including, but not limited to, completing and/or filing of temporary restraining orders, injunctions, other protective orders, elder abuse or child abuse petitions. The available scope of legal services may be for the following service areas: Legal services to assist victims of human trafficking; legal services to assist victims of crime to obtain temporary or permanent protective orders; spousal/child support, divorce and relocation, legal services to assist victims of crime with immigration proceedings; and legal services relating to victims of crime obtaining Crime Victims’ Compensation benefits. Any other scope of legal services must have the prior written approval of the OAG. Legal assistance does not include activities solely for the prosecution of an offender, such as witness coordination; expert witness fees; or prosecutor salaries.

**Lodging** – arranging and/or providing lodging for a victim, to include but not limited to emergency housing assistance. For example, the number of victims who received lodging as arranged by grant funded staff.

**Peer Support Services** – one-on-one peer support provided by trained staff and/or volunteers to increase client functionality and facilitate empowerment in meeting his/her physical, medical, legal, and or psychological needs.

**Support Groups** – groups for victims led by trained staff, volunteers or peer facilitators covering educational material or issues brought up by the group.

**Therapeutic Groups** – groups facilitated by a licensed professional and includes therapeutic/counseling and/or psycho-educational content for victims.

**Transportation** – arranging and/or providing transportation for a victim for planned activities to one or more destinations in a single trip, or to an unplanned or crisis situation to or from locations such as medical facilities, shelters, or police stations.

**Unique Victims Served** – a victim of crime that receives any direct victim service from staff funded on this grant counted only once per fiscal year.
GENERAL DEFINITIONS

Administrative Services – functions that provide support or oversight to grant activities that are not:
- Direct Victim Services;
- Education
  - Outreach
  - Training

(See Definitions of Direct Victim Services and Education (Outreach and Training).

Advertising Costs – the cost of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals and the like. Most advertising is unallowable for grant purposes and are only allowable if related to and necessary for performance of the grant, i.e. recruitment of personnel, procurement of goods and services, disposal of surplus materials, other specific purposes necessary to meet the requirements of the grant project, or the availability of services.

Alternate Designee – The person designated by the Authorized Official to sign invoices for the agency (i.e., Authorized Official, Executive Director, Financial Director, Auditor, Treasurer, etc.).

Authorized Official – Each grantee must designate an Authorized Official. The authorized official may not be the same person as the grant contact. The authorized official is the person authorized to apply for, accept, decline, or cancel the grant for the grantee. This person signs all grant contracts and financial forms as well as any other official documents related to the grant. This person may be, for example, the executive director of the entity, a county judge, or the designee authorized by the governing body in a resolution.

Contract Staff – individuals that are not employed by the organization but are hired contractors of the organization to carry out specific work for the grant.

Crime Victim Liaison – each local law enforcement agency shall designate one person to serve as the agency's crime victim liaison and perform the duties described in Article 56.04 (c) and (d) of the Texas Code of Criminal Procedure.

Equipment – an article of non-expendable, tangible personal property having a useful life of more than one (1) year and a per unit acquisition cost which equals the lesser of the capitalization level established by the grantee for financial statement purposes or $5,000.

Employee – a person under the direction and supervision of the organization, who is on the payroll of the organization and for whom the organization is required to pay applicable income withholding taxes.

Fiscal Year – Texas state fiscal year, beginning on September 1st and ending on August 31st.
**Fringe Benefits** – compensation or other benefits provided by the employer to the employee at no charge that is above and beyond salary or wages. Examples include health plans, life insurance, leave, pensions, unemployment benefit plans, and employer’s portion of payroll tax.

**Grant Contact** – each grantee must designate a Grant Contact. The grant contact may not be the same person as the Authorized Official. The grant contact must be an employee of the grantee who is responsible for operating and monitoring the project and who is able to readily answer questions about the project’s day-to-day activities. All grant related information will be sent to the grant contact.

**Mileage** – per mile cost when traveling by car may be reimbursed according to the Texas State Travel Guidelines, unless a grantee’s travel policy provides a lesser reimbursement.

**Other Direct Operating Expenses** – costs not included in other budget categories and which are directly related to the day-to-day operation of the grant program. Other direct operating expenses include, but are not limited to, conference registration, rent, utilities, janitorial supplies, liability insurance, and communication.

**Outcome** – specific changes in knowledge, attitudes, skills, behavioral intentions, behaviors, or other that are expected as a result of program activities. Example: 80% of unique victims served (output) this year showed an "Increase in knowledge of crime victims’ rights" (outcome).

**Output** – products of program activities, including services delivered by a program. Examples include:
- The number of unique victims served (outputs) last month. Example: 25 is the number of unique victims served (output) last month.
- The number of instances a service was provided. Example: 100 counseling sessions were provided (output) last month.

**Output Target** – estimate of the number of program activities, including services the organization plans to deliver in a given time period. Examples include:
- The organization plans to serve 30 unique victims in FY 2018.
- The organization plans to provide 25 accompaniments in FY 2018.

**Per Diem** – (NEW) actual meal expense incurred on an overnight stay in which the grantee travels outside of their designated headquarters may be reimbursed according to the Texas State Travel Guidelines, unless a grantee’s travel policy provides a lesser reimbursement.

**Personnel** – employees of this organization that will be funded by this grant. See “Employee”.

**Professional & Consultant Services** – service for which the grantee uses an outside source for necessary support. Professional & Consultant Services include, but are not limited to tax services, accounting services, counseling, legal services, and computer support.
**Project Financial Officer** – This person has primary responsibility for overseeing the financial operations of the grant project and may or may not be the same as the organization’s highest financial position. This person may be, for example, the chief financial officer, finance director, county auditor, comptroller or board treasurer.

**Promotional Items** – articles of merchandise that are branded with a logo and used in marketing and communication programs. They are usually given away to promote a company, corporate image, brand, or event. Most promotional items are unallowable expenditures for grant purposes and are only allowable if the item is informational and/or instructional in nature and thus provides a public service.

**Resolution of Governing Body** – a formal written statement of an official body that is the governing authority of an agency.

**Salary** – the total compensation, not including fringe benefits, earned by the employee without regard to funding source.

**Special Conditions** – placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a financial hold being placed on the OAG grant program. Special conditions may be placed on a grant at any time with or without notice.

**Supplies** – consumable items directly related to the day to day operations of the grant program. Allowable items include, but are not limited to, office supplies, paper, postage, education resource materials, printers, projectors, laptops, and computers.

**Support Document(s)** – a Memorandum of Understanding, Cooperative Working Agreement, or Letter of Support or other written agreement between two or more parties that sets forth common understandings, respective roles or interactions between the parties or any supporting duties or responsibilities between the parties. It must be signed by all parties involved and describe in sufficient detail the subject matter of the agreement.

**Texas Statewide Automated Victim Notification Service (SAVNS)** – a free and confidential statewide service that provides registered victims of crime and concerned citizens’ information and notification about offender custody status and related court events and cases.

**Unique Application Number (UAN)** – this number will be assigned by the OAG after an Applicant has completed the required on-line Application Registration for this grant opportunity. The UAN will be used by the OAG to track the receipt of Applications from registered Applicants. The assigned UAN must be included on all Application documents submitted to the OAG.

**Victim Assistance Coordinator** – the district attorney, criminal district attorney, or county attorney who prosecutes criminal cases shall designate a person to serve as victim assistance coordinator in that jurisdiction and perform the duties described in Article 56.04 (a) and (b) of the Texas Code of Criminal Procedure.
Volunteer – a person who provides an unpaid service to the organization.
III. SPECIFIC INSTRUCTIONS FOR TABS IN EXCEL WORKBOOK

For all Tabs, answer the questions only in the space provided. Only answers that appear in the specific text box will be read or scored. Do not write answers beyond the space provided or attach additional pages; they will not be read or scored.

In order to cut and paste text into a cell, it may be necessary to double click the cursor into the cell, rather than simply selecting the cell.

Not all questions on this Application have instructions listed below. The instructions provided are to clarify and provide specific information where necessary. Every question should be answered in the Excel document.

TAB A - ORGANIZATION

1. Organization
Identifying and contact information:

- Unique Application Number (UAN) – A UAN was assigned when the organization completed its online registration for the grant program. Each grant program registered will have a different UAN. Be sure to enter the correct UAN associated with this grant type.
- Legal Name of Applicant – Enter the legal name of Applicant Organization.
- Name of Agency Contact and Agency Contact’s Telephone Number - Provide a contact name and phone number in the event the OAG has any questions about the Application.

Applicant must select the Purpose Area(s) the Applicant is seeking funding for by checking the appropriate box or boxes. Selecting Purpose Area(s) will populate Outcomes in Section 22.1 on Tab D.

For example: If Applicant “A” is requesting funding for Direct Victim Services, Training, and Outreach, then Applicant “A” checks the Direct Victim Services, Training, and Outreach boxes.

Unless the Applicant is requesting an exception to the Direct Victim Services Requirement, all Applicants must select the Direct Victim Services Purpose Area.

If Applicant is applying for an OVAG Statewide Project, check the box above of the Amount Requested. Applicants must check the “Check if Applying for an OVAG Statewide Project” box in order to answer the Statewide application questions.

The Amount Requested for FY 2018-2019 as well as the % of Personnel and Fringe Requested will auto-calculate when information is entered into Tab C - Budget Calculation. If Applicant’s amount requested is or over the maximum eligible amount, the dollars requested will turn red. If a cell turns red, this is an indicator that the amount entered must be lowered as it exceeds the maximum eligible amount.
2.1- 7.2 Narrative Questions
All responses must fit in the text boxes provided when the Application is printed. Any information that does not appear in the text box (in print preview) will not be reviewed or scored. It is highly recommended that responses be written on a separate document, then cut and pasted into the Excel document. If uncertain whether a response fits in the space provided, use the “print preview” function, or print out the responsive page to confirm.

8. State and Federal Funds Experience Enter the number of years of experience your organization has in managing state or federal grant funds.

**TAB B - OUTPUT TARGET CALCULATION**

List staff position targets for grant funded activities for all requested personnel funded with this OAG grant. The information entered onto this tab will be totaled on Tab D to indicate the Applicant’s targets for FY 2018 and FY 2019. The Applicant will report on cumulative activities in quarterly Performance Reports to the OAG, not activities by individual personnel.

9. Output Target Categories
Applicants must provide targets for all grant funded positions in Section 10 and 11 of Tab C.

**Output Target Calculation**
Targets are broken down into two tables for Grant Funded Personnel and Professional & Consultant. The first table should include cumulative targets for Grant Funded Personnel listed in Section 10 of Tab C. The second table should include cumulative targets for Professional/Consultants listed in Section 11 of Tab C.

For all grant funded Personnel and Professional & Consultant the following projected targets are required:

1. Number of Unique Victims Served
2. Assistance with Crime Victims' Compensation
3. Assistance with Texas SAVNS
4. Information & Referral
5. All other activities conducted using OAG OVAG/VCLG grant funds

In addition to the four (4) targets listed above, prosecutor based Applicants must also provide a target for Assistance with Restitution.

**Important information regarding targets - targets and reporting on Direct Victim Services has changed. Read the guidance carefully before proceeding.**

- Organizations will provide a target for the number of Unique Victims Served (a victim of sexual assault that receives any direct victim service from staff funded on this grant counted only once per fiscal year).

- For each Direct Victim Service that the organizations is requesting funding, enter the target for the number of instances each service will be provided. Note: This is a change in the way Direct Victim Services targets are calculated.
**Example:**

An organization serving 1 victim by providing 35 Individual Counseling sessions would count one unique victim served and 35 instances of Individual Counseling.

If the organization requests funding for **Outreach** or **Training**, enter targets using the following guidelines:

- Outreach – enter targets for public speeches, informational booths and participants. If awarded the grantee will be required to report on all outreach activities conducted. See the Output Definitions section for a detailed definition of Outreach.
- Training – enter targets for training sessions (general training sessions, video conference training sessions, and computer based training sessions) and participants.

Note: The Applicant will be required to track and report to the OAG information about all services provided through this grant.

**TAB C - BUDGET CALCULATION**

**10. PERSONNEL AND FRINGE BENEFITS**

- Each Applicant is limited to no more than ten positions.
- Each position listed on the budget can only be associated with one employee. If job sharing, list each position on the budget separately as many times as necessary regardless of time allocated to grant.
- Priority positions should be listed first. Staff Position/Title #1 is highest priority and Staff Position/Title # 10 is lowest priority.
- Any hours over forty (40) hours are unallowable by this grant.
- Job Descriptions are required and must be submitted for all positions requesting funding. Job descriptions must reflect activities that relate to the project’s goals and must be appropriately proportionate to the time spent on the OVAG or VCLG grant. (See Application Submission section for required documentation.)
- The personnel budget category must include employees’ salaries only and not compensation for independent contractors. See the General Definitions section of this Application Kit for a definition of “employee”.
- Salaries for grant funded positions must be reasonable for activities funded on the grant. Salaries may be subject to OAG review.
- Fringe benefits should only be included for the position(s) listed in the Personnel budget category.
- An organization must provide grant funded personnel the same fringe benefits provided to all other non-grant funded personnel, and it should be offered/covered in the organization’s written personnel policies regardless of whether the costs for fringe benefits are paid through that OAG grant.
- Fringe benefits must comply with the organization’s written personnel policies regarding fringe benefits.
• Grantees must agree to comply with the Uniform Grant Management Standards (UGMS), Texas Administrative Code (TAC), 2 C.F.R. 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

For each position, the Applicant must list the position title and the number of hours scheduled to work per week. Fill in the numbers of hours each week that will be spent on:
• Direct Victim Services;
• Administration; or
• Victim related Training and/or Outreach

The number of hours “Scheduled on this grant” column auto-fills based on the hours entered into the “Direct Victim Services on this grant”, “Admin on this grant”, and “Training and/or Outreach on this grant” columns. See the Definitions section of this Application Kit for a list of Direct Victim Services and Education (includes Outreach and Training)

For each fiscal year and each position, provide the following information:
• Annual salary
• Annual fringe benefits amount for the position
• Amount of fringe benefits requested from this grant
• The Justification section must include the breakdown used to calculate fringe benefits for each position.

Note: Total Salary Requested category auto-fills based on the annual salary and the percentage of hours worked on the grant.

10.1 FY 2018 Position Narrative
Provide a summary justification for each position in Section 10.1 Position Narrative. This should include how each position supports the goal of the grant.

10.2 FY 2019 Position Narrative
Provide a summary justification for each position in Section 10.2 Position Narrative. This should include how each position supports the goal of the grant.

10.3-10.4 Exceptions to Personnel Requirements
If a grantee is unable to fulfill the personnel requirements of this grant, the Applicant must request an exception and provide a justification. A justification must be included in this section if the Applicant is requesting an exception to one or both of the following personnel requirements:
• A minimum of 75% of an Applicant’s budget must be allocated to the Personnel and Fringe Benefits budget categories and
• All Applicants must provide one (1) direct service staff person working at least twenty (20) hours per week or two (2) direct service staff persons working at least ten (10) hours each per week.
11. Professional & Consultant Services

- “Professional & Consultant Services” is defined as a service for which the grantee uses an outside source for necessary support. Professional & Consultant Services include, but are not limited to, tax services, accounting services, counseling, legal services, and computer support.
- This category is appropriate when contracting with an individual or organization to provide professional services (e.g., training, expert consultant, etc.) for a fee but not as an employee of the grantee organization.
- Any contract or agreement entered into by a grantee that obligates grant funds must be in writing and consistent with Texas contract law.
- Grantees must maintain adequate documentation supporting budget items for a contractor’s time, services, travel expenses and rates of compensation. Grantees must establish a contract administration and monitoring system to regularly and consistently ensure contract deliverables are provided as specified in the contract.
- Grant funds may not be used to pay Professional & Consultant services for a person or vendor who participated directly in writing a grant Application.

11.1 FY 2018 Professional & Consultant Services Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

11.2 FY 2019 Professional & Consultant Services Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

12. Travel

- Travel expenses must be reasonable and necessary for activities funded on the grant.
- Grant funds requested in the travel category should be for grant related travel performed by grant funded staff and volunteers assigned to the grant only.
- Travel must relate directly to the delivery of services that supports the program funded by the OAG grant.
- Enter the name of the training event, the positions attending the training (separated by a comma), the total cost of travel by expense type (i.e: Airfare/Mileage, Hotel, etc.), and the % requested by this OAG grant in the % column.
- Cost Requested by this OAG Grant will autofill based on expenses and percentage requested.
- Lodging, mileage, car rental, airfare, and parking may be reimbursed according to the Texas State Travel Guidelines, unless a grantee’s travel policy provides for a lesser reimbursement. The reimbursement rate for these expenses can be found in the Texas State Travel Guidelines at: [https://fmx.cpa.state.tx.us/fm/travel/travelrates.php](https://fmx.cpa.state.tx.us/fm/travel/travelrates.php)
- For this grant, per diem is limited to actual expenses and is reimbursable according to the Comptroller of Public Accounts guidelines, for overnight travel unless a grantee’s travel policy provides for a lesser reimbursement. Per diem is unallowable for non-overnight travel for this grant.
- Hotel tax should be included under the Misc./Hotel Tax line.
• If mileage is to be paid, provide the number of miles and the cost per mile, not to exceed the Texas State Travel Guidelines, in the justification under 12.1 FY 2018 Travel Narrative and/or 12.2 FY 2019 Travel Narrative section.
• Grant funds may not be used to pay for out-of-state travel.
• Do not include conference registration fees in the travel budget category. Conference registration fees should be listed in the "Other Direct Operating Expenses" budget category.
• The OAG Conference subsection is only to be used for OAG Conference estimates of expenses.
• All other training including OAG Regional Training should be listed under the “Additional Training” subsections.

12.1 FY 2018 Travel Narrative
Provide a summary justification describing activities the travel grant funded persons will perform. This should include the proposed travel location, the number of trips planned, the title of grant funded persons who will be making the trips, and how the travel supports the goal of the grant.

12.2 FY 2019 Travel Narrative
Provide a summary justification describing activities the travel grant funded persons will perform. This should include the proposed travel location, the number of trips planned, the title of grant funded persons who will be making the trips, and how the travel supports the goal of the grant.

13. Equipment
• “Equipment” is defined as an article of non-expendable, tangible personal property having a useful life of more than one (1) year and a per unit acquisition cost which equals the lesser of the capitalization level established by the grantee for financial statement purposes or $5,000.
• A grantee may use equipment paid with OAG funds only for grant related purposes.
• Do not include maintenance or rental fees for equipment in the equipment budget category. Equipment maintenance or rental fees should be listed in the “Other Direct Operating Expenses” budget category.
• Enter the % of the total cost allocated to this grant project in the % column of the Equipment Chart.
• Do not include computers in the equipment budget category. Computers should be listed in the supplies budget category under its own line item.

13.1 FY 2018 Equipment Narrative
Provide a summary justification for each item. This should include the title of grant funded persons who will be using each piece of equipment and how the use supports the goal of the grant.
13.2 FY 2019 Equipment Narrative
Provide a summary justification for each item. This should include the title of grant funded persons who will be using each piece of equipment and how the use supports the goal of the grant.

14. Supplies
- “Supplies” is defined as consumable items directly related to the day-to-day operation of the grant program. Allowable items include, but are not limited to, office supplies, paper, postage, and education resource materials, as appropriate.
- The OAG will not approve funds for the purchase of promotional items or recreational activities.
- Computers, regardless of cost, should be included under supplies.
- Costs for supplies should be allocated for grant funded persons listed on this Application.
- Enter the % of the total cost allocated to this grant project in the % column of the Supplies Chart.
- Each Applicant is required to have access to a computer in order to perform data collection and reporting to the OAG. If the Applicant does not currently have a computer, then one may be budgeted as part of this grant or secured through other means.
- Furniture, regardless of cost, should be included under supplies.

14.1 FY 2018 Supplies Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

14.2 FY 2019 Supplies Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

15. Other Direct Operating Expenses (ODOE)
- "Other Direct Operating Expenses" is defined as those costs not included in other budget categories and are directly related to the day-to-day operation of the grant program. Examples: Utilities, rent, insurance, security fees, or maintenance fees.
- Registration fees for conferences and other training sessions should be included in this category. List the name of the conference and/or training to be attended.
- Funds may not be used to purchase food and beverages.
- Enter the % of the total cost allocated to this grant project in the % column of the Other Direct Operating Expenses Chart.

ODOE and Cost Allocation
Grantees often share program expenses with more than one funding source. Listed below are four allowable allocation methods and examples of how allocation can be applied to the appropriate funding source.
- Other Direct Operating Expenses that benefit more than one grant should be allocated proportionately to the benefit or service received. The method used to allocate cost
should be a reasonable and measurable means of distributing the cost to those grants, and consistently applied to the type of cost.

- It is acceptable to use different allocation methods for different types of ODOE expense, as long as the allocation method is applied consistently for those expenses.
- Four common and acceptable allocation methods for ODOE expenses are: (1) funding, (2) full-time equivalents (FTE), (3) square footage, and (4) direct use. Allowable methods related to specific costs are shown in the chart below: This chart is an example of using different allocation methods for different specific costs.

### ALLOWABLE ALLOCATION METHODS

<table>
<thead>
<tr>
<th>Cost Type</th>
<th>Funding</th>
<th>FTE</th>
<th>Square Footage</th>
<th>Direct Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copiers</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data Line</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equip Maintenance</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janitorial</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Printing</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Rent</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Telephones</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

The following are descriptions and examples of the acceptable methods:

1. **Funding Source Based**: The proportion of expense borne by each funding source is allocated based on the proportion of funding provided. For example:

   **Funding Source Based Example**
   
   Total Operating Budget of Grantee A $475,000  
   OAG Grant Funds $75,000  
   
   $75,000 \div 475,000 = 0.16$
   
   OAG Grant portion of the expense = 16%  
   The OAG Grant should not be charged more than the allowable ODOE costs. In this example, the allowable portion is 16% of the total cost.

2. **Full-time equivalents (FTE) Based**: FTE is the numerical representation of full and part-time work activities. A person working full-time represents 1.00 FTE; a person working half-time represents .50 FTE.

   **Steps to calculate the annual number of FTEs:**
   
   1. Determine the total number of hours worked for all employees.
2. Divide that number by 2080 to calculate the overall total number of FTEs.
3. To obtain the number of FTEs charged to the grant, determine the total number of hours to be directly charged to the grant and divide by 2080. (2080 is the number of hours per year for a full-time FTE at 40 hours per week).
4. To obtain percentage of the grant FTEs, divide the FTE total for the grant by the total of the organization FTEs calculated in step 2.
5. This calculation will provide the percentage of ODOE cost that could be allocated to the grant.

<table>
<thead>
<tr>
<th>FTE Based Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual FTE Calculation</td>
</tr>
<tr>
<td>20,800 total hours charged for all staff (based on time sheets or payroll records)</td>
</tr>
<tr>
<td>20,800 / 2080 = 10 FTEs overall</td>
</tr>
<tr>
<td>5,600 staff hours charged to grant A (based on time sheets or payroll records)</td>
</tr>
<tr>
<td>5,600 / 2080 = 2.7 FTE's charged to that grant A</td>
</tr>
<tr>
<td>2.7 (FTE charged to grant A) / 10 (FTEs overall) = .27 (27%)</td>
</tr>
<tr>
<td>27% x ODOE expense = amount to be allocated to grant A</td>
</tr>
</tbody>
</table>

(3) *Square Footage Based:* This is cost calculated by measuring the square footage (sq. ft.) to determine the allocation percentage for direct use and common area. Listed below is an example to determine rent.

**Direct Use** is defined as an area occupied by funded grant staff under this grant. **Common Area** is defined as an area shared by all employees of the organization.

**Steps to Calculate Square Footage**

1. Calculate the total square footage and divide by the monthly rent to determine the cost per square foot.

| Total Sq. Footage = 1250; Rent = $1200 per month; $1200 / 1250 = $.96 per sq ft |
| Suite 1 (Program A) 10 x 13.8 = 138 sq ft |
| Suite 2 (Program B) 10 x 13.8 = 138 sq ft |
| Suite 3 (Program C) 10 x 13.8 = 138 sq ft |
| Suite 4 (Program D) 10 x 13.8 = 138 sq ft |
| Conf. Rm (Common Area) 22 x 15 = 330 sq ft |
| Rest Rm 1 (Common Area) 6 x 8 = 48 sq ft |
| Break Area (Common Area) 8 x 8 = 64 sq ft |
| Storage Rm (Common Area) 8 x 8 = 64 sq ft |
| Hallway (Common Area) 48 x 4 = 192 sq ft |
2. Multiply the direct use square footage by the cost per square foot. This will provide the direct use cost.

<table>
<thead>
<tr>
<th>Direct Use Cost by Program</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Program A (Direct Use)</td>
<td>138 sq ft x .96 = $132.48</td>
</tr>
<tr>
<td>Program B (Direct Use)</td>
<td>138 sq ft x .96 = $132.48</td>
</tr>
<tr>
<td>Program C (Direct Use)</td>
<td>138 sq ft x .96 = $132.48</td>
</tr>
<tr>
<td>Program D (Direct Use)</td>
<td>138 sq ft x .96 = $132.48</td>
</tr>
<tr>
<td>Common Area (Allocable ODOE Expense)</td>
<td>698 sq ft x .96 = $670.08</td>
</tr>
</tbody>
</table>

3. Add the total square feet of all the direct use areas (Program A + Program B + Program C + Program D) = Program ABCD direct use (138 + 138 + 138 + 138 = 552).
4. Divide each direct use space by the total direct use to obtain % to distribute Common Area cost (Program A is 138 / 552 = 25%).
5. Multiply this percentage by the cost of the Common Area to obtain the additional cost for each program Common Areas. (Program A = 25% X Common Area cost of $670.08 = $167.52).
6. Program A is allocated the $132.48 based on direct use and $167.52 for the proportionate Common Area. Program A allocation for rent based on square footage is $132.48 + $167.52 = $300.00. Repeat for Program B, Program C and Program D.

(4) Direct Use Based: This is used when the ODOE cost can be directly charged to a grant by using meter readings, copy counts, etc.

15.1 FY 2018 Other Direct Operating Expenses Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

15.2 FY 2019 Other Direct Operating Expenses Narrative
Provide a summary justification for each item. This should include how it supports the goal of the grant.

TAB D – PROJECT SUMMARY
Complete all applicable narratives in this section.

16. Project Summary
The summary is in standardized language and may be used by the OAG to describe the project. Examples would be:

“This project funds four staff to serve victims of family violence by providing counseling and crisis intervention services in the city of Dallas.”

“This project funds one staff to serve all victims of violent crime by providing crisis intervention and information and referral services in El Paso County.”
“This project funds two staff to serve victims of child abuse and neglect by providing training to volunteers working with child abuse victims in all 150 counties across Texas.”

17. Target Population
This section requires information on the Applicant’s project for which funding is being requested, not by the organization as a whole. Under both “Specific Victimizations” and “Specific Populations,” place an “X” in all categories that apply.

All responses must fit in the text boxes provided when the Application is printed. It is highly recommended that responses be written on a separate document, then cut and pasted into the Excel document. It is the responsibility of the Applicant to ensure that all responses fit in the space provided. This can be done by using the “print preview” function or by printing out the responsive page to confirm. Any information that does not appear in the text box (in print preview) will not be reviewed or scored.

21.2 Outputs Summary
This Section is auto-calculated based on the Applicant’s responses on Tab B. The Applicant will not enter any information in this Section.

22. Outcomes

22.1 Depending on Purpose Areas selected on Tab A, the associated outcome statements will populate and must be collected and reported by the grantee:
- Direct Victim Service Outcome
  - Increase in knowledge of sexual assault victims’ rights
  - Increase in knowledge of community resources and services
- Outreach Outcome
  - Increase in knowledge of community resources and services
- Training Outcome
  - Increase in knowledge of crime victims’ rights

22.2 Outcome Narrative
Applicant must provide a detailed description of the systems, including tools and/or processes, written policies and procedures, databases, tracking forms or quality control testing, which will be used to track and verify the project's outcomes listed in Section 22.1.

26. Financial
This section must be answered by describing the Financial Systems to track financial activities of the entity.
26.3 Budget Narrative
Applicant must provide a brief description of how the budget requested relates to the project goal.

27. Budget Summary
This Section is auto-calculated based on the Applicant’s responses on Tab C. The Applicant will not enter any information in this Section. If the total requested budget for either fiscal year is below the minimum or exceeds the maximum amount allowable, the dollar amounts will turn red. Applications requesting an amount below the minimum or above the maximum may not be considered. If the Application is awarded, the budget may be adjusted by the OAG to fit within the minimum and maximum amounts.
IV. OAG CERTIFICATIONS AND ASSURANCES

The Applicant agrees to:

1. Comply with Texas Government Code, Chapter 573, Vernon’s 1994, by ensuring that no officer, employee, or member of the Applicants governing body or of the Applicants contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two (2) years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

2. Comply, as applicable, with Texas Government Code, Chapter 552, (“Texas Public Information Act”) which requires the public information that is collected, assembled or maintained by the Applicant relative to a project to be available to the public during normal business hours.

3. Comply with Texas Government Code, Chapter 551, (“Texas Open Meetings Act”) which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

4. Comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

5. If Applicant is a health and human services agency or public safety or law enforcement agency, it may not contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

6. If Applicant is a law enforcement agency regulated by Texas Government Code, Chapter 1701 it must be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 1701 Texas Government Code or must provide the OAG with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.

7. Agrees that when incorporated into a grant award or contract, these standard assurances become terms or conditions for receipt of grant funds and that the Applicant shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.

8. Comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Applicant shall also ensure that all program personnel are properly trained and aware of this requirement.

9. Comply with all federal statutes relating to nondiscrimination. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended...
which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which Application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the Application.

(10) Comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for federally assisted construction sub-agreements.

(11) Comply, as applicable, with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(12) Comply with the provisions of the Hatch Political Activity Act (5 U.S.C. 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

(13) Comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

(14) Insure, as applicable, that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protections Agency’s (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA, (EO 11738).

(15) Comply, as applicable, with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102 (a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(16) Comply, as applicable, with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National
Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

(17) Comply, as applicable, with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

(18) Comply, as applicable, in assisting the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(19) Comply, as applicable, with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(20) Comply, as applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

(21) Comply, as applicable, with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

(22) Comply, as applicable, with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

(23) Comply, as applicable, with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.

(24) Certifies, as a signatory party to the grant contract, that it is not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

(25) Comply, by adopting and implementing the applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.
**B. Other Certifications and Assurances**

**EQUAL EMPLOYMENT OPPORTUNITY PROGRAM CERTIFICATION**
The Applicant certifies that if it is required to file an Equal Employment Opportunity Plan (EEOP), the Applicant will do so in compliance with the applicable federal requirements.

**DISCLOSURE AND CERTIFICATION REGARDING LOBBYING**
The Applicant certifies:
1. No federal/state 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 or the Texas Legislature, or an employee of a member of Congress or the Texas Legislature in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan, or cooperative agreement; and

2. If any non-federal/state 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 or the Texas Legislature, an officer or employee of Congress or the Texas Legislature, or an employee of a member of Congress or the Texas Legislature in connection with this federal/state contract, grant, loan, or cooperative agreement, the undersigned shall contact the CVSD of the OAG for the “Disclosure Form to Report Lobbying.”

**NON-PROCUREMENT DEBARMENT CERTIFICATION**
The Applicant certifies that it and its principals:
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
(b) Have not within a three-year period preceding this Application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
(d) Have not within a three-year period preceding this Application had one or more public transactions (Federal, State, or local) terminated for cause or default.

If Applicant is unable to certify to any of the statements in this Non-procurement Debarment certification, the Applicant shall attach an explanation. Funding is contingent upon OAG review of this explanation.
**DRUG-FREE WORKPLACE CERTIFICATION**

The Applicant certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees/assignees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant’s workplace and specifying the actions that will be taken against employees for violation of such prohibition.

B. Establishing a drug-free awareness program to inform employees/assignees about:
   1. The dangers of drug abuse in the workplace;
   2. The Applicant’s policy of maintaining a drug-free workplace;
   3. Any available drug counseling, rehabilitation, and employee assistance programs; and
   4. The penalties that may be imposed upon employees/assignees for drug abuse violations.

C. Making it a requirement that each employee/assignee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (A).

D. Notifying the employee/assignee in the statement required by paragraph (A) that, as a condition employment/assignment under the grant, the employees/assignee will:
   1. Abide by the terms of the statement, and
   2. Notify the Applicant and OAG, of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.

E. Notifying the agency within ten days after receiving notice under subparagraph (D) (2) from an employee/assignee or otherwise receiving actual notice of such conviction.

F. Taking one of the following actions with respect to any employee/assignee so convicted:
   1. Taking appropriate personnel action with respect to any employee/assignee so convicted;
   2. Requiring such employee/assignee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

G. Making a good faith effort to continue to maintain a drug-free workplace through the implementation of paragraphs (A), (B), (C), (D), (E), and (F).

**ANNUAL SINGLE AUDIT CERTIFICATION**

The Applicant certifies to the best of their knowledge and belief that one of the following applicable requirements will be met:

1. The Applicant currently expends $750,000 or more, in combined federal funds during the fiscal year; and, therefore, is required to submit an annual single audit by an independent auditor made in accordance with the Single Audit Act Amendments of 1996 and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200.

2. The Applicant currently expends $750,000 or more in combined state funds during the fiscal year; and, therefore, is required to submit an annual Single Audit by an independent auditor made in accordance with the Uniform Grant Management Standards (UGMS).

3. The Applicant currently expends less than $750,000 in either federal or state funds during the fiscal year; and therefore is exempt from the Single Audit Act and cannot charge audit costs to an OAG grant. Applicant agrees that the OAG may require a limited scope audit as defined in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200.

If this Application is for funds in excess of $25,000, the Applicant certifies the following:
By submission of this proposal, that neither the Applicant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or state agency.

If the Applicant is unable to certify the above statements, the Applicant has attached an explanation to this Application.

**COMPLIANCE WITH ANNUAL INDEPENDENT FINANCIAL AUDIT FILING REQUIREMENT**

The Applicant assures that it will file an Annual Independent Financial Audit of the complete program and/or organization and management letter of the audit findings within nine months of the end of the fiscal year of the agency. An annual independent financial audit is a requirement for this OAG grant. The audit will meet Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 and Uniform Grant Management Standards (UGMS) requirements. Additionally, the annual independent financial audit will meet GAGAS standards in the event a Single Audit is not required.

**COMPLIANCE WITH UGMS AND THE APPLICABLE 2 CFR 200**

The Applicant assures that it will follow the guidelines in the Uniform Grant Management Standards (UGMS). Both governmental entities as well as non-profit entities are required to follow UGMS guidelines.

The Applicant assures compliance with all federal/state statutes, regulations, policies, guidelines and requirements, including, but not limited to, UGMS as well as Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

**RETURN OF GRANT FUNDS IN THE EVENT OF LOSS OR MISUSE**

The Applicant agrees that in the event of loss or misuse of the OAG funds, the Applicant assures that the funds will be returned to the OAG in full.

**CONFLICT OF INTEREST**

The Applicant assures that there is no conflict of interest that would preclude it from filing the Application or providing the services under this grant. By submitting this Application, Applicant affirms that it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, at any time during the procurement process or in connection with this grant Application, except as allowed under relevant state and federal law. The Applicant further agrees that it will establish safeguards to prohibit its employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. The Applicant shall operate with complete independence and objectivity without actual, potential, or apparent conflict of interest with respect to the activities conducted under this grant.

Without diminishing the provisions of the prior paragraph, the Applicant assures that as a grantee, grantee personnel, members of a grantee board or governing body, or other persons affiliated with the grant project shall not participate in any proceeding or action where grant funds personally...
benefit, directly or indirectly, the individuals or their relatives. For the purposes of this provision, "relatives" means persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined by Chapter 573 of the Government Code. Grant personnel and officials must avoid any action that results in or creates the appearance of using their official positions for private gain; giving preferential treatment to any person; losing independent judgment or impartiality; making an official decision outside of official channels; or adversely affecting the confidence of the public in the integrity of the program or the OAG.

**AUTHORITY TO FILE APPLICATION**

The Applicant has the authority or will receive the appropriate authority by the Applicant’s governing body to file the Application, including the authority to agree to the assurances and certifications contained herein.
V. REQUIRED DOCUMENTS FOR SUBMISSION OF APPLICATION

EXCEL APPLICATION WORKBOOK
• The Excel Application Workbook must be submitted in excel format

“STATEMENTS SUPPORTING SUBMISSION OF THE APPLICATION TO THE OFFICE OF THE ATTORNEY GENERAL”
• It must be signed by the Authorized Official (or designated Authorized Official) and submitted at the time the Application is submitted to the OAG.
• Applications that are received by the OAG without this document will not be considered or funded by the OAG.

“RESOLUTION OF GOVERNING BODY”
• It must be signed and submitted at the time the Application is submitted to the OAG, unless the timing of the Application due date and requirements of the Open Meeting Act or other requirements prevents the governing body from reviewing and approving the Resolution, then it may be submitted to the OAG at a later date. (Please note that the Authorized Official must be designated by signature of the governing body. If the Authorized Official is also a member of the governing body, they must be designated by another member’s signature. The Authorized Official cannot sign the Resolution designating the Authorized Official.)

Note: The “Statements Supporting Submission of the Application to the Office of the Attorney General” and “Resolution of Governing Body” listed above can be found at the end of this Application Kit.

Job Descriptions are required for each position requested in the proposed budget.
• Job descriptions must be submitted with the Application. Missing job descriptions may impact the Applicant’s funding.
• Job description titles should match the titles of the positions on the proposed budget.
• The Applicant should mark each page of the submitted job descriptions with the name of the Applicant and the Unique Application Number, if applicable.

Support Document(s) if required by the Applicant to achieve the proposed project as described in Tab A.
• Support Document(s), if required, must be submitted with the Application. Missing Support Document(s) may impact the Applicant’s funding.
• The Applicant should mark each page of the submitted Support Document(s) with the name of the Applicant and the Unique Application Number, if applicable.

IF POSSIBLE, THE APPLICANT SHOULD SUBMIT “STATEMENTS SUPPORTING SUBMISSION OF THE APPLICATION TO THE OFFICE OF THE ATTORNEY GENERAL,” “RESOLUTION OF GOVERNING BODY,” JOB DESCRIPTIONS AND SUPPORT DOCUMENT(S) TOGETHER IN ONE PDF DOCUMENT. IF THE APPLICANT DOES NOT HAVE THE CAPABILITY TO SCAN THESE DOCUMENTS TOGETHER AS ONE PDF, APPLICANTS MAY SUBMIT THEM AS SEPARATE PDF DOCUMENTS.
STATEMENTS SUPPORTING SUBMISSION OF THE APPLICATION TO THE OFFICE OF THE ATTORNEY GENERAL

REQUIRED TO BE SUBMITTED WITH THE APPLICATION BY 5:00 p.m. CDT WEDNESDAY, APRIL 19, 2017, OR THE APPLICATION WILL NOT BE CONSIDERED.

INSTRUCTIONS: Select the grant program in Section 1 below and submit this signed required document with the Application.

LEGAL NAME OF APPLICANT: ____________________________________________________________

UNIQUE APPLICATION NUMBER: _______________________________________________________

1. THIS APPLICATION IS FOR (check one):
   _____ Other Victim Assistance Grant (OVAG)
   _____ Victim Coordinator and Liaison Grant (VCLG)
   _____ Sexual Assault Prevention and Crisis Services (SAPCS) – State Grant

2. TRUE AND CORRECT INFORMATION. The undersigned certifies that the information contained in this Application is true and correct to the best of his or her knowledge.

3. OAG CERTIFICATIONS AND ASSURANCES. The undersigned has read and understands the Certifications and Assurances contained in the Application Kit.

4. DEADLINES AND SUBMISSION OF APPLICATION. The undersigned understands that the deadline for submission is 5:00 p.m. CDT Wednesday, April 19, 2017 and that to meet the deadline, the Applicant must submit electronic (email) documents as required in the Application Kit. The undersigned further acknowledges that:
   • It is the Applicant’s responsibility to submit the Application to the OAG in the specified manner and by the specified date and time
   • Applications submitted in other formats will not be accepted
   • The OAG accepts no responsibility for delays in electronic submission delivery
   • Late Applications will not be considered under any circumstance
   • Proof of sending a document by email or other means is not proof that the OAG received the information

5. JOB DESCRIPTIONS FOR EACH REQUESTED POSITION. The undersigned understands that the most recent job description for each position requested in the proposed budget must be submitted with the Application. Missing job descriptions may impact the Applicant’s score.

6. RESOLUTION OF GOVERNING BODY. The undersigned states it is either submitting the Resolution of Applicant’s governing body with this Application or will submit one at a later date as established by the OAG. If the timing of the Application due date and requirements of the Open Meetings Act or other requirements prevents the governing body from reviewing and approving the Resolution, then it may be submitted to the OAG at a later date.

__________________________________     ____________ ______________________
Authorized Official Signature/Title   Authorized Official Printed Name

__________________________________
Date
(SAMPLE FORM OF RESOLUTION OF GOVERNING BODY)

RESOLUTION OF GOVERNING BODY—REQUIRED

REQUIRED TO BE SUBMITTED WITH THE APPLICATION BY 5:00 P.M. CDT WEDNESDAY, APRIL 19, 2017. IF THE TIMING OF THE APPLICATION DUE DATE AND REQUIREMENTS OF THE OPEN MEETINGS ACT OR OTHER REQUIREMENTS PREVENTS THE GOVERNING BODY FROM REVIEWING AND APPROVING THE RESOLUTION, THEN IT MAY BE SUBMITTED TO THE OAG AFTER THE DUE DATE.

LEGAL NAME OF APPLICANT: __________________________________________________________

UNIQUE APPLICATION NUMBER (if applicable): ____________________________________________

Be it known as follows:

WHEREAS, the ________________________________, [Name of Applicant] has applied or wishes to apply to the Office of the Attorney General (OAG) for the following grant program (check one):

_____ Other Victim Assistance Grant (OVAG)
_____ Victim Coordinator and Liaison Grant (VCLG)
_____ Sexual Assault Prevention and Crisis Services (SAPCS) – State Grant

WHEREAS, the ________________________________
[Name of Governing Body of Applicant, such as City Council, County Commissioners' Court or Board of Directors], has considered and supports the Application filed or to be filed with the OAG;

WHEREAS, the ________________________________, [Name of Applicant] has designated or wishes to designate the following individual as the “Authorized Official” who is given or has been given the power to apply for, accept, reject, alter, or terminate that certain grant with the OAG, as well as given the authority to sign all grant adjustment requests, inventory reports, progress reports and financial reports or any other official documents related to the grant on behalf of the grantee:

Name of Person Designated as “Authorized Official”: ________________________________

Position Title: ________________________________________________________________

NOW THEREFORE, BE IT RESOLVED that this governing body approves the submission of the Application to the OAG, as well as the designation of the Authorized Official.

__________________________________     ____________ ______________________
Signature     Printed Name

__________________________________     ______________________
Date

FY 2018-2019 Grant Application Kit for OVAG/VCLG
AGENDA CAPTION:  
Consider approval of Resolution 2017-66R, approving the purchase of radar equipment for 44 police patrol vehicles for the Police Department from Applied Concepts, Inc., DBA Stalker Radar through the Houston-Galveston Area Council Cooperative Purchasing Program Contract #EF04-15 for Law Enforcement speed detection and video equipment in the total amount of $98,576.00; authorizing the Interim City Manager or his designee to execute the appropriate purchasing documents on behalf of the City and declaring an effective date.

Meeting date:  April 18, 2017

Department:  Police Department - Chase Stapp, Chief (By Cheryl Pantermuehl, Purchasing Manager)

Funds Required:  $98,576  
Account Number:  CAPVP_GENERALC_EQUIP_POLICE  
Funds Available:  $99,000  
Account Name:  PD - VEHICLE EQUIPMENT

CITY COUNCIL GOAL:
Goal #7 - Maintain fiscal responsibility
Goal #8 - Provide for the efficient and effective delivery of services

COMPREHENSIVE PLAN ELEMENT(s):  [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
The City of San Marcos is authorized by the Local Government Code, Chapter 271, to participate in cooperative purchasing programs. The Houston-Galveston Area Council (HGAC) purchasing cooperative has awarded a contract #EF04-15 for Law Enforcement Speed Detection and Video Equipment to Applied Concepts, dba Stalker Radar, located in Plano, Texas.

Through this HGAC contract, we are purchasing radar equipment for a total of forty-four (44) Patrol vehicles from Applied Concepts, dba Stalker Radar, in the total amount of $98,576. Of the totals, thirty-four (34) Patrol vehicles are Ford Utility Police Interceptor vehicles and the remaining are Chevy Caprice vehicles.

The new radar equipment will be installed in vehicles that do not have radar equipment installed in them.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF RADAR EQUIPMENT FOR 44 POLICE PATROL VEHICLES FOR THE POLICE DEPARTMENT FROM APPLIED CONCEPTS, INC., DBA STALKER RADAR THROUGH THE HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM CONTRACT #EF04-15 FOR LAW ENFORCEMENT SPEED DETECTION AND VIDEO EQUIPMENT IN THE TOTAL AMOUNT OF $98,576.00; AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASING DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The purchase of Radar Equipment for 44 police patrol vehicles for the Police Department from Applied Concepts, Inc., dba Stalker Radar through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program, Contract #EF04-15 for Law Enforcement Speed Detection and Video Equipment in the total amount of $98,576.00 is approved.

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

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

ADOPTED this the day of 2017.

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
### Quote # 2005862

**Effective From:** 01/06/2017  
**Valid Through:** 04/06/2017  
**Lead Time:** 21 working days

**Bill To:**  
San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919

**Ship To:**  
San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919

**Customer ID:** P11206  
**Ship To:** UPS Freight LTL (3-5 Days)

**Inside Sales Partner:** Ed Kosanke  
**Inside Sales Partner:** Ed Kosanke  
**Reg Sales Mgr:** Bill Switzer - S TX  
**Reg Sales Mgr:** Bill Switzer - S TX  
**Phone:** 972-837-3434  
**Phone:** 972-801-4818  
**Fax:** 972-398-3781  
**Fax:** 972-398-3781

---

<table>
<thead>
<tr>
<th>Ln</th>
<th>Qty</th>
<th>Part Number</th>
<th>Description</th>
<th>Price</th>
<th>Ext Price</th>
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<tr>
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<td>34</td>
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<td>Dual Enhanced Counting Unit, 1.5 PCB</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
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<td>200-0326-35</td>
<td>Dual Enhanced Ka-band Antenna</td>
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<td>$0.00</td>
</tr>
<tr>
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<td>34</td>
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<td>Dual SL Remote Control w/Screw Latch</td>
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</tr>
<tr>
<td>5</td>
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<td>25 MPH/40 KPH KA Tuning Fork</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>6</td>
<td>34</td>
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<td>40 MPH/64 KPH KA Tuning Fork</td>
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<td>$0.00</td>
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<td>7</td>
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<td>Counting Unit/Display Short Dash Mount</td>
<td>$0.00</td>
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<td>8</td>
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<td>Antenna Dash Mount</td>
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<td>$0.00</td>
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<tr>
<td>9</td>
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<td>Antenna Tall Deck Mount</td>
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<tr>
<td>10</td>
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<td>200-0648-00</td>
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<tr>
<td>11</td>
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<td>CAN/VSS Power Cable</td>
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<td>$0.00</td>
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<tr>
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<td>34</td>
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**Group Total** $81,906.00

**Continued on Next Page**
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### Valid Through: 04/06/2017  
### Lead Time: 21 working days

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| San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919 | P11206            | San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919 | Net 30 days       |
| **Ship To:**          | **Customer ID:** | **Ship To:**          | **Payment Terms:** |
| Accounts Payable      | Accounts Payable | Patrol Commander       |                   |
| UPS Freight LTL (3-5 Days) |                | Winkenwerder          |                   |

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H-GAC Contract EF04-15 Item Code: AA05

Vehicle Information:
2016-2017 Ford Interceptor SUV

This Quote or Purchase Order is subject in all respects to the Terms and Conditions detailed at the back of this document. These Terms and Conditions contain limitations of liability, waivers of liability even for our own negligence, and indemnification provisions, all of which may affect your rights. Please review these Terms and Conditions carefully before proceeding.
## Applied Concepts, Inc.

2609 Technology Dr.
Plano, TX 75074
Phone: 972-398-3780
Fax: 972-398-3781

### Quote

**# 2006843**

**Effective From:** 02/09/2017  
**Valid Through:** 05/10/2017  
**Lead Time:** 21 working days

### Customer Information

**Bill To:**
San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919

**Ship To:**
San Marcos Police Dept  
2300 I H 35 S  
San Marcos, TX 78666-5919

### Order Details

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<td>10</td>
<td>200-0996-30</td>
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<td>Dual Enhanced Ka-band Antenna</td>
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<td>10</td>
<td>200-0920-00</td>
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<td>$0.00</td>
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<td>5</td>
<td>10</td>
<td>200-0769-00</td>
<td>25 MPH/40 KPH KA Tuning Fork</td>
<td>$0.00</td>
<td></td>
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<td>200-0770-00</td>
<td>40 MPH/64 KPH KA Tuning Fork</td>
<td>$0.00</td>
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<tr>
<td>7</td>
<td>10</td>
<td>200-0345-00</td>
<td>Counting Unit/Display Short Dash Mount</td>
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<td>8</td>
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<td>200-0244-00</td>
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<td>10</td>
<td>200-0820-00</td>
<td>Dual Manual Kit</td>
<td>$0.00</td>
<td></td>
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<td>15</td>
<td>10</td>
<td>035-0361-00</td>
<td>Shipping Container, Dash Mounted Radar</td>
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<td></td>
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<td>16</td>
<td>10</td>
<td>060-1000-36</td>
<td>36 Month Warranty</td>
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<tr>
<td>17</td>
<td>10</td>
<td>155-2211-00</td>
<td>Remote Display Interconnect Cable</td>
<td>$0.00</td>
<td></td>
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</tbody>
</table>

### Group Total

**Group Total:** $22,500.00

### Payment Terms

**Product:** $22,500.00  
**Sub-Total:** $21,000.00

**Discount:** 1,500.00  
**Sales Tax:** 0%  
**Shipping & Handling:** $175.00

**Payment Terms:** Net 30 days

**Total:** $21,175.00

---

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**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

**Contract No.:** EF04-15  
**Date Prepared:** 2/9/2017

---

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

---

### Buying Agency
San Marcos Police Dept

### Contractor
Applied Concepts Inc./Stalker Radar

### Contact Person
Patrol Commander Brandon Winkenwerder

### Preparted By
Ed Kosanke

---

### Phone
512-753-2108

### Phone
972.801.4818

---

### Fax
512-753-2190

### Fax
972.801.4818

---

### Email
bwinkenwerder@sanmarcostx.gov

### Email
edkos@stalkerradar.com

---

### Product Code
AA05

### Description
Stalker Dual-SL

### Quote No.
2006843

---

**A. Product Item Base Unit Price Per Contractor’s H-GAC Contract:**

<table>
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<th>Cost</th>
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<tbody>
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**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**  
(Note: Published Options are options which were submitted and priced in Contractor’s bid.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

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**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

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**Subtotal From Additional Sheet(s):**

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<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**Subtotal B:** 0

---

**D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)**

| Quantity Ordered | 10 | X Subtotal of A + B + C: | 2250 | = Subtotal D: | 22500 |

---

**E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

<table>
<thead>
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<th>Description</th>
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<tr>
<td>Discount off of contract price</td>
<td>$150.00/unit</td>
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**Subtotal E:** -1325

---

**Delivery Date:** 25 working days

---

**F. Total Purchase Price (D+E):** 21175
CONTRACT PRICING WORKSHEET
For Standard Equipment Purchases

Contract No.: EF04-15  Date Prepared: 2/9/2017

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

<table>
<thead>
<tr>
<th>Buying Agency:</th>
<th>Contractor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Marcos Police Dept</td>
<td>Applied Concepts Inc./Stalker Radar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Prepared By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patrol Commander Brandon Winkenwerder</td>
<td>Ed Kosanke</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone:</th>
<th>Fax:</th>
<th>Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td>512-753-2108</td>
<td>512-753-2190</td>
<td><a href="mailto:bwinkenwerder@sanmarcostx.gov">bwinkenwerder@sanmarcostx.gov</a></td>
</tr>
<tr>
<td>972.801.4818</td>
<td>972.801.4818</td>
<td><a href="mailto:edkos@stalkerradar.com">edkos@stalkerradar.com</a></td>
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<table>
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<tr>
<td>AA05</td>
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:**

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</thead>
<tbody>
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**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**

(Note: Published Options are options which were submitted and priced in Contractor's bid.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>2015-2017 FI SUV Remote Display Mount, Ka Band</td>
<td>53</td>
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<tr>
<td>2015-2017 FI SUV Dash Antenna Mount, Ka Band</td>
<td>65</td>
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<tr>
<td>2015-2017 FI SUV Rear Antenna Mount, Ka Band</td>
<td>41</td>
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</tbody>
</table>

Subtotal From Additional Sheet(s):

Subtotal B: 0

**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**

(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>2015-2017 FI SUV Remote Display Mount, Ka Band</td>
<td>53</td>
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<tr>
<td>2015-2017 FI SUV Dash Antenna Mount, Ka Band</td>
<td>65</td>
</tr>
<tr>
<td>2015-2017 FI SUV Rear Antenna Mount, Ka Band</td>
<td>41</td>
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</tbody>
</table>

Subtotal From Additional Sheet(s):

Subtotal C: 159

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is: 7%

**D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)**

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Subtotal D: 81906

**E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

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Subtotal E: -4505

**Delivery Date:** 25 working days

**F. Total Purchase Price (D+E):** 77401
AGENDA CAPTION:
Consider approval of Resolution 2017-67R, approving the purchase and installation of law enforcement equipment for fourteen new Ford Police Utility Interceptor vehicles for the Police Department from Fleet Safety Equipment, Inc. through the Texas Local Government Purchasing Cooperative Buyboard Contract for Public Safety and Fire House supplies and equipment (contract #432-13) in the total purchase amount of $180,618.57; authorizing the Interim City Manager or his designee to execute the appropriate purchase documents on behalf of the City and declaring an effective date.

Meeting date: April 18, 2017

Department: Police Department - Chase Stapp, Chief (By Cheryl Pantermuehl, Purchasing Manager)

Funds Required: $180,618.57
Account Number: CAPVP.GENERALC.EQUIP.POLICE
Funds Available: $181,000
Account Name: CAPVP.GENERALC.EQUIP.POLICE

CITY COUNCIL GOAL:
Goal #7 - Maintain fiscal responsibility
Goal #8 - Provide for the efficient and effective delivery of services

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
The Texas Local Government Purchasing Cooperative (BuyBoard) has awarded a contract #432-13 for Public Safety and Fire House Supplies and Equipment to Fleet Safety Equipment, Inc., located in Houston, Texas. The total estimated cost to outfit and install the equipment is $180,618.57, which averages out to approximately $12,901.33 per vehicle.

This is for the purchase and installation of law enforcement equipment for fourteen (14) new Ford Police Utility Interceptor Vehicles. This purchase includes all items needed to fully equip the new marked Police vehicles, including emergency lighting and sirens, prisoner transport systems, consoles, computer mounts, gun locks, push bumpers, and other miscellaneous equipment needed to make the vehicles functional. Five (5) of the
fourteen (14) vehicles will be outfitted for SWAT members and will have weapons vault options included in those five (5) vehicles. The price also includes complete installation of all listed items.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE AND INSTALLATION OF LAW ENFORCEMENT EQUIPMENT FOR FOURTEEN NEW FORD POLICE UTILITY INTERCEPTOR VEHICLES FOR THE POLICE DEPARTMENT FROM FLEET SAFETY EQUIPMENT, INC. THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE BUYBOARD CONTRACT FOR PUBLIC SAFETY AND FIRE HOUSE SUPPLIES AND EQUIPMENT (CONTRACT #432-13) IN THE TOTAL PURCHASE AMOUNT OF $180,618.57; AUTHORIZING THE INTERIM 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 and installation of law enforcement equipment for fourteen (14) new Ford Police Utility Interceptor Vehicles for the Police Department from Fleet Safety Equipment, Inc. through the Texas Local Government Purchasing Cooperative Buyboard contract for Public Safety and Fire House Supplies and Equipment (Contract #432-13) in the total purchase amount of $180,618.57 is approved

PART 2. The Interim 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 2017.

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
Fleet Safety Equipment, Inc.
6525 Goforth St.
Houston, TX 77021

<table>
<thead>
<tr>
<th>P.O. No.</th>
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<th>Rep</th>
<th>Project</th>
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<th>Your Cost</th>
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</thead>
<tbody>
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<td>14</td>
<td>LIBERTY II DUO...</td>
<td>Whelen Liberty II DUO Wecan Series Lightbar Blue/Clear Red/Clear Front, Blue/Amber Red/Amber Rear w/ Alleys, Traffic Advisor Takedowns</td>
<td>2,400.00</td>
<td>33,600.00</td>
</tr>
<tr>
<td>14</td>
<td>L2-WDD48DE-I...</td>
<td>Wecan Liberty II DUO Wecan Series Lightbar Blue/Clear Red/Clear Front, Blue/Amber Red/Amber Rear w/ Alleys, Traffic Advisor Takedowns</td>
<td>2,400.00</td>
<td>33,600.00</td>
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<tr>
<td>14</td>
<td>STPKT83</td>
<td>STRAP KIT FOR SUV INTERCEPTOR - (no roof rack)</td>
<td>0.00</td>
<td>0.00</td>
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<td>14</td>
<td>CCSRN3</td>
<td>CENCOM SAPPHIRE SIREN SYSTEM</td>
<td>450.00</td>
<td>6,300.00</td>
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<td>14</td>
<td>SA315P</td>
<td>SA315P SPEAKER, BLACK PLASTIC</td>
<td>150.00</td>
<td>2,100.00</td>
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<tr>
<td>14</td>
<td>SAK44</td>
<td>SA315 MT KIT 11-12 EXPLORER</td>
<td>0.00</td>
<td>0.00</td>
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<tr>
<td>28</td>
<td>I2J</td>
<td>DUO LINEAR ION RED/BLUE BLK 2X Rear Side Windows</td>
<td>106.58</td>
<td>2,984.24</td>
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<td>14</td>
<td>RPLS34</td>
<td>New! Six Lamp, Two Piece, For Ford Police Interceptor Utility 2013-2017, Requires Six SOLO™ OEION* Lightheads</td>
<td>701.22</td>
<td>9,817.08</td>
</tr>
<tr>
<td>42</td>
<td>OEIONB</td>
<td>Blue New! SOLO™ Lighthead, Six Required, No Charge when Ordered with Outer Edge®</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

This Quote is Good for 30 Days

Subtotal

Sales Tax (8.25%)

Total

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Name / Address
San Marcos Police Department
Garner Ames
2300 IH 35 South
San Marcos, TX 78666

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<tbody>
<tr>
<td>42</td>
<td>OEIONR RED New! SOLO™ Lighthouse, Six Required, No Charge when Ordered with Outer Edge®</td>
<td>0.00</td>
<td>0.00</td>
<td></td>
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<tr>
<td>14</td>
<td>3SRCDCR 3” ROUND SPLIT RED/WHT COMPART</td>
<td>43.05</td>
<td>602.70</td>
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<td>14</td>
<td>3SC0DCR 3” ROUND COMPARTMENT LT WHITE Prisoner Area</td>
<td>39.38</td>
<td>551.32</td>
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<tr>
<td>14</td>
<td>SSFPP16 HEADLIGHT FLASHER 16 SUV INTER</td>
<td>67.73</td>
<td>948.22</td>
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<tr>
<td>14</td>
<td>SSF5150D SOLID STATE BRAKE LT. FLASHER</td>
<td>51.45</td>
<td>720.30</td>
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<td>14</td>
<td>FS-TOGGL3 3-Way Rocker Switch</td>
<td>5.00</td>
<td>70.00</td>
<td></td>
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<tr>
<td>14</td>
<td>FS-TOGGLE LED TOGGLE SWITCH ON/OFF BLACK</td>
<td>5.00</td>
<td>70.00</td>
<td></td>
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<tr>
<td>14</td>
<td>C-VS-2400-INUT-1 2013-2016 Ford Police Interceptor Utility Vehicle Specific 24” Console CON, VS, 24TMS, 0DG, HC, INUT, 13-16, Please Include the following faceplates: 21X C-EB30-CH7-1P 21X C-EB40-CCS-1P</td>
<td>291.61</td>
<td>4,082.54</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>C-CUP2-1 Internal Cup Holders CON, ACSY, CUPHLDR, IM, 4MS, DUAL,</td>
<td>28.67</td>
<td>401.38</td>
<td></td>
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<tr>
<td>14</td>
<td>C-ARM-103 Armrest For Top Mount, Console, Large Pad CON, ACSY, ARM, EM, LPD, FLP, H-ADJT,</td>
<td>80.57</td>
<td>1,127.98</td>
<td></td>
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<tr>
<td>14</td>
<td>C-LP1-PS2-USB Lighter Plug Outlet W/ 1 Switch &amp; 1 USB Cut Outs CON, ACSY, PLT, IM, 1.5MS, [1]LPO, [1]SWCO, [1],</td>
<td>57.79</td>
<td>809.06</td>
<td></td>
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</tbody>
</table>

This Quote is Good for 30 Days

Subtotal

Sales Tax (8.25%)

Total
**Quote**

**Date** 3/6/2017  
**Estimate #** 16987

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**Name / Address**  
San Marcos Police Department  
Garner Ames  
2300 IH 35 South  
San Marcos, TX 78666

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<tr>
<td>14</td>
<td>C-AP-0325</td>
<td>3&quot; Accessory Pocket, 2.5&quot; Deep CON, ACSY, BOX, IM, 3MS, 2.5d, 13-16</td>
<td>31.40</td>
<td>439.60</td>
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<td>14</td>
<td>BK2019ITU16</td>
<td>PB450L4 - WHELEN ION 2 Red and 2 Blue</td>
<td>682.18</td>
<td>9,550.54</td>
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<td>14</td>
<td>HK0810ITU16</td>
<td>PB6 VS Headlight Guard With PB5 Wrap</td>
<td>449.51</td>
<td>6,293.14</td>
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<td>14</td>
<td>WK0514ITU12</td>
<td>Window Barrier VS Steel Vertical</td>
<td>173.01</td>
<td>2,422.14</td>
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<tr>
<td>14</td>
<td>DK0100ITU12</td>
<td>Door Panel VS TPO Plastic Black Installs Over OEM Door Panels</td>
<td>193.55</td>
<td>2,709.70</td>
</tr>
<tr>
<td>14</td>
<td>PK1126ITU12</td>
<td>#10XL C Coated Polycarbonate With Expanded Metal Window Security Screen</td>
<td>670.71</td>
<td>9,389.94</td>
</tr>
<tr>
<td>14</td>
<td>QK0495ITU12</td>
<td>Full Rear Transport TPO Seat, with #12 Vinyl Coated Expanded Metal Cargo Partition,Center Pull Seat Belt</td>
<td>962.22</td>
<td>13,471.08</td>
</tr>
<tr>
<td>14</td>
<td>QK0491ITU12</td>
<td>SETINA FLOOR PAN FOR USE WITH SETINA TRANSPORT SEAT AND CARGO BARRIER</td>
<td>165.11</td>
<td>2,311.54</td>
</tr>
<tr>
<td>28</td>
<td>PP9640</td>
<td>V Drain</td>
<td>22.12</td>
<td>619.36</td>
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<tr>
<td>9</td>
<td>TK0248ITU12</td>
<td>CARGO BOX - DSC- Drawer, Sliding with Combination Lock - BSC- Base Sliding with Combination Lock</td>
<td>1,065.71</td>
<td>9,591.46</td>
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<tr>
<td>9</td>
<td>TPA9289</td>
<td>Cargo Radio Tray with no lock TRN</td>
<td>289.93</td>
<td>2,609.37</td>
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**Subtotal**

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## Quote

**Date**

3/6/2017

**Estimate #**

16987

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**Name / Address**

San Marcos Police Department  
Garner Ames  
2300 IH 35 South  
San Marcos, TX 78666

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**P.O. No.**

Terms

Rep

Project

NET 30

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<tbody>
<tr>
<td>9</td>
<td>TK0476ITU12</td>
<td>Easy lift cargo deck with lower tray</td>
<td>433.70667</td>
<td>3,903.36</td>
</tr>
<tr>
<td>5</td>
<td>FINTSUVL3PV-9</td>
<td>9” Level III Single Drawer Poly Vault for Ford Interceptor SUV. W/key override locks. Designed to be used with metal hinged floor for spare tire access</td>
<td>1,163.75</td>
<td>5,818.75</td>
</tr>
<tr>
<td>5</td>
<td>FINTSUVL1-2D-8</td>
<td>Level 1 2 drawer 8” depth upper drawers with Southco locks for Ford Interceptor</td>
<td>831.25</td>
<td>4,156.25</td>
</tr>
</tbody>
</table>
| 5   | CP-UV-CARGO-... | Stepped cargo mount  
- Replaces OEM spare tire cover  
- No-holes-drilled design  
- Features a pair of 120-lb. gas shocks  
- Lifts up to allow access to spare tire  
- Compatible with other manufacturers’ products  
- Can be trimmed to work with plastic seats, cargo partitiona nd K-9 inserts | 300.00 | 1,500.00 |
| 14  | INSTALL-LARG... | LARGE INSTALL KIT | 95.00 | 1,330.00 |
| 14  | SC-934-5-A | SANTA CRUZ GUNLOCK SYSTEM SC-934-5-A | 199.49 | 2,792.86 |
| 1   | *S & H - E8 | Shipping and Handling | 3,944.00 | 3,944.00 |

This Quote is Good for 30 Days

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**Subtotal**

**Sales Tax (8.25%)**

**Total**

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**Phone #**

866-829-8900

**Fax #**

713-842-3045

**E-mail**

houston@fleetsafety.com

**Web Site**

www.fleetsafety.com
Fleet Safety Equipment, Inc.
6525 Goforth St.
Houston, TX 77021

Date          Estimate #
3/6/2017      16987

Name / Address
San Marcos Police Department
Garner Ames
2300 IH 35 South
San Marcos, TX 78666

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</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>* INSTALL</td>
<td>INSTALLATION SERVICE FOR THE ABOVE ITEMS. BY FLEET SAFETY AT FLEET SAFETY. CUSTOMER IS RESPONSIBLE FOR THE TRANSPORTATION OF VEHICLE TO AND FROM FLEET SAFETY EQUIPMENT.</td>
<td>1,100.00</td>
<td>15,400.00</td>
</tr>
<tr>
<td>14</td>
<td>HGS-DWRAP</td>
<td>Door Wrap</td>
<td>221.43</td>
<td>3,100.00</td>
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<tr>
<td>14</td>
<td>Graphic Install</td>
<td>Graphics Installation</td>
<td>250.00</td>
<td>3,500.00</td>
</tr>
<tr>
<td>14</td>
<td>* Misc</td>
<td>Shipping of Vehicles from Houston to San Marcos Police Department</td>
<td>385.00</td>
<td>5,390.00</td>
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</tbody>
</table>

|              |              | Buy Board# 432-13                                                         |           |         |

This Quote is Good for 30 Days

Subtotal: $180,618.57

Sales Tax (8.25%): $0.00

Total: $180,618.57

Phone #      Fax #      E-mail                  Web Site
866-829-8900 713-842-3045 houston@fleetsafety.com  www.fleetsafety.com
AGENDA CAPTION:
Consider approval of Resolution 2017-68R, approving the purchase of Sensus Water Meters as a sole source procurement for the Public Services Department, Water/Wastewater Utilities Division from Aqua Metric Sales Company in the estimated amount of $2,388,261.00; authorizing the Interim City Manager or his designee to execute the appropriate purchasing documents on behalf of the City; and declaring an effective date.

Meeting date: April 18, 2017

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

Funds Required: $2,388,261.00 FY18-22

Account Number: 22000000.15035
Funds Available:
Account Name: Inventory - Materials

CITY COUNCIL GOAL:
Goal #5 - Maintain and improve City’s infrastructure
Goal #7 - Maintain fiscal responsibility
Goal #8 - Provide for the efficient and effective delivery of services

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]
NA

BACKGROUND:
The Local Government Code, Section 252.022(7) permits a limited exemption from the competitive bidding process if the items to be purchased are available from only one source. The City considers Sensus water meters a sole source procurement from Aqua Metric based on the City’s maintenance requirement for compatibility and interchangeability of the meters with existing inventory in conjunction with the Automated Meter Implementation (AMI) System.

The water meters 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 projected requirements to keep up with the ten-year change-out plan and new installations requiring multiple sizes are estimated as follows:

FY18 - $275,594
FY19 - $665,949
FY20 - $899,096
FY21 - $206,906
FY22 - $340,716

These estimated totals do not include replacement of meters due to unforeseen damage, which should be minimal.
RESOLUTION 2017-_______R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PURCHASE OF SENSUS WATER METERS AS A SOLE SOURCE PROCUREMENT FOR THE PUBLIC SERVICES DEPARTMENT, WATER/WASTEWATER UTILITIES DIVISION FROM AQUA METRIC SALES COMPANY IN THE ESTIMATED AMOUNT OF $2,388,261.00; AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASING DOCUMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

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

2. The City considers the Sensus Water Meters (the “Meters”) to be a sole source procurement based on the City’s maintenance requirements for compatibility and interchangeability of the Meters with existing inventory in conjunction with the Automated Meter Implementation System.

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

PART 1. The sole source procurement of Sensus Water Meters for the Public Services Department, Water/Wastewater Utilities Division from Aqua Metric Sales Company in the estimated amount of $2,388,261.00 is approved.

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

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

ADOPTED this the day of 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case,
City Clerk
January 11, 2017

To Whom It May Concern:

Sensus USA, Inc is pleased to announce that **Aqua Metric of Schertz, TX** is the exclusive Authorized Distributor of Sensus products and Value Added Reseller (VAR) for Sensus Services such as SaaS in the territory of Central and East Texas and the state of Louisiana.

Please contact Aqua Metric for all of your Sensus needs. Purchasing Sensus products and services from the authorized distributor for your area ensures that your products will be properly supported and warranted.

We look forward to the opportunity of providing your firm with quality water measurement equipment and support in the near future. Please feel free to contact me at **jim.grillo@sensus.com** regarding this or any other matter.

Sincerely

James C. Grillo
Regional Manager

Sensus USA, Inc
AGENDA CAPTION: Consider approval of Resolution 2017-69R, approving an agreement with TMT Solutions, Inc. in connection with the Surface Water Treatment Plant and the Wastewater Treatment Plant Supervisory Control and Data Acquisition Systems for the Public Services Department in the total amount of $174,279.82 which includes five years of support; authorizing the Interim City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

Meeting date: April 18, 2017

Department: Public Services - Tom Taggart, Executive Director of Public Services (by Cheryl Pantermuehl, Purchasing Manager)

Funds Required: $174,279.82
Account Number: 22006330 60128
Funds Available: $300,000
Account Name: Software

CITY COUNCIL GOAL:
Goal #5 Maintain and Improve City’s Infrastructure; Goal #7 Maintain Fiscal Responsibility

COMPREHENSIVE PLAN ELEMENT(s): Parks, Public Spaces, and Facilities; Goal 1 Well-maintained public facilities that meet the needs of our community

BACKGROUND: The current System Control and Data Acquisition (SCADA) system at the Surface Water Treatment Plant and Wastewater Treatment Plant is outdated and no longer supported by its provider National Instruments. A SCADA system allows the plant operators the ability to monitoring operations and control critical equipment in the plants from certain computer terminals. The SCADA replacement project was implemented to replace the current system with an updated and fully supported system.

On December 22, 2016 the City received four (4) for the Surface Water Treatment Plant and the Water Treatment Plant SCADA Systems (RFP# 217-002). A selection committee consisting of treatment plant personnel, instrumentation and control specialists, and information technology personnel met, evaluated, and ranked the proposals according the criteria set forth in the RFP. TMT Solutions, Inc. a San Marcos company, was the highest ranked Proponent with a proposal in the amount of $174,279.82.

This contract is for the purchase, design, implementation and testing of the SCADA system at both the Surface Water Treatment Plant which is operated by Guadalupe Blanco River Authority and the Wastewater...
Treatment Plant which is operated by CH2M. The Agreement also includes necessary training and support.
RESOLUTION 2017-_______R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AN AGREEMENT WITH TMT SOLUTIONS, INC. IN CONNECTION WITH THE SURFACE WATER TREATMENT PLANT AND THE WASTEWATER TREATMENT PLANT SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEMS FOR THE PUBLIC SERVICES DEPARTMENT IN THE TOTAL AMOUNT OF $174,279.82 WHICH INCLUDES FIVE YEARS OF SUPPORT; AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Agreement with TMT Solutions, Inc. in connection with the Surface Water Treatment Plant and Wastewater Treatment Plant Supervisory Control and Data Acquisition (“SCADA”) Systems for the Public Services Department in the total amount of $174,279.82, which includes five (5) years of support, is approved.

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

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

ADOPTED this the day of 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case,
City Clerk
SURFACE WATER AND WASTEWATER TREATMENT PLANT SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEMS INTEGRATION AGREEMENT

CONTRACT NUMBER: 217-002

This Agreement (the “Agreement”) is effective this the 18th day of April, 2017 (“Effective Date”) by and between the City of San Marcos, Texas, (the “City”), 630 East Hopkins, San Marcos, Texas 78666 and TMT Solutions, Inc. 4041 FM 1978, San Marcos, Texas 78666 (“TMT” or “Contractor”) for the provision of Surface Water Treatment Plant and Wastewater Treatment Plant Supervisory Control and Data Acquisition Systems (the “Services or “Project(s)”).

The City and the Contractor agree as follows:

RECIDALS

WHEREAS, the City issued a Request for Proposals (RFP # 217-002) on November 20, 2016 for the Contractor’s provision of design, implementation, configuration and testing of Supervisory Control and Data Acquisition (“SCADA’) systems for the Surface Water Treatment Plant (“SWTP”) and the Wastewater Treatment Plant (“WWTP”) in order to provide a unified SCADA software solution for both the SWTP and the WWTP that includes a redundant operation that will automatically failover to a backup system; and

WHEREAS, The Contractor responded to the City’s RFP # 217-002 with a Proposal dated December 22, 2016;

WHEREAS, The Contractor represents that it performs services of the nature described in this Agreement (which includes all exhibits hereto) and in its proposal, as amended (the “Proposal”) in its normal and customary course of business and that it understands that the City, compared to the Contractor, is relatively unfamiliar with the types of products and services described in the Contractor’s Proposal and the City, in executing the Agreement, relies upon the Contractor’s superior knowledge of these types of products and services; and

WHEREAS, after careful evaluation the City has determined that, the Contractor is qualified to provide the products and services included in this Agreement, based on the Contractor’s proposal, and the City wishes to enter into a contract with the Contractor to provide same;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, the Contractor and the City agree that the Contractor will provide all products and services necessary for the satisfactory completion of this Project, and the City will pay prices for said products and services as set forth in this Agreement.

ARTICLE 1
CONTRACTOR’S SERVICES AND RESPONSIBILITIES

1.0 STANDARDS OF PERFORMANCE

1.0.1 The Contractor’s Basic Services consist of the services described in Section 1.1 and will be performed by the “Contractor in partnership with Inductive Automation (the “Software
1.0.2 The Contractor will not subcontract any work under this Agreement without prior written approval from the City. The Contractor will specify any work or services subcontracted under this Agreement by separate written Agreements and those Agreements will be subject to each provision of this Agreement.

1.0.3 Any provisions in this Agreement pertaining to the City’s review, approval and/or acceptance of written materials prepared by the Contractor and/or its subcontractor in connection with this Agreement will not diminish the Contractor’s responsibility for the materials.

1.0.4 The Contractor will perform all of its services in coordination with the City. The Contractor will advise the City of data and information the Contractor needs to perform its services and the Contractor will meet with City representatives at mutually convenient times to assemble this data and information.

1.0.5 The Contractor certifies that it is an Ignition Level 4 “Premier” Certified Integrator and that it will provide a team of Ignition programmers with experience in SCADA, Information Technology, Network Security, Data Management and a licensed, experienced Surface Water ‘B’ operator. In addition, the Contractor will have available, a fully staffed electrical team, a drafting department fluent in CAD and 3-D Drafting, and a UL508 Certified Panel Shop if necessary.

1.0.6 Andrew Ober, Project Manager, is the Contractor’s Project Representative assigned to this Project. The Contractor’s representative will make sure that the Project is managed so that the Project finishes by the mutually approved dates. Furthermore, it is the Project Representative’s responsibility to set meeting dates and facilitate these meetings. The Project Start (“Project Start Date”) will occur ten (10) calendar days from the date the San Marcos City Council approves this Agreement. The schedule for completion of this Project is included in Subsection 1.1.17 and the milestone payment schedule is included in Article 14. The Contractor will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the Contractor cannot agree to the substitution of the Project Representative, the City may terminate this agreement in accordance with Article 7.

1.1. **SCADA SYSTEM DEVELOPMENT**

The Contractor will:

1.1.1 Poll all device tags required from the SWTP and WWTP and develop all required graphical screens. The City’s existing screens will be used as a guide but the City will have access to the development team to customize those screens as needed. The Contractor will design these screens to allow simple and intuitive navigation as well as for quick accessibility from the home screen, and the navigation bar will always be accessible to allow switching between any major screens with one click. The screen design will include standard symbol factory graphics and will also rely on the use of templates to make development efficient and easily scalable. The Ignition platform will allow for alarming to be displayed with a visual alert on the screen and/or an audible alert from the machine’s speakers. Alarms are logged and can be automatically sent to individuals using different mediums including email or SMS
messages. Finally, the Contractor will include a Sierra Wireless AirLink cellular modem, which will be utilized as a gateway to allow those SMS messages to be distributed to specified devices.

1.1.2 Create customized reports using the Ignition Report Writer module based on the customer’s feedback and needs.

1.1.3 Migrate Legacy data from Lookout to the new database residing on the City’s Microsoft SQL Server.

**Software License Grant**

The Contractor will:

1.1.4 As of the Effective Date established above, the Contractor grants to the City, through its Software Provider, Inductive Automation, a non-exclusive, non-transferable, royalty-free, revocable license to use Ignition Software products (the “Software Products”) as those products are detailed in the Software License Agreement Exhibit A. The Ignition HMI software will meet and exceed the City’s requirements and will allow flexibility for future growth. This license is revocable by the Contractor if the City fails to comply with the terms and conditions of this Agreement, including without limitation, the City’s failure to pay the Software license fees in full when due. Upon the City's acceptance and payment in full for the Inductive Software Products, the license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.

1.1.5 Inductive Automation, as the Software Provider, will retain ownership of, including all intellectual property rights in and to, the Software Products.

1.1.6 The Software Products are not licensed to perform functions or processing for subdivisions or entities that are not named in this Agreement.

1.1.7 The NCC Group, Inc. (“NCC”) the Software Provider’s escrow services company, will maintain the Software Escrow Agreement (Exhibit B) under which the Software Provider through the Contractor will place the source code of each major release of the Software Products. At the City's request, NCC will add City as a beneficiary to such escrow agreement. The City will pay the source code escrow agreement fee as stated in Article 14 directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary.

1.1.8 License Fees. The City agrees to pay the Contractor and the Contractor agrees to accept from the City as payment in full for the license granted herein, the Software fees set forth in Article 14 of this Agreement.

1.1.9 Verification of the Software Products. Within 15 calendar days after the Project Start Date, the City will use its own process with assistance from the Contractor as necessary to verify that the Software Products perform all of the functions set forth in the Standardization and Analysis Verification Test (Exhibit C) (excluding customization, modifications, etc.). This Verification Test will constitute verification that the Software Products conform to the then-current User Guides provided by the Contractor upon completion of software customization and the functional descriptions of the Software Products in the Contractor's written proposal to the City.
Verification as described herein will be final and conclusive except for a latent defect, fraud, and/or a gross mistake that amounts to fraud. In the event verification is not final and conclusive, pursuant to this paragraph, the Contractor will promptly correct any function of the Software Products that failed verification. In the event Contractor cannot correct the cause thereof, the City may invoke its rights under Section 7.

The Contractor will promptly correct any functions of the Software Products that failed verification.

**Scada System Design and Implementation**

For both the SWTP and the WWTP, the Contractor will:

1.1.10 assist the City with hardware configurations at both the SWTP and the WWTP as follows:

   a) Ensure that the hardware configurations are installed properly.
   b) Ensure that the hardware configurations automatically alternate to the appropriate redundant server when the Production Server goes down as detailed in the diagram attached as Exhibit D.
   c) Ensure that the SCADA Systems (the “Systems”) can be backed up on a daily basis.
   d) Provide the City with an easy to understand diagram of how the Systems are installed at both sites

1.1.11 Design and Build Screens to cover the entire SWTP and WWTP.

   a) Meet with the City and its authorized agents to determine what is required on the Ignition Software screens;
   b) Ensure that the City signs off on all screens as acceptable.
   c) Develop screens;
   d) Assist designated City personnel in developing test plans;
   e) Install the screens on the system;
   f) Assist City with the testing of the software see Exhibit C; and
   g) Ensure that the City signs off that accepted screens are working properly.

1.1.12 Design alarms and thresholds to cover the entire SWTP and WWTP.

   a) Hold meetings with the City and its authorized agents to determine which alarms and thresholds the City requires for the SMS (texting or Short Message Service) messaging system;
   b) Ensure that the City signs off on the alarms and thresholds for all I/Os (Input and Output);
   c) Develop the alarms and thresholds;
   d) Assist the City in developing test plans;
   e) Install alarms and thresholds on the system;
   f) Ensure that the City tests the software for alarms and thresholds for all I/Os;
   g) Ensure that the City signs off that alarms and thresholds working properly

1.1.13 User Rights and Permissions for the SWTP and the WWTP:
a) Assist the City in making User Rights and Permissions decisions.
b) Make changes to the database to implement those decisions.
c) Test the changes and make sure they work correctly.

1.1.14 Setup all the I/O Devices. The Contractor will ensure that all I/O devices are correctly connected at both sites.

1.1.15 Write the conversion of data for the existing software currently in place from National Instruments Lookout System for the Project to include:

a) Convert all existing historical data to Ignition from the Citadel Database;
b) Write the code to convert the data;
c) Convert the data to Ignition; and
d) Test the data in Ignition.

Software Installation

The Contractor will:

1.1.16 Implement the Project in five (5) phases which includes software installation at both sites. The phases are:

   a) Database Connectivity;
   b) Development;
   c) Thorough Testing;
   d) Training, and
   e) Support.

The Contractor will install the software on multiple physical servers for redundancy and failover. The software will include server/client installs in an isolated network, segregated or VLAN from the rest of the network. The software will deliver alerts, audible alarms for maintenance, and threshold instances from the previous software. The database connectivity will provide different levels of permissions and rights for users throughout the system. The Contractor will ensure that data is backed up daily, and will be able to be restored in a reasonable time frame. It will also provide numerous reports for trending and previous historical data. The Consultant will design and build screens for all the I/Os for the Surface Water and Wastewater Plants. Alarms and Alert thresholds will be designed by the Consultant and put in place, to be retrieved via email, mobile device, etc. which include iPhone and Android smartphones along with tablets that run Mac OS, Android, or Windows. The Consultant will ensure that testing consists of user acceptance for Project screens that are being developed for all the I/Os for each plant. The Consultant will export the Legacy database from the previous software and imported into the new software. The systems will run, with complete functionality, of both systems simultaneously side-by-side for testing purposes and approval.

The Consultant will provide adequate training on each screen that is developed for operators, administrative personnel, IT personnel, and all other required individuals. The Contractor will provide an operational manual and documentation at this time.

Support will include Knowledge Based Training videos, and 24/7/365 via email or on-call.
Project Schedule

1.1.17 The following High-Level Timeline/Schedule includes:

1. Installation of Software – Total 5 days
   a. Installation & Configuration at SWTP – 2 days
   b. Installation & Configuration at WWTP – 2 days

2. Design and Build Screens – Total 40 days
   a. SWTP Tag Development - 3 days
   b. WWTP Tag Development – 9 days
   c. SWTP Tag Screen Development – 15 days
   d. WWTP Tag Screen Development – 28 days
   e. SWTP Reporting Design & Testing – 5 days
   f. WWTP Reporting Design & Testing – 5 days
   g. DFS HyperTACII (API) Integration – 10 days

3. Design Alarms & Thresholds – Total 7 days
   a. SWTP Alarms & Thresholds – 2 days
   b. WWTP Alarms & Thresholds – 5 days

4. Convert Lookout Historical Data – Total 10 days
   a. SWTP Data Export – 2 days
   b. WWTP Data Export – 2 days
   c. Develop- script to insert data into new database – 5 days

5. Training – Total 25 days
   a. System Documentation – SWTP – 5 days
   b. System Documentation – WWTP – 5 days
   c. SWTP End User Training - 4 days
   d. WWTP End User Training – 4 days
   e. SWTP Administrative Training – 2 days
   f. WWTP Administrative Training – 2 days
   g. IT Department Training – 1 day

Database Connectivity

The Contractor will:

1.1.18 Enable Ignition to connect to a redundant physical server onsite at both locations using credentials provided by the City. During operation, if connectivity or a problem with the primary server renders it inoperative, then the secondary server with the database will fail over and start working immediately. If both servers are down, because of a catastrophic event, the Consultant will bring up a virtual server from a remote location and reroute the City’s access to the server, until the primary is operational and running. The City is responsible for the permission and access to the database, and will provide the Contractor with the appropriate rights to install, configure, and troubleshoot, remotely. The Contractor
will configure the gateway application to automatically create a backup on a nightly basis, and store to a location specified by the City or set up by the Contractor if needed at no additional cost to the City. The Contractor will create a backup schedule for the database for storage to a location specified by the City at no additional cost. In addition, the Contractor will create required database tables and fields through the Ignition application but custom database tables and fields will be created using SQL Management Studio. These fields will be accessible in the Ignition application or through the Ignition reporting module.

**Reporting**

The Contractor will:

1.1.19 Determine what reports the City needs the Ignition Software to produce.
1.1.20 Write the reports; and
1.1.21 Test the reports in accordance with Exhibit C.

**Training**

The Contractor will:

1.1.22 Provide onsite training to operators, administrative personnel, IT personnel, and all other required individuals as specified in the City’s RFP and as is included on the Contractor’s website. The Contractor will provide an operational manual(s), which will include an overview and instructions on the HMI operation along with any administrative functionality.

**Testing**

1.1.23 Perform user acceptance testing throughout the Project as screens are being developed. This schedule will allow the City to be closely involved in the design and look of the Project along with ensuring the end product meets all expectations. The existing SCADA system of Lookout and the new SCADA system of Ignition will be running in parallel during this process, which will allow the customer to compare functionality of the two systems side-by-side for testing purposes.

**Support**

1.1.24 The Contractor will provide support through the Software Provider as an online searchable knowledge base along with a user forum and training videos included in an online university. Support also includes free software upgrades and email support with a 48 hour turnaround time. The knowledge base is searchable by keyword but is not context searchable. Outside of the online help from Inductive Automation, the Contractor will provide support 24/7/365.

1.2 **ADDITIONAL SERVICES/CHANGE OR DELAY IN SERVICES/PROJECT ASSUMPTIONS**

1.2.1 The City may direct the Contractor to perform services outside of the scope of the Basic
Services described in Section 1.1 above. The Contractor will submit a written estimate of fees to the City and obtain the City’s authorization before initiating any additional services.

1.2.2 Each material change (deletion or addition) in the services to be provided by the Contractor must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Exhibit E. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Article 14 of this Agreement. The approval of the San Marcos City Council is necessary for all additional services the compensation for which exceeds $50,000.00.

1.2.3 The Contractor will complete its Services in accordance with the schedule included in Subsection 1.1.17. No charge will be made by the Contractor for any hindrance or delay from any cause if the hindrance or delay is caused solely by the Contractor during the progress of any portion of its work contemplated by this Agreement. The City may grant an extension of time at its discretion in the event of such delay in services is caused by the Contractor or the Contractor may charge for the completion of the work, provided it has satisfied that such delays or hindrances were due to causes beyond the reasonable control of the Contractor or the acts of omission or commission by the City. Any such extension of time will be provided utilizing the City’s Authorization of Change in Services form included as Exhibit E.

1.2.4 The City and the Contractor understand that Inductive Automation provided a software certificate to the Contractor on 12/8/2016. The Contractor has been a Premier Integrator since January 2016. The Contractor is committed to working in concert with Inductive Automation along with the City’s IT Department to provide a City with a turn-key SCADA software solution. This includes assisting with the network design and server configuration at both the SWTP and WWTP.

1.2.5 Both the City and the Contractor assume and agree that both systems (SWTP and the WWTP):

a) Offer unlimited licensing;
b) Offer unlimited tags, users, reports and I/O devices per gateway/server;
c) Are IT friendly;
d) Work on any operating system that can run Java JRE;
e) Include single file backup and restore that can be automated;
f) Include single file install per gateway;
g) Have alarming capabilities via email and SMS;
h) Are fully redundant systems with automatic fail over and each plant will have primary gateway with a redundant gateway;
i) Include built in reporting systems to create custom reports;
j) Distribute reports automatically on a schedule;
k) Can save to a location or distribute via email;
l) Can use Java and Python coding to further improve their system;
m) Provide unlimited user licenses per server package;
n) Are easy to use, powerful and the design interface allows for a short Project turnaround time; and
n) Connects with all major database providers.

In addition, both the City and the Contractor understand and agree that the City will contract
separately with Data Flow Systems ("DFS") for any changes that need to be made within the HyperTACII system to work with the new SCADA system. Furthermore, the City agrees that the use of SMS modems will require the City to purchase a SIM card through a cellular provider for the SMS gateway. Finally, both parties understand that the Contractor will utilize two sets of redundant gateways. One redundant set will be dedicated to the Wastewater Treatment Plant, the second redundant set to the Surface Water Treatment Plant.

ARTICLE 2
THE CITY’S RESPONSIBILITIES

The City will:

2.1 Provide full information to the Contractor regarding the City’s requirements for the Contractor’s services under this Agreement. The City will furnish the Contractor with copies of data and information in the City’s possession needed by the Contractor at the Contractor’s request. The City will provide this information and render decisions expeditiously for the orderly progress of the Contractor’s services.

2.2 Designate Matthew Williams, Business Analyst 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 Contractor and promptly render responses to the Contractor on issues requiring a decision by the City.

2.3 Provide access to and make all necessary provisions for the Contractor to enter public and private property as required for the Contractor to perform its services under this Agreement.

2.4 Provide all necessary hardware as required for Project implementation.

2.5 Bear all other costs incidental to this Article.

ARTICLE 3
REIMBURSABLE EXPENSES

3.1 Reimbursable expenses, including such things as expenses for reproduction of documents, auto travel mileage (at the prevailing IRS rate), delivery charges, long distance communications and freight are included in the Contractor’s basic services compensation.

ARTICLE 4
PAYMENTS TO THE CONTRACTOR

4.1 PAYMENTS FOR BASIC SERVICES

The City will pay the Contractor for Basic Services based on the milestone schedule included in Article 14, following receipt by the City of the Contractor’s invoices showing direct and indirect labor costs, expenses for materials and supplies and any other reimbursable expenses if applicable and appropriate payment requisitions less any disputed amounts, pending resolution thereof.
4.2 **PAYMENTS FOR ADDITIONAL SERVICES**

The City will pay the Contractor for Additional Services as those are defined in Section 1.2, monthly upon presentation of the Contractor’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 Contractor and the City.

4.3 **TAXES**

The Contractor will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from the payment of such taxes and the Contractor may retrieve a resale certificate for use on this Project from the State of Texas Comptroller’s website.

**ARTICLE 5**

**CONTRACTOR’S RECORDS**

5.1 The Contractor will keep all of its expense records related to the Agreement in a recognized accounting format acceptable to the City and these records will be available to the City at mutually convenient times.

5.2 The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for the Agreement will have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

5.3 The Contractor 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 the Agreement. Information provided pursuant to this subsection will be held in strict confidence to the extent permitted by applicable law.

**ARTICLE 6**

**OWNERSHIP AND USE OF DOCUMENTS**

6.1 All documents prepared by Contractor specifically for the City in connection with the Agreement are the property of the City whether any project related to this Agreement is executed or not.

6.2 The City will maintain ownership and control of all data files generated by the City using any software provided by The Contractor.

6.3 The Contractor will retain all of its records and supporting documentation relating to the Agreement, and not delivered to the City, for a period of three years, except that in the event the Contractor 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 7
TERM; TERMINATION OF AGREEMENT

7.1 The term of this Agreement begins on the effective date established in the first paragraph of the Agreement. Support (Basic Care by Inductive Automation) will extend for five (5) years from the effective date of this Agreement unless the Agreement is terminated under Sections 7.2 or 7.3 below. The Contractor, not the Software Provider, will assume all risk for the provision and functionality of the Software Products. Both the City and the Contractor assume the Project/Services will be finally completed in accordance with the schedule negotiated between the Contractor and the City and included in Subsection 1.1.17.

7.2 The Agreement may be terminated by the City upon 15 calendar days prior written notice and by the Contractor upon 30 calendar 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. Each party will provide the other with at least a 30 calendar day period of opportunity to cure before the it initiates termination.

7.3 The City may terminate this Agreement for convenience and without cause upon at least 30 calendar days prior written notice to the Contractor. In the event of termination for convenience the City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called “manufacturing material”) as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the agreement. Upon such termination, the Contractor will (a) stop work to the extent specified (b) terminate any subconsultants as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the agreement (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the Contractor can demonstrate to the satisfaction of the City, using its standard record keeping system, have resulted from the termination, The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, the Contractor will submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract will not increase the obligation of the City beyond what it would have been had the subcontract contained such a clause.

ARTICLE 8
INSURANCE AND INDEMNITY

8.1 The Contractor, at its own expense 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 solely from the negligent or intentional wrongful acts, errors or omissions of the Contractor, 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 alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising solely from any negligent or intentional wrongful act, error or omission of the Contractor and/or its agents and/or employees. This obligation by the Contractor will not be limited because of the specification of any particular insurance coverage required under this Agreement.

8.2 Intellectual Property Infringement Indemnification.

The Contractor, at its own expense, will completely and entirely hold harmless, indemnify and defend the city from any claim or suit brought against the city involving an alleged violation of patents or copyrights resulting from the contractor’s or the city’s use of any software, documentation, and/or data provided or developed by the contractor in connection with the services and products described in the agreement. The city will provide the contractor with a written notice of any such claim or suit. The city will assist the contractor, in reasonable ways, in the preparation of information helpful to the contractor in defending the city against such a claim or suit. The city retains the right to offset against any amounts owed the contractor any such monies expended by the city in defending itself against such claims. Should a court order be issued restricting the city’s use of any product at the city’s sole option, the contractor will, at the contractor’s sole expense, (1) purchase for the city the right to continue using the contested product(s), or (2) provide substitute products to the city which are, in the city’s sole opinion, of equal or greater quality, or (3) refund all monies paid to the contractor by the city for the product(s) and for all reasonable expense related to the installation and conversion of new products. This obligation by the contractor will not be limited by reason of the specification of any particular insurance coverage in the Agreement.

8.3 The Contractor will procure and maintain at Contractor’s expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Contractor or Contractor’s agents, subcontractors or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Contractor has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 calendar days written notice has been given to the City. Failure of the Contractor to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Contractor to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Contractor’s obligation to maintain the required insurance coverage specified herein. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier’s right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers’ Compensation Insurance and/or Employer’s Liability: In accordance with the provisions of the Workers’ Compensation Act of the State of Texas and/or $500,000.00/$500,000.00 for Employer’s Liability.

Liability Insurance: (1) Commercial general liability insurance (standard ISO version) with
a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises/operations, products/completed operations, independent consultants as applicable (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than $1,000,000 per occurrence (3) professional liability coverage to cover lawful claims arising in connection with the Project in the combined single limit amount of at least $1,000,000.00 as applicable. Should the Contractor not own any automobiles, the business auto liability requirement will be amended to allow the Contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability or separate Business Auto Policy.

The stated limits of insurance required by this Paragraph are minimum only—they do not limit the Contractor’s indemnity obligation, and it will be the Contractor’s responsibility to 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 Contractor from compliance with these requirements.

**ARTICLE 9**

**WARRANTIES**

9.1 **GENERAL WARRANTIES.**

The Contractor represents and warrants that:

9.1.1 All information provided in its proposal is true and correct.

9.1.2 All computer software and related services, as applicable, provided by the Contractor to the City under this Agreement are merchantable and fit for their intended purposes. The Contractor acknowledges that the intended purposes for the services/software/hardware as stated and described in the City's RFP, TMT’s Proposal and the Scope of Services for this Agreement.

9.1.3 All services performed by or for it under this Agreement will be performed on a timely basis and in a good, professional, and competent manner by persons having specialized skill and knowledge as to the services being performed.

9.1.4 The City will have quiet enjoyment of all computer software that may have been provided by the Contractor under this Agreement, and that no change in the organization, structure or ownership of the Contractor will in any way interfere or diminish the City's use, possession and enjoyment of the software.

9.1.5 Any training provided by the Contractor as part of its Services under this Agreement will be sufficient to enable the City's staff to use fully the required computer software for the City's intended purposes.

9.1.6 The Contractor will warranty the work performed at the SWTP and the WWTP for six
months each from the date of completion and acceptance of all services performed and Software Products provided

9.2 **WARRANTY FOR CORRECTION OF DEFECTS IN SOFTWARE**

The Contractor represents and warrants that:

9.2.1 Warranty for Correction of Defects in Software. The Contractor is providing the City with Software Products in the course of its engagement with the City, and it warrants that all computer software provided by the Contractor under the Agreement will meet each of the requirements and representations described in the Agreement, including without limitation all representations of the Contractor included in its proposal. If errors or deficiencies are discovered after the date of the formal acceptance of the software by the City, the Contractor warrants that it will correct the defects without charge to the City, for a period of one (1) year from the date of the discovery. This correction may take the form of software additions, modifications, or deletions, or the provision of substitute software which meets the system functions as specified in the Agreement. All software additions, modifications, and substitution will integrate fully with other software and hardware packages in the system.

**ARTICLE 10**

**MISCELLANEOUS PROVISIONS**

10.1 This Agreement is governed by the law of the State of Texas. This Agreement is to be performed in Hays County and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas. In the event of a dispute in federal court, venue will be in the United States District Court for the Western District of Texas, Austin Division.

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 Contractor 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 Contractor hereby affirms that neither the Contractor, the Contractor’s firm nor any of its associates or employees have 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 Contractors to provide consulting 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 is not considered a valuable gift for the purposes of this Agreement. The Contractor further agrees that none of its paid personnel will be employees of the City or have any contractual relationship with the City. All activities, investigations, and other efforts made by Contractor pursuant to the Agreement will be conducted by employees, associates, or independent contractors of the Contractor.
10.5 In performing the services required under this Agreement, the Contractor will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Contractor 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, disability or ancestry. A breach of this covenant by the Contractor may be regarded as a default 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 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 severable. Paragraph and Section headings included in the Agreement are for convenience only and are not intended to define or limit the scope of any provisions of the Agreement.

10.8 All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and this Agreement does not create rights in third parties.

10.9 In performing all services under this Agreement, the Auditor, its subcontractors, successors and assigns will comply with all local, state and federal laws.

10.10 The City will have the right to declare the Contractor in breach of the Agreement for cause when the City determines that this Agreement has not been performed in accordance with its written terms and conditions.

10.11 In the event of a default or breach of this Agreement by the Contractor, 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 Contractor will not waive the City’s ability to enforce the Agreement after that time.

10.12 The City’s execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability 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.

10.13 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 Contractor will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.
10.14 In the event that the performance by either the City or the Contractor 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.

10.15 If applicable, the Contractor will pay all license fees, royalties and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed Project.

10.16 It is expressly agreed that the Contractor is an independent contractor and not an employee, agent partner or joint venturer with the City. The Contractor will not pledge or attempt to pledge the credit of the City.

10.17 It is the City’s intent to be proactive with regard to the environment. The City encourages “value purchasing” of environmentally friendly products. The Contractor is encouraged to utilize green solutions in performing any services under the Agreement, as appropriate.

10.18 The Contractor’s attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All consultants, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate this Agreement for noncompliance with this ordinance.

10.19 The Contractor understands that funds for the payment for work performed by the Contractor under this Agreement have been provided through the City’s budget approved by the 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. The City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City 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 City extends from October 1st of each calendar year to September 30th of the following calendar year.

10.20 The Contractor is required to electronically generate 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. This 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

10.21 The Contractor will perform all services as is prudent considering the ordinary professional skill and care of a competent contractor and in all cases in accordance with the schedule negotiated with the City. The Contractor has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material, workers,
and weather or otherwise. No charge will be made by the Contractor for any hindrance or delay from any cause whatever during the progress of any portion of its work contemplated by the specifications, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to the acts of omission or commission by the City. It is agreed that the granting of such extensions of time will in no instance exceed the time actually lost by Contractor for reason of such causes, provided that the Contractor will give the City immediate notice in writing of the cause of the detention or delay. Any such extension of time will be provided utilizing the City's Authorization of Change in Services form included as Exhibit E.

ARTICLE 11
SUCCESSORS AND ASSIGNS

11.1 The City and the Contractor, 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 Contractor will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

11.2 The Contractor will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

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 Contractor and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and Contractor regarding the intent of this Agreement, both parties agree that they will construe this Agreement in a manner consistent with the City’s Request for Proposals, the Contractor’s proposal response and the public record of the City Council’s approval of this agreement as applicable. The Contractor’s expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. This Agreement may be amended only by written instrument, which must be signed by both the City and the Contractor. The San Marcos City Council must approve any such authorization of change in services or amendment if the compensation for which exceeds $50,000.00.

12.2 Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein. This Agreement includes the following attachments/exhibits:

Exhibit A–Software License Agreement
Exhibit B–Multi-License Software Escrow Agreement
Exhibit C–Standardization and Analysis Verification Testing Plan
Exhibit D–Server Configuration for SWTP & WWTP
Exhibit E–Authorization of Change in Service Form

Contractor Proposal (incorporated by reference herein for all intents and
purposes)  
City Request for Proposals 217-002 (incorporated by reference herein for all intents and purposes)

In the event of conflict between any of the portions of this Agreement, including Exhibits hereto, both parties will adhere to the following order of precedence:

This Agreement  
Software License Agreement  
Verification Testing Plan  
Contractor Proposal  
City RFP

ARTICLE 13  
NOTICES

13.1 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 of San Marcos  
City Manager  
630 E. Hopkins  
San Marcos, Texas 78666

To the Contractor:  
TMT Solutions, Inc.  
Mike Marx, President  
041 FM 1978,  
San Marcos, Texas 78666

ARTICLE 14  
BASIS OF COMPENSATION

14.1 The City will compensate the Contractor, in accordance with Article 4, Payments to the Contractor, and the other terms and conditions of this Agreement, as follows:

14.2 The total of all fees and expenses (at direct cost) to be paid to the Contractor for Basic Services as described in Sections 1.1 through 1.4 is a not to exceed fee of $174,279.82. Reimbursable expenses, include such things as expenses for reproduction of documents, auto travel mileage at the prevailing IRS rate, lodging, delivery charges, long distance, communications and freight and are included in the total compensation.

The Contractor will be paid in accordance with the following milestones:

1) Cost of Software, Maintenance, and Source Code Escrow Agreement are due upon the Project Start date established in Subsection 1.0.6. (See Line Items: 15-21 below)  
$106,702.82

2) Labor and Travel shall be billed on a progressive structure:
   a) 30% of the total amount due at 30% completion. - $20,273.00 (Estimated at 30 days
after the effective date of the Agreement)
b) 30% of the total due at 60% completion. - $20,273.00 (Estimated at 60 days after effective date of the Agreement)
c) 30% of the total due at 90% completion. - $20,273.00 (Estimated at 90 days after the effective date of the Agreement-Substantial Completion.)
d) $6,760.00 - final payment due after acceptance of the SWTP and WWTP Scada Systems (Estimated at 120 days after the effective date of the Agreement.)

Compensation for additional services (all services not shown in the Scope of Services) will be computed based on the amounts included in the Payment Terms, Section #3, Additional Services/Costs below.

**Payment Terms**

<table>
<thead>
<tr>
<th>ITEM</th>
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<tr>
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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.

TMT Solutions, Inc. Inc.  The City of San Marcos

By: _____________________________  By: _____________________________

________________________________  _____________________________
Printed Name/Title  Printed Name/Title

Date: _____________________________  Date: ___________________________
EXHIBIT A

SOFTWARE LICENSE AGREEMENT
IGNITION BY INDUCTIVE AUTOMATION® SOFTWARE LICENSE (IASL)

Effective 2/19/2016

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1. Ignition by Inductive Automation® Software License Agreement
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   E. CUP Parser Generator for Java F. Date Selector
   G. Google GSON
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   I. HSQLDB
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   Y. Suds
   Z. Table Layout

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previously installed.

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E. CUP PARSER GENERATOR FOR JAVA

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F. DATE SELECTOR


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K. JETTY


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N. JGRAPHT

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O. JQUERY

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P. JODA-TIME


Q. JSON

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S. LOG4J

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X. SLF4J

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Y. SUDS

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Z. TABLE LAYOUT

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Exhibit B

Leave Blank, insert
Multi License Software Escrow Agreement
Assignment and Assumption Agreement

This Assignment and Assumption Agreement (the "Agreement"), effective as of 7 April 2015 (the "Effective Date"), is by and between HECHTMAN ENTERPRISE, INC. dba INDUCTIVE AUTOMATION, a California corporation ("Assignee"), and INDUCTIVE AUTOMATION LLC, a California Limited Liability Company ("Assignor").

WHEREAS, NCC Group Escrow Associates, LLC ("NCC Group") and Assignee entered into an escrow agreement dated 25th July 2012 and numbered 51012, pursuant to which NCC Group agreed to provide escrow services to the parties there to ("Escrow Agreement").

WHEREAS, Assignee has agreed to assign all of its rights, title and interests in, and Assignor has agreed to assume all of Assignee's duties and obligations under, the Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment and Assumption.** Assignee hereby sells, assigns, grants, conveys and transfers to Assignor all of Assignee's right, title and interest in and to the Escrow Agreement. Assignor hereby accepts such assignment and assumes all of Assignee's duties and obligations under the Escrow Agreement and agrees to pay, perform and discharge, as and when due, all of the obligations of Assignee under the Escrow Agreement accruing on and after the Effective Date.

2. **Governing Law.** This Agreement shall be deemed entered into in California and will be governed by and construed according to the laws of the state of California, exclusive of its body of law known as conflict of law.

3. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

HECHTMAN ENTERPRISE, INC. dba INDUCTIVE AUTOMATION ('Assignee')

By: ___________________________
Name: STEVEN A. HECHTMAN
Title: PRESIDENT

INDUCTIVE AUTOMATION LLC ('Assignor')

By: ___________________________
Name: STEVEN A. HECHTMAN
Title: PRESIDENT

Acknowledged and Consented to by: ___________________________
Name: CULDE ASHLEY
Title: PRESIDENT

Authorized signatory for NCC Group Escrow Associates, LLC

Date: April 7th, 2015

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April 2016
Multi Licensee
Software Escrow Agreement

Date 07/25/2012
Licensor Hootman Enterprises, Inc. dba Inductive Automation
Agreement Number 51012

Notice: The parties to this Agreement are obliged to inform NCC Group of any changes to the Software or in their circumstances (including change of name, principal office, contact details or change of owner of the Intellectual property in the Software).

Version 10.14.09
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Software Agreement Date:

1. Definitions

1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means the terms and conditions of this multi-licensee software escrow agreement set out below, including the Schedules and Appendices hereto.

"Confidential Information" means any technical and/or commercial information not in the public domain or which is designated confidential by Licensor.

"Deposit Form" means the form attached to Schedule 1 which is to be completed by Licensor and delivered to NCC Group with each deposit of the Escrow Material.

"Escrow Material" means the Source Codes of the Software and such other materials and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with Clause 2 of this Agreement.

"Integrity Testing" means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Escrow Material.

"Patented Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, model rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"License Agreement" means the agreement under which a Licensee was granted a license to use the Software.

"Licensee" means any person, firm, company or other entity:

1.1.1 to whom a license to use the Software has been granted; and

1.1.2 where Licensor has approved for registration under this Agreement; and

1.1.3 who has agreed to be bound by the terms and conditions of this Agreement by executing a completed Registration Agreement, forwarding the same to NCC Group and the receipt and registration of which has been acknowledged by NCC Group (in writing) to Licensor and Licensee.

and references to the Agreement in Licenirse shall be to the relevant Licensee or Licensees given the context in which such reference is made.

"Letter of Intent" means the form completed by Licensor or Licensee containing the information to enable NCC Group to set up this Agreement or a Registration Agreement.
"Media" means the devices upon which the Licensor and/or NCC Group may store the Escrow Material. It does not include any of the Escrow Material itself.

"Registration Agreement" means an agreement in the form attached as Appendix 1 to be signed by the Licensor, NCC Group and the company wishing to be a party to this Agreement as a Licencee and, accordingly, to take the benefit of and be bound by the terms and conditions of this Agreement, including payment obligations as may be defined in the Registration Agreement.

"Release Purpose" means the purposes of understanding, maintaining, updating and correcting the Software exclusively for and on behalf of the Licencee together with each other purposes (if any) as we are permitted under the Licence Agreement and only for the benefit of a Licencee who licenses the software under the terms and conditions of the Licence Agreement.

"Software" means the software together with any updates and upgrades thereof and new versions thereof licensed to Licencee under the Licence Agreement defined of which are set out in Schedule 1.

"Source Code" means the computer programming code of the Software in human readable form.

1.2 This Agreement shall be interpreted in accordance with the following:

1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;

1.2.2 all references to Clauses and Schedules are references to Clauses and Schedules of this Agreement; and

1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Licensor's Duties and Warranties

2.1 Licensor shall:

2.1.1 deliver a copy of the Escrow Material to NCC Group within 30 days of the date of this Agreement;

2.1.2 deliver an update or replacement copy of the Escrow Material to NCC Group within 30 days of a material update, error correction, enhancement, maintenance release or functional modification to the Software which results in an updated delivery of the object code version of the Software to Licencee;

2.1.3 ensure that each copy of the Escrow Material delivered with NCC Group includes the Source Code of the latest version of the Software used by Licencee(s);

2.1.4 deliver with each deposit of the Escrow Material a Deposit Form which includes the following information:

2.1.4.1 details of the deposit including the full name of the Software (i.e. the original name as not set out under Schedule 1 together with any new names given to the Software by Licencee), version details, media type, backup command line used, compression used, online help and operating system details and

2.1.4.2 password/encryption details required to access the Escrow Material;

2.1.5 deliver with each deposit of the Escrow Material the following technical information (where applicable):

2.1.5.1 documentation describing the procedures for building, compiling and installing the Software, including names and versions of the development tools;

2.1.5.2 Software design information (e.g. module names and functionality); and

2.1.5.3 names and contact details of employees with knowledge of how to maintain and support the Escrow Material; and

2.1.6 deposit a detailed list of the suppliers of any third party software or tools required to access, install, build or compile the Escrow Material.

2.2 Licensor warrants to both NCC Group and Licencee at the time of each deposit of the Escrow Material with NCC Group that:

2.2.1 it has the full right, ability and authority to deposit the Escrow Material;
2.2.2 In entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s); and

2.2.3 the Escrow Material deposited under Clause 2.1 contains all information in human-readable form and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software.

3 Licensee's Responsibilities and Undertakings

3.1 Licensee shall notify NCC Group of any change to the Software that necessitates a replacement deposit of the Escrow Material.

3.2 In the event that the Escrow Material is released under Clause 6, Licensee shall:

3.2.1 keep the Escrow Material confidential at all times;

3.2.2 use the Escrow Material only for the Reliance Purposes;

3.2.3 not disclose the Escrow Material to any person save such of Licensee's employees or contractors who need to know the same for the Reliance Purposes, to the event that Escrow Material is disclosed to its employees or contractors, Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this Clause 3.2;

3.2.4 hold all media containing the Escrow Material in a safe and secure environment when not in use and

3.2.5 forthwith destroy the Escrow Material should Licensee cease to be entitled to use the Software under the terms of the License Agreement.

4 NCC Group's Duties

4.1 NCC Group shall:

4.1.1 at all times during the term of this Agreement, retain the Escrow Material in a safe and secure environment;

4.1.2 notify Licensee and the relevant Licensee of the acceptance of any Registration Agreement; and

4.1.3 inform Licensee and Licensee of the receipt of any deposit of Escrow Material by sending to both parties a copy of the Deposit Form and/or the Integrity Testing report generated from the testing process carried out under Clause 10.

4.2 In the event of failure by Licensee to deposit any Escrow Material with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensor and Licensee of Licensor's failure to deposit any Escrow Material.

4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in this Clause 6.

4.4 NCC Group has the right to make copies of the Escrow Material as may be necessary solely for the purposes of this Agreement.

5 Payment

5.1 The parties shall pay NCC Group's fees and charges as agreed in writing and as listed in the Letter of Intent between the parties. NCC Group's fees as published are exclusive of any applicable sales tax.

5.2 If NCC Group is required to perform any additional or extraordinary services as a result of being an escrow agent including intervention in any litigation or proceeding, NCC Group shall receive reasonable compensation for such services and be reimbursed for all costs incurred, including reasonable attorney's fees. As a condition precedent to Licensee or being obligated to pay for these services, NCC Group shall provide an estimate of costs associated with any additional or extraordinary services at least thirty (30) days prior to incurring any costs. If NCC Group does not receive written notice from Licensee that it has not approved these estimated expenses within 10 days of the date of delivery of the expense notice, each estimated expense shall be deemed approved. NCC Group shall receive approval from Licensee before incurring such expenses and shall provide a bi-weekly report of expenses incurred to date included a detailed summary and explanation of such expenses. NCC Group shall be entitled to review and verify its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days prior written notice to the parties.
5.3 All invoices are payable within 30 days from the date of invoice. Interest shall accrue at the lesser of 1.5% per month or the maximum amount permitted by applicable law for any fees that are undisputed by the paying party and remain unpaid for more than 30 days past the due date of the applicable invoice.

5.4 In the event of a dispute arising in good faith as to the amount of fees, the party responsible for payment agrees to remit payment on any undisputed amount(s) in accordance with Clause 5.1 above. In such circumstances, the interest on the fees shall not accrue as to any disputed amounts unless not paid within 30 days after such dispute has been resolved by the parties.

5.5 NCC Group shall have no obligations under this Agreement until the initial invoice has been paid in full.

6. Release Events and Procedures

6.1 Subject to (a) the remaining provisions of this Clause 6 and (b) the receipt by NCC Group of the fees chargeable upon a release and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Escrow Material to a duly authorized representative of Licensor if any of the following events ("Release Events") occur:

6.1.1 Licensor ceases to carry on its business or the part of its business which relates to the Software; or

6.1.2 Licensor ceases to carry on its business or the part of its business which relates to the Software due to a material breach of its obligations as to maintenance or modification of the Software under the License Agreement or any maintenance agreement entered into in connection with the Software and has failed to remedy such default notified by Licensor to Licensor within a reasonable period.

6.2 Licensor must notify NCC Group, with a copy to the Licensor, of the Release Event specified in Clause 6.1 by delivering to NCC Group a notice in writing ("Notice") declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, stating that the License Agreement and any maintenance agreement entered into in connection with the Software and has failed to remedy such default notified by Licensor to Licensor within a reasonable period.

6.3 Upon receipt of a Notice from Licensor that a Release Event has occurred:

6.3.1 NCC Group shall submit a copy of the Notice to Licensor (with a copy to the Licensor in order to acknowledge receipt of the Notice) by courier or other form of guaranteed delivery; and

6.3.2 unless within 14 calendar days after the date of dispatch of the Notice from NCC Group, NCC Group receives a counter-notice in writing from Licensor stating that in their view no such Release Event has occurred or, if applicable, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof.

NCC Group will release the Escrow Material to Licensor for its use for the Release Purposes.

6.4 Upon receipt of the counter-notice from Licensor under Clause 6.3.2, NCC Group shall send a copy of the counter-notice and any supporting evidence to Licensee (with a copy to Licensee in order to acknowledge receipt of the counter-notice) by courier or other form of guaranteed delivery.

6.5 Within 30 days of receipt of the counter-notice by NCC Group, Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under Clause 7.

6.6 If, within 30 days of receipt of the counter-notice by NCC Group to Licensee, NCC Group has not been informed by Licensee that they wish to invoke the dispute resolution procedure under Clause 7 to apply, the Notice submitted by Licensee will be deemed to be no longer valid and Licensee shall be deemed to have waived their right to release of the Escrow Material for the particular reason or event specified in the original Notice. In such circumstances, this Agreement shall continue in full force and effect.

7. Dispute

7.1 Upon receipt of Licensee's notice regarding dispute resolution pursuant to Clause 6.6 above, NCC Group shall notify Licensee of the Licensee's request for dispute resolution. Licensee shall submit their dispute to expedited binding arbitration in San Mateo County, California under Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed by the said rules. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction. A copy of such decision shall be delivered immediately to Licensee, Licensee and NCC Group. The parties shall use their best efforts to commence the arbitration proceedings within 14 days following delivery of the notice of arbitration. Any dispute that is determined by the arbitrator shall be whether or not there existed a Release Event at the time Licensee delivered the Notice to NCC Group.

Page 6 of 15
7.2 If the arbitrator finds that a Release Event existed at the time of delivery of the Notice to NCC Group, NCC Group to hereby authorize to release and deliver the Escrow Material to the Licensee within 6 working days of being notified of the arbitration by the arbitrator to the parties. If the arbitrator finds to the contrary, then NCC Group shall not release the Escrow Material and shall continue to hold it in accordance with the terms of this Agreement.

7.3 The parties hereby agree that the costs and expenses of the arbitrator, the reasonable attorney's fees and costs incurred by the prevailing party in the arbitration and any recoverable costs incurred by NCC Group in the arbitration shall be paid by the non-prevailing party.

8 Confidentiality

8.1 The Escrow Material shall remain at all times the confidential and intellectual property of its owner.

8.2 In the event that NCC Group releases the Escrow Material to Licensee, Licensee shall be permitted to use the Escrow Material only for the Release Purposes.

8.3 Subject to Clause 8.4, NCC Group agrees to keep all Confidential Information relating to the Escrow Material and/or the Software that comes into its possession or to its knowledge under this Agreement in strict confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties shall agree otherwise in writing and subject to Clause 8.4, will not disclose or release it other than in accordance with the terms of this Agreement.

8.4 NCC Group and Licensee agree that any violation or breach of the Confidentiality provision of this Agreement may cause irreparable injury to Licensee, for which monetary damages may be inadequate. Accordingly, in the event of such threatened or actual violation or breach, NCC Group and Licensee, as applicable, each acknowledges and agrees that Licensee, in addition to any other remedy to which it may be entitled in law or equity, shall be entitled to seek an injunction to prevent and/or remedy threatened or actual violations or breaches of the Confidentiality provisions of this Agreement. Further, Licensee acknowledges that the damages caused by a breach of the Confidentiality provisions of this Agreement would be irreparable or extremely difficult to determine, but would be materially detrimental to Licensee. Because of this difficulty in determining the damages resulting from the disclosure or release of Confidential Information, the parties agree that, in the event of such a breach, Licensee shall pay to Licensee the sum of Two Hundred Fifty Thousand Dollars ($250,000) to Licensee as liquidated damages for each breach.

8.5 NCC Group may release the Escrow Material to the extent that it is required by applicable federal, state or local law, regulation, court order, judgment, decree or other legal process, provided that NCC Group has notified Licensee and Licensee prior to such required release, has given Licensee and Licensee an opportunity to contest (at their own expense) such required release, within the time parameters mandated by such applicable regulation, court order, judgment, decree or other legal process. NCC Group is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments, decrees entered or issued by any court, without the necessity of inquiring as to the validity of such order, judgment or decree, or the court's underlying jurisdiction. Where NCC Group above or complies with any such order, judgment or decree, NCC Group shall not be liable to Licensee, Licensee, or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

9 Intellectual Property Rights

9.1 The release of the Escrow Material to Licensee will not act as an assignment of any Intellectual Property Rights that Licensee or any third party possesses in the Escrow Material. However, upon delivery of the Escrow Material, the Licensee to the Media upon which the Escrow Material is deposited is transferred to NCC Group. Upon delivery of the Escrow Material back to Licensee, the Media shall transfer back to the Licensee. If the Escrow Material is released to the Licensee, the Media shall transfer to the Licensee.


10 Integrity Testing

10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Escrow Material released by NCC Group under this Agreement.

10.2 As soon as practically after the Escrow Material has been delivered with NCC Group, NCC Group shall apply its Integrity Testing processes to the Escrow Material.

11 NCC Group's Liability

Page 7 of 15
11.1 Nothing in this Clause 11 excludes or limits the liability of NCC Group for gross negligence or intentional misconduct.

11.2 Subject to Clause 11.1, NCC Group shall not be liable for:

11.2.1 any loss or damage caused to either Licenser or Licensee except to the extent that such loss or damage is caused by the negligent acts or omissions of or on behalf of NCC Group, its employees, agents or sub-contractors and in such event NCC Group's total liability with regard to all claims arising under or by virtue of this Agreement or in connection with the performance or contemplated performance of this Agreement, shall not exceed the sum of $100,000 (one hundred thousand US dollars); and

11.2.2 any special, indirect, incidental or consequential damages whatsoever.

11.3 NCC Group shall not be responsible in any manner whatsoever for any failure or inability of Licenser or Licensee to perform or comply with any provision of this Agreement.

11.4 NCC Group shall not be liable in any way to Licenser or Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.

11.5 NCC Group shall not be required to make any investigation into and shall be entitled to good faith without incurring any liability to Licenser or Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorized execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

12 Infringement

Licenser agrees to defend and indemnify NCC Group and to hold NCC Group harmless from and against any claims, suits or other proceedings, actions, losses, costs, liabilities or expenses incurred in connection with the defense thereof (including reasonable attorney's fees), in each case which may be imposed on, or incurred by or asserted against NCC Group in any way arising out of or relating to this Agreement, provided that Licenser shall not be liable for that portion of any such indemnification amount resulting from NCC Group's negligence or intentional misconduct.

13 Term and Termination

13.1 This Agreement shall continue in accordance with this Clause 13.

13.2 If Licenser or Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, NCC Group reserves the right to give them written notice to pay the outstanding invoice within 10 days. If Licenser has not paid its invoice by the expiry of the 10 day notice period, NCC Group will give Licensee(s) a period of 30 days to pay Licensee's invoice. If Licenser or Licensee (as appropriate) has not paid its invoice after being given notice in accordance with this Clause, NCC Group shall have the right to terminate this Agreement or the registration of Licensee (as appropriate) without further notice. Any amounts owed by Licenser but paid by Licensee(s) will be recoverable by Licensee(s) directly from Licenser as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.

13.3 Upon termination of this Agreement in its entirety under the provisions of Clause 13.2, for 30 days from the date of termination NCC Group will make the Escrow Material available for collection by Licenser or its agents from the premises of NCC Group during office hours. After such 30 day period NCC Group has the authority to destroy the Escrow Material.

13.4 Notwithstanding any other provision of this Clause 13, NCC Group may resign as Escrow Agent hereunder and terminate this Agreement by giving sixty (60) days written notice to Licenser and Licensee(s). In the event that it is terminated in its entirety, Licenser and Licensee(s) shall appoint a mutually acceptable new custodian under a mutually acceptable written agreement. If a new custodian is not appointed within 14 days of delivery of such notice, Licenser or Licensee(s) shall be entitled to request the American Arbitration Association to appoint a suitable new custodian on terms and conditions consistent with those in this Agreement. Such appointment shall be final and binding on Licenser and Licensee(s). If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Escrow Material to the new custodian. If NCC Group is not notified of the new custodian within the notice period and this Agreement has been terminated in its entirety, NCC Group will return the Escrow Material to Licenser.

13.5 Licenser may terminate this Agreement in respect of itself only at any time by giving sixty (60) days prior written notice to NCC Group.
13.6 If the Licensee Agreement with a Licensee has expired or has been lawfully terminated, then Licensee shall give notice to NCC Group within 14 days thereof to terminate its interest under this Agreement, failing which, Licensee shall be entitled to give written notice to NCC Group to terminate the relevant Licensee’s interest under this Agreement. Upon receipt of such notice from either Licensee or Licensee, NCC Group shall notify the other party of the notice to terminate. Unless within 30 days of NCC Group giving such notice to Licensee, NCC Group receives a counter-notice from Licensee disputing the termination of the Licensee Agreement, then Licensee shall be deemed to have consented to such termination and Licensee’s rights under this Agreement shall immediately automatically terminate. Any disputes arising under this Clause shall be dealt with in accordance with the dispute resolution procedure in Clause 7. Upon termination of the entire agreement under this Clause, NCC Group shall return the Escrow Material to Licensee.

13.7 Subject to Clause 13.8, Licensee may only terminate the interests of any Licensee under this Agreement with the written consent of that Licensee.

13.8 Notwithstanding any other provision contained herein, Licensee may terminate this Agreement at any time upon sixty (60) days prior written notice to NCC Group and all Licensees. If, at the time of termination, Licensee continues to have an obligation to provide a software escrow for Licensees, Licensee shall provide Licensor with notice, within thirty (30) days of the notice of termination, of the new escrow holder and related information regarding the new escrow.

13.9 This Agreement shall immediately terminate in respect of a Licensee upon release of the Escrow Material to that Licensee in accordance with Clause 6.

13.10 If this Agreement is superseded and replaced by a new agreement in respect of the Escrow Material, this Agreement shall, upon the coming into force of the new agreement in respect of a Licensee, automatically terminate in respect of that Licensee. Where this Agreement has been terminated in respect of all Licensees, it shall immediately terminate in its entirety. The relevant party or parties shall request NCC Group to either transfer the Escrow Material to the new agreement or ask Licensee under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Escrow Material.

13.11 The termination of this Agreement in respect of a Licensee shall be without prejudice to the continuation of this Agreement in respect of any other Licensees.

13.12 If any terminations of Licensees’ interests under this Agreement result in those being no Licensees registered under this Agreement, unless otherwise instructed by Licensee, this Agreement will continue and the Escrow Material will be released by NCC Group pending registration of other Licensees.

13.13 The provisions of Clauses 5, 8, 10, 11, 12, 13, 14, and 16 shall continue in full force after termination of this Agreement.

13.14 On and after termination of this Agreement, Licensee and/or Licensee(s) (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.

13.15 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14 General

14.1 Licensee and Licensee(s) shall notify NCC Group and each other, within 30 days of its occurrence, of any of the following:

14.1.1 any change of its name, principal office, contact details or any other contact details; and

14.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.

14.2 This Agreement shall not be assigned entered into in California and will be governed by and construed according to the laws of the state of California, excluding that body of law known as conflict of law. The parties agree that any dispute arising under this Agreement will be resolved in the state or federal courts in Sacramento County, California, and the parties hereby expressly consent to the jurisdiction thereof.

14.3 This Agreement, together with, in respect of each Licensee, their Registration Agreement, represents the whole agreement relating to the escrow arrangements between NCC Group, Licensee and Licensee for the Software and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings, in the event of any conflict between these documents, the terms of this Agreement shall prevail.
14.4 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if dispatched by certified or registered mail (airmail if overseas) addressed to the address specified for the parties in this Agreement or their Registration Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:

(i) If delivered by hand or courier, at the time of delivery;
(ii) If sent by certified or registered mail (airmail if overseas), 3 business days after posting (5 business days if sent by airmail);
(iii) If sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

14.5 Except where Licensor or Licensee merges, is acquired or has substantially all of its assets acquired and the new entity or acquiree agrees to assume all of their obligations and liabilities under this Agreement, Licensor and Licensee shall not assign, transfer or substructure this Agreement or any rights or obligations hereunder without the prior written consent of the other parties.

14.6 NCC Group shall be entitled to transfer or assign this Agreement upon consent of Licensor, which consent shall not be unreasonably withheld.

14.7 This Agreement shall be binding upon and survive for the benefit of the successor to the parties.

14.8 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be limited to the minimum extent permitted by law and that such provision shall be deemed to be voided accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.

14.9 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorized representative of each of the parties thereto.

14.10 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, earthquake, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or wasting illnesses or threat of war, terrorism, activities, accidental or malicious damage, or any prohibition or restriction by any government or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as possible. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.

14.11 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to Clause 11.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.

14.12 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of Inductive Automation.

[Signature]

Position: [Position]

(Authorized Signatory)

Signed for and on behalf of NCC GROUP, INC.

Agreement Number [Agreement #]
Exhibit C
Standardization and Analysis Verification Testing Plan

The verification test ("Test") detailed below will be conducted following installation. The purpose of the Test is to ensure the Software Products perform as warranted, using the Inductive Automation Ignition Software.

<table>
<thead>
<tr>
<th>Approach</th>
<th>Type of Testing</th>
<th>Manual Testing</th>
<th>Automated Testing from Device</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Server Test</td>
<td>Client Test</td>
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<tr>
<td>Standard Testing</td>
<td>Server Installation</td>
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<td>Client Installation</td>
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<tr>
<td></td>
<td>Historical Data Migration</td>
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<td></td>
<td>Reports and Trend Data Testing</td>
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<tr>
<td>Screen and I/O Development Testing</td>
<td>Screen Development and GUI Testing for I/Os</td>
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<tr>
<td></td>
<td>Threshold Testing I/Os</td>
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<tr>
<td></td>
<td>Alarm Testing I/Os</td>
<td></td>
<td></td>
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<tr>
<td>Site Redundancy and Backups Testing</td>
<td>Performance Testing</td>
<td></td>
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<tr>
<td></td>
<td>Security Testing</td>
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<td></td>
<td>Failover Testing (Redundancy)</td>
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<tr>
<td></td>
<td>Backup Testing</td>
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</tr>
</tbody>
</table>

Signed and accepted (the “Acceptance Date”) on the ________ day of ________________, 2017.

__________________________________________  ________________________________________
TMT Solutions, Inc.  City of San Marcos
Exhibit D

Server Configuration for all Sites
(Incorporated by reference herein for all intents and purposes)
Exhibit E

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

PROJECT NAME: Surface Water and Wastewater Treatment Plant Supervisory Control and Data Acquisition Systems

CONTRACTOR: TMT Solutions, Inc.

CONTRACT NO: 217-002

AUTHORIZATION NO: __________________________

CONTRACT EXECUTION DATE: __________________________

DATE OF THIS CHANGE: __________________________

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

<table>
<thead>
<tr>
<th>Previous contract amount:</th>
<th>$ ____________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net increase/decrease in contract amount:</td>
<td>$ ____________</td>
</tr>
<tr>
<td>Revised contract amount:</td>
<td>$ ____________</td>
</tr>
</tbody>
</table>

TMT Solutions, Inc.

By: ___________________________ Date: ___________________________

_____________________________

Printed name, title

Approved by:

City of San Marcos:

By: ___________________________ Date: ___________________________

_____________________________

Printed name, title

City only below this line.

Account Number(s): __________________________, __________________________

Previous Changes in Service:

#_____; date; amount

#_____; date; amount

#_____; date; amount
<table>
<thead>
<tr>
<th>PROPONENT NAME</th>
</tr>
</thead>
</table>
| Schneider Engineering, Ltd.  
Boerne, TX |
| TMT Solutions  
San Marcos, TX |
| Vertech Industrial Systems, LLC  
Phoenix, AZ |
| Prime Controls, LP  
Schertz, TX |

WITNESSED BY:

Cheryl Parnell

[Signature]
AGENDA CAPTION:
Consider approval of Resolution 2017-70R, approving a contract with the Lower Colorado River Authority (LCRA) providing for payment to LCRA in the amount of $75,255 for its costs to construct a high voltage bus extension necessary for LCRA to provide electric transmission power to a new transformer at the Hilltop Substation; authorizing the Interim City Manager to execute said contract on behalf of the City; and declaring an effective date.

Meeting date: April 18, 2017

Department: Public Services - Electric Utility, Tom Taggart Executive Director

Funds Required: $75,255
Account Number: Project C390 GL Acct 5153819.70200
Funds Available: $792,785
Account Name: C390 Hilltop Substation Upgrade

CITY COUNCIL GOAL:
Goal #5 Maintain and improve City’s infrastructure
Goal #7 Maintain Fiscal Responsibility
Goal #8 Provide for the efficient and effective delivery of services

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
The Hilltop Substation HT-T1 Upgrade CIP project was approved in the FY16 CIP budget. This project replaces the underrated and HT-T1 power transformer and its associate electric distribution infrastructure, circuit breaker, and protection and control equipment. LCRA will engineer and construct a 138,000 volt bus extension to provide electric transmission power to the new HT-T1 transformer.
RESOLUTION NO. 2017- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CONTRACT WITH THE LOWER COLORADO RIVER AUTHORITY (LCRA) PROVIDING FOR PAYMENT TO LCRA IN THE AMOUNT OF $75,255 FOR ITS COSTS TO CONSTRUCT A HIGH VOLTAGE BUS EXTENSION NECESSARY FOR LCRA TO PROVIDE ELECTRIC TRANSMISSION POWER TO A NEW TRANSFORMER AT THE HILLTOP SUBSTATION; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. LCRA provides electric transmission power to the City’s Hilltop Substation.

2. Installation of a new transformer by the City at the Substation requires that LCRA provide a high voltage bus extension in order to provide power to the new transformer.

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

PART 1. The attached Customer Service Contract with the Lower Colorado River Authority (LCRA) is hereby approved.

PART 2. The Interim City Manager is authorized to execute said contract on behalf of the City.

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
**LCRA CUSTOMER SERVICES CONTRACT**

**CUSTOMER:** San Marcos Electric Utility  
630 East Hopkins  
San Marcos, TX 78666

**PROJECT:** Hilltop Substation  
**DATE SUBMITTED:** September 27, 2016  
**JOB NUMBER:** 1017017

**SCOPE OF SERVICES:**

The Lower Colorado River Authority (LCRA) shall provide to San Marcos Electric Utility (SMEU) engineering, material and construction services for the proposed Hilltop Substation as described in the attached Schedule A. If you have any questions regarding this contract, please contact the Project Manager, Sonya Strambler at (512) 578-1856.

**SCHEDULE:**

- Design Engineering: September 19th - November 11th  
- Material Procurement: February 6th - February 28th  
- Construction: Coordinate with SMEU schedule

**CONTRACT PRICE:**

Billing will be on a cost plus basis invoiced monthly.  
Estimated Total Cost: $75,255

---

Customer and the Lower Colorado River Authority agree that the work described above shall be performed in accordance with the terms and conditions on the front and reverse sides of this form.

San Marcos Electric Utility  

<table>
<thead>
<tr>
<th>By:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Lower Colorado River Authority  

<table>
<thead>
<tr>
<th>By:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
</thead>
</table>

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**OFFICE USE ONLY**

<table>
<thead>
<tr>
<th>Accounting: 1017017/PMT/400300</th>
<th>Contract Administrator: Sonya Strambler</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Administration Date: 9/27/2016</td>
</tr>
</tbody>
</table>
INTRODUCTION
This Scope of Services is intended to cover project management, engineering, materials and construction necessary to design and install a 138-kV Switch, which will include a 795-MCM jumper, footings, grounding, and switch stand at Hilltop Substation. The facilities are located in Hays County.

RESPONSIBILITIES AND STATEMENT OF WORK
The LCRA's responsibility for this project is to manage the scope, design, construction, schedule and budget as described in this contract.

SCOPE OF SERVICES

1. Project Management
   a. Manage the scope, schedule, and budget throughout the project duration from initiation, planning, execution, controls and the close-out process.

2. Engineering
   a. A design of the following will be prepared for (1) 138-kV switch:
      i. Switch Stand
      ii. Switch Footings
      iii. Switch Groundings
      iv. 795-MCM jumper
   b. A material list will be prepared for the following:
      i. Materials for (1) Switch stand
      ii. Concrete / Rebar for six sets of switch foundations
      iii. Materials for grounding

3. Materials
   a. LCRA will supply the 138-kV switch and all other related materials

4. Construction
   a. LCRA Transmission Substation Structural and Electrical crews will install (1) 138-kV switch and associated foundations as prescribed in the approved "For Construction" plans.
<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Cost</th>
<th>Total Billed</th>
<th>Monthly Invoice</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>Materials</td>
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<td>Transportation</td>
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<td></td>
<td>$0</td>
</tr>
</tbody>
</table>
AGENDA CAPTION:
Consider approval of Resolution 2017-71R, approving an agreement with Alan Plummer Associates, Inc. for the provision of professional engineering services in connection with the Primrose Way Water Project in the not-to-exceed amount of $69,978.00 contingent upon the consultant's provision of sufficient insurance in accordance with the attached agreement; authorizing the Interim City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

Meeting date: April 18, 2017

Department: Engineering and Capital Improvements

Funds Required: $69,978.00
Account Number: C592
Funds Available: $70,000
Account Name: Primrose Way Water

CITY COUNCIL GOAL:
Goal #5 Maintain and improve City's infrastructure

COMPREHENSIVE PLAN ELEMENT(s):
Land Use
- Goal 1 - Direct growth, compatible with surrounding uses
- LUG105 - Align infrastructure plans to achieve preferred scenario

BACKGROUND:
Construct 1,880 LF (approx.) of 8” water line along Primrose way starting at Horace Howard Dr. and tied to existing 8” water line located at Southwest corner of The Master’s school parcel. This is an area within the City's water CCN where the number of connections exceeds TCEQ requirements. This will also provide a loop feed for fire protection.

Staff recommends approval of this agreement.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AN AGREEMENT WITH ALAN PLUMMER ASSOCIATES, INC. FOR THE PROVISION OF PROFESSIONAL ENGINEERING SERVICES IN CONNECTION WITH THE PRIMROSE WAY WATER PROJECT IN THE NOT-TO-EXCEED AMOUNT OF $69,978.00 CONTINGENT UPON THE CONSULTANT’S PROVISION OF SUFFICIENT INSURANCE IN ACCORDANCE WITH THE ATTACHED AGREEMENT; AUTHORIZING THE INTERIM 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 attached agreement (the “Agreement”) between the City and Alan Plummer Associates, Inc. for the provision of professional engineering services in connection with the Primrose Way Water Project in the not-to-exceed amount of $69,978.00 is approved contingent upon the Consultant’s provision of sufficient insurance in accordance with the Agreement.

PART 2. The Interim 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 __________ 2017.

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
Contract Number: 217-196

This Agreement is effective January 31, 2017 between the City of San Marcos, Texas, a home-rule municipal corporation, (the “City”), 630 East Hopkins, San Marcos, Texas 78666 and Alan Plummer Associates, Inc. (the “Engineer”), 6300 La Calma, Suite 400, Austin, TX 78752, for the Engineer’s provision of engineering services in connection with the Primrose Way Water Project (the “Project”).

The City and the Engineer agree as follows:

**ARTICLE 1**  
**ENGINEER’S SERVICES AND STANDARD OF PERFORMANCE**

A. The term of this Agreement begins on the effective date established above and will end upon the Engineer’s completion, and the City’s acceptance of all services included in this Agreement. The Engineer agrees to provide the City with the services described in Attachment A, Scope of Services, which is incorporated herein by reference for all intents and purposes. The services for this Project are more generally described as the provision of preliminary engineering and final design phase services for the construction of approximately 1,880 linear feet of 8-inch water line.

B. The Engineer understands that time is of the essence and agrees to provide all design work and professional services in the most expedient and efficient manner possible in order to complete the Project by September 30, 2019 in accordance with the approved Project Schedule included in this Agreement as Attachment C.

C. The Engineer will not subcontract any work under this Agreement without prior written approval from the City. In the event approval is given by the City, the Engineer will specify the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

D. The 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.

E. Maridel Jimenez, P.E. is the Engineer’s Project Representative assigned to this Project. The Engineer will not substitute another representative for this Project unless approved in writing by the City in advance of such proposed substitution. In the event the City and the Engineer cannot agree to the substitution of the Project Representative, the City may terminate this agreement.

F. The City will designate and notify the Engineer of its designation of an authorized Project
representative who will act on the City’s behalf with respect to this Agreement.

G. Any change to the scope of services described in Attachment A, must be by an approved Authorization of Change in Services developed in accordance with the approved fee schedules and/or hourly rates stipulated in Attachment B and executed by the Engineer and the City prior to the work being performed.

ARTICLE 2
PAYMENTS TO THE ENGINEER

A. In consideration of the Engineer’s provision of services in accordance with all terms and conditions of this Agreement, the City will pay the Engineer in accordance with the terms set forth in Attachment B less any disputed amounts, pending resolution thereof. Except in the event of an Authorization of Change in Service executed by the Engineer and the City, the total cost of all professional services provided under this Contract may not exceed Sixty-Nine Thousand Nine Hundred Seventy Eight Dollars ($69,978.00). Reimbursable expenses including such things as expenses for plotting, reproduction of documents, auto travel mileage (at the current IRS rate), delivery charges, long distance communications, freight, and state accessibility review, if any, will be paid in accordance with Attachment B. In the event that additional services are requested by the City, those costs will be identified in Attachment B.

B. The Engineer will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and the Engineer may retrieve a resale certificate for use on this Project from the State of Texas Comptroller’s website.

ARTICLE 3
ENGINEER’S RECORDS

A. The Engineer will keep all of its expense records in a recognized accounting format acceptable to the City and these records will be available to the City at mutually convenient times.

B. 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.

C. The Engineer will furnish to the City documents related to the Project, including but not limited to correspondence, drafts, calculations, sealed plans and specifications and, 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 4
OWNERSHIP AND USE OF DOCUMENTS

A. All documents prepared by the Engineer in connection with this Agreement are the property of the City whether any project related to this Agreement is executed or not. The City agrees that the Engineer’s sealed plans and specifications are not intended or represented to be suitable for reuse for another project by the City or others. Any such reuse by the City or those who obtained said documents from the City without written verification or adaptation by the Engineer will be without liability or legal exposure to the Engineer.

B. 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 5
TERMINATION OF AGREEMENT

A. The City may terminate this Agreement for convenience and without cause upon at least thirty (30) calendar days prior written notice to the Engineer.

B. Upon the Engineer’s receipt of any such notice of termination under this Article 5, it will cease work as directed in writing by the City. The City will compensate the Engineer for all services performed up to the date of the notice of termination, which are deemed by the City to be in accordance with this Agreement. The City will pay this amount upon the Engineer’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.

C. If applicable to this Agreement, funds for the payment for work performed by the Engineer under this Agreement have been provided through the City’s 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. The City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Engineer acknowledges and agrees that it will have no recourse against the City 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 City extends from October 1st of each calendar year to September 30th of the following calendar year.

ARTICLE 6
WARRANTY AND INDEMNIFICATION

A. In performing all services under this Agreement, the Engineer or persons under the supervision of the Engineer will use that degree of care and skill normally exercised for similar
projects by professional Engineers who possess special expertise in the types of services. The Engineer will ensure that all persons performing services under this Agreement possess the appropriate licenses under local, State or Federal law governing their respective discipline. As an experienced and qualified design professional, the Engineer warrants that the information it provides reflects highest professional and industry standards, procedures, and performances. The Engineer warrants that the preparation of designs/drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Agreement, are pursuant to a high standard of performance in the profession. 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 Engineer’s responsibility for the materials. Approval of the City will not constitute, or be deemed, a release of the responsibility and liability of the Engineer, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor will the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Engineer, its employees, associates, agents, subconsultants or subcontractors.

B. The Engineer will promptly correct any defective designs or specifications it furnishes at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Engineer’s services under this Agreement or of the Project itself will in no way alter the Engineer's obligations or the City's rights under this Agreement.

C. It is expressly agreed that the Engineer and its employees are independent contractors, and not agents, employees, partners or joint venturers with the City. As an independent contractor, the Engineer is responsible for the professional services and the final work product contemplated under this Agreement. Except for materials furnished by the City, the Engineer will supply all materials, equipment, and labor required for the provision of its professional services under this Agreement. The Engineer has ultimate control over the execution of its professional services and it is the Engineer’s sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees, subconsultants and subcontractors, and the City has no control of or supervision over the employees of the Engineer or any of the Engineer’s subconsultants or subcontractors. The Engineer will not pledge or attempt to pledge the credit of the City.

D. The Engineer will at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City is not liable or responsible for the negligence of the Engineer, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. The Engineer will indemnify, hold harmless and defend the City and all its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising solely from the negligent or intentional wrongful acts or omissions of the
Engineer, its officers, employees or agents or by or on account of any claims or amounts recovered under the Workers’ Compensation Laws of Texas or any other law, ordinance, order or decree, and its sureties will be held liable until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid have been settled and satisfactory evidence to that effect has been furnished to the City. 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 alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising solely from any negligent or intentional wrongful act, error or omission of the Engineer and/or its agents and/or employees. This obligation by Engineer will not be limited because of the specification of any particular insurance coverage in this Agreement.

ARTICLE 7
INSURANCE

A. Coverage. The Engineer will procure and maintain on a primary basis, at the Engineer’s expense and for the duration of this Agreement insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Engineer or Engineer’s agents, subcontractors or employees. Before commencing the work, the Engineer will furnish to the City a certificate or certificates in form satisfactory to the City (See Attachment D for example), showing that the Engineer has complied with this paragraph. Before commencing the work and within five (5) business days of the City’s award of a contract, the Engineer must deliver to the City a certificate(s) of insurance evidencing that such policies are in full force and effect. Failure to meet the stated insurance requirements and provide the required certificate(s) and any necessary endorsements within five business days may cause the contract to be terminated. The City reserves the right to obtain complete, certified copies of all required insurance policies at any time. The stated limits of insurance required by this Paragraph are minimum only—they do not limit the Engineer’s indemnity obligation, and it will be the Engineer’s responsibility to determine what limits are adequate. These limits may be met by 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. The kinds and amounts of insurance required are as follows:

1) **Workers’ Compensation Insurance and/or Employer’s Liability Insurance**: In accordance with the provisions of the Workers’ Compensation Act of the State of Texas and/or $500,000.00/$500,000.00 for Employer’s Liability.

2) **Commercial General Liability Liability Insurance**: (1) Commercial general liability insurance with a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate, Engineer agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing
coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Engineers.

3) **Business Automobile Liability Insurance.** – Limits of liability not less than $1,000,000.00 per occurrence. The Engineer agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Should the Engineer not own any automobiles, the business auto liability requirement will be amended to allow the Engineer to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

4) **Professional Liability Insurance.** – Limit of liability not less than $1,000,000 per occurrence. Engineer agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured will become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the Engineer or any person employed or acting on the Engineer’s behalf (including but not limited to sub-contractors). For policies written on a “claims-made” basis, Engineer agrees to maintain a retroactive date prior to or equal to the effective date of this contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this Agreement. The Engineer is solely responsible for any additional premium for the supplemental extended reporting period.

B. **Endorsements/Waiver of Subrogation.** The Engineer agrees to provide commercial general liability insurance and motor vehicle insurance written with the City of San Marcos, Texas endorsed as an additional insured. A waiver of the carrier’s right of subrogation against the City of San Marcos is required for each insurance policy.

C. **Deductibles, Coinsurance Penalties, and Self-Insured Retention.** Engineer agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

D. **Subcontractor’s Insurance.** The Engineer will ensure that each subcontractor employed by the Engineer for this Project purchases and maintains insurance of the types specified, provided that the Engineer’s insurance does not afford coverage on behalf of the subcontractor.

E. **Certificate of Insurance Form.** The Engineer will furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of “AVII” or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. All certificates will
provide that coverage under the policies will not be canceled or non-renewed until at least thirty (30) calendar days prior written notice, or ten (10) calendar days notice of cancellation due to the non-payment of premiums is given to the City. Failure of the Engineer to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Engineer to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Engineer’s obligation to maintain the required insurance coverage specified herein. If, in the event the City is notified that a required insurance coverage will cancel or non-renew during the contract period, the Engineer agrees to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to the Engineer until coverage is reinstated. Certificates and notices will be given to the City at the following address:

City of San Marcos
Attn: Engineering and Capital Improvements Department
630 E. Hopkins
San Marcos, Texas  78666

F. **Right to Review and Adjust.** The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

**ARTICLE 8**
**CERTIFICATE OF INTERESTED PARTIES.**

This Engineer 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 Engineer.

**ARTICLE 9**
**MISCELLANEOUS PROVISIONS**

A. 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.

B. 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.
C. 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.

D. The Engineer hereby affirms that Engineer and Engineer’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 consulting 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 is not considered a valuable gift for the purposes of this Agreement.

E. 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, 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, disability or ancestry. A breach of this covenant by the Engineer may be regarded as a default of the Agreement.

F. 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.

G. Should any provision in this Agreement be found or deemed 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 severable.

H. All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and this Agreement does not create rights in third parties.

I. In performing all services under this Agreement, the Engineer, its agents, employees, subcontractors, successors and assigns will comply with all local, state and federal laws, the charter and ordinances of the City of San Marcos and with all applicable rules and regulations promulgated by local, state, and federal boards, bureaus, and agencies. It is the Engineer’s responsibility to obtain all necessary permits and licenses required to provide services required by this Agreement.

J. The City’s execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is governmental entity acting in a governmental capacity.

K. 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 will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City. Upon receipt of a request for information under the Act, the City will immediately notify the Engineer of the request, and it will be the responsibility of the Engineer to object, within ten days of the City’s receipt of the request, to the Texas Attorney General by way of a written request. If the Engineer fails to submit a letter to the Attorney General within ten days of the City’s receipt of a request for information, the City shall release the information in accordance with the Act.

L. 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.

M. 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.

N. In the event of a default or breach of this Agreement by the Engineer, 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.

O. No waiver by either party hereto of any term or condition of this Contract will be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

P. If applicable, the Engineer will pay all license fees, royalties and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed Project.

Q. It is the City’s intent to be proactive with regard to the environment. The City encourages “value purchasing” of environmentally friendly products. The Engineer is encouraged to utilize green solutions in performing any services under the Agreement, as appropriate.

R. The Engineer’s attention is called to the fact that pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos owned and rented/leased properties are smoke free properties. All Engineers, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 10 feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate this Agreement for noncompliance with this ordinance.
ARTICLE 10
SUCCESSORS AND ASSIGNS

A. The City and the Engineer, 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.

B. The Engineer will notify the City, in writing, of any change in its partnership/ownership within thirty (30) calendar days of such change.

ARTICLE 11
EXTENT OF AGREEMENT

A. 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. In the event of a dispute between the City and Engineer regarding the intent of this Agreement, both parties agree that they will construe this Agreement in a manner consistent with the City’s Request for Proposals, the Engineer’s proposal response and the public record of the City Council’s approval of this agreement as applicable. This Agreement may be amended only by written instrument, which must be signed by both the City and the Engineer. The San Marcos City Council must approve any such authorization of change in services or amendment if the compensation for which exceeds $50,000.00. The City may agree to a revised completion date/extension of time at its sole discretion, and only upon receipt of a fully executed Authorization of Change in Services (Attachment E) form.

B. Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

C. In the event of any conflict between this Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

ARTICLE 12
NOTICES

Notices required under this Agreement will be provided by the parties to one another and will be deemed received when sent by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City: To the Engineer:
City Manager Stephen Coonan, P.E.
The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement. 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.

Approved as to Form:

By: ____________________________
   City Attorney’s Office

______________________________  
(Date)

Approved for Processing:

______________________________  
Laurie Moyer, P.E.,
Director of Engineering and Capital Improvements

City of San Marcos

By: ____________________________
   ____________________________
   (Signature)

______________________________  
Printed Name/Title

City of San Marcos

Firm’s License No. F-0013

By: ____________________________
   ____________________________
   (Signature)

______________________________  
Printed Name/Title

Date: ____________________________
PROJECT DESCRIPTION SUMMARY

The work shall consist of professional engineering design services for the Primrose Way Water Line Project including preliminary and final design phase services for the water line improvements along Primrose Way starting at Horace Howard Drive extending to the Master’s School Property (approximately 1,880 LF). The scope includes the design for an 8-inch water line to address TCEQ requirements regarding the maximum number of services allowed on a 2-inch line and to provide a loop feed for fire protection. The project is not located within the Edwards Aquifer Recharge Zone.

BASIC SERVICES

PROJECT MANAGEMENT & QA/QC

Includes project set-up/close-out; communication with the City; subconsultant management; managing staff resources, files, budgets, and schedule; project invoicing; and project QA/QC throughout the duration of the project.

PRELIMINARY PHASE (30%)

- Meetings. Includes one (1) 30% Review Meeting and one (1) site visit. A kick-off meeting, public meeting, and utility coordination meetings are not included.
- Data Collection and Review. Collect and review previous project records and available base map information including City GIS, aerial imagery, floodplain mapping, and property parcels.
- Provide Topographic Surveying. Byrn & Associates will provide topo survey to include:
  1. Provide horizontal and vertical control for topographic survey.
  2. Topographic survey.
  3. Locate above ground planimetric features, including existing structures, edge of roads, evidence of underground utilities, overhead utilities, fences, trees 6-inches in diameter and larger, ditch flowlines and other pertinent features affecting design.
  4. Water valve top of nut elevations.
  5. Locate enough boundary information for determination of street right of way lines.
  6. Contact Digg-Tess for location of existing underground utilities
  7. The topographic information will be provided in Autocad format with a triangulation network of the existing surface.
- Perform Utility Coordination including contacting area utility providers via email to request utility records and information regarding any planned projects within the project area.
- Evaluate proposed water alignment option(s) and develop schematic drawing(s). The drawing will be roll plot of plan view only.
- Evaluate environmental and permitting considerations, including a desktop review of cultural resources within the proposed project. Cox McLain Environmental Consulting (CMEC) will provide the cultural resources desktop review/analysis and summarize findings in a letter report.
- Evaluate easement requirements and prepare related exhibits and field notes. Plat and field note combinations for easement documents will be provided by Byrn & Associates as a Supplemental Services item.
- Prepare Preliminary Opinion of Probable Construction Cost (OPCC). The OPCC will be based on available recent bid tabulations for similar projects in Central Texas.
- Update Project Schedule.
- Prepare Preliminary Phase Technical Memorandum (TM). The preliminary TM will be prepared as a concise summary of the existing utilities, alignment evaluation, easement requirements, OPCC,
project schedule, and permitting and environmental considerations along with at schematic figure. APAI will address City comments and revise memo as requested by City. Deliverables include a draft memo (3 hard copies, 1 PDF) and final memo (3 hard copies, 1 PDF, 1 DWG).

DESIGN PHASE

- Meetings. Includes one (1) Review Meetings at 90% and one (1) site visit. Public meetings, preparation of exhibits, and utility coordination meetings are not included.
- Prepare Drawings, including:
  1. Cover Sheet
  2. General Notes Sheets
  3. Overall layout plan showing sheet index
  5. Traffic Control Plan Sheets consisting of Standard Details (Detailed Project Specific Sheets are not included).
  6. Erosion and Sedimentation Control plan prepared with TxDOT template Stormwater Pollution Prevention Plan (SWPPP) sheets and Environmental Permits, Issues, and Commitments (EPIC) Sheets
  7. Standard Water Details, COA Traffic Control Details, and Standard Erosion Control Standard Details
- Prepare Quantity Breakdowns by Sheet and OPCC. Quantity Table by sheet to be included on the 90% submittal.
- Prepare Bid Form and Specifications
- Update Project Schedule and Prepare Construction Schedule

Design Phase Submittal Deliverables will include:

A. 60% Submittal Not requested for this project.
B. 90% Submittal (4-11"x17" Sets, 1 PDF) (1"=40' H & 1"=10' V)
  1. Plan Set (Include items from 60% submittal)
     a. Cover Sheet
     b. Project Layout Sheet
     c. Plan Sheets (Profile is not required for water lines less than 12-inches in diameter)
     d. Details
     e. Quantities – Broken down by sheet
     f. OPCC - broken down by sheet
     g. Specifications
        i. Index of Specs
        ii. Modifications to Austin Specs
        iii. COSM Adopted Specs - Project Specific
        iv. Special Specifications
  2. OPCC
  3. Bid Form
  4. Construction Schedule
C. 99% Submittal (4-11"x17" Sets, 1 PDF)
  1. Plan Set (include items from 90% submittal)
     a. Unsealed plans with all comments addressed
D. 100% Submittal Sealed (2-11"x17" Sets, 1 PDF, 1 CAD)
  1. Sealed Plan Set (include all items from 90%, and 99% submittal)
  2. Construction Check List (1 PDF)
  3. Bid Form (Word version)
  4. Technical Specifications (1 PDF)
BIDDING PHASE

- Not included at this time.

CONSTRUCTION PHASE

- Not included at this time.

RECORD DRAWINGS PHASE

- Not included at this time.

SUPPLEMENTAL SERVICES

A. Subsurface Utility Engineering (SUE) Locates. SUE Locates are not requested for this project.
B. Geotechnical Investigation. A geotechnical investigation is not requested for this project.
C. Easement Field Notes. This task shall include preparation of easement field notes. The number of easements required is unknown; the budget included is based on an estimate of four (4) easements.

CITY RESPONSIBILITIES / ASSUMPTIONS IN SCOPE PREPARATION

- City will give prompt notice of any development or other activities that would affect the scope or schedule of the scope of work.
- City will field and document questions during the bidding phase and route technical questions regarding the design to APAI. City will distribute Addenda.
- City will draft and route Change Orders.
- The cultural resources scope includes a desktop review/analysis and letter report; any required follow-up field investigations, agency coordination/permit preparation, and archeological surveys are not included in the scope of services and can be provided as additional services.
- Karst investigations and surveys are not included in the scope of services.
- Trench restoration will consist of restoration to pre-existing conditions.
- Construction Phase Services were based on an estimated construction duration of 2 months.
- Schedule is contingent on right-of-entry to private property for surveying and site visits.
- City will handle public relations and communications with property owners.
PRIMROSE WAY WATER LINE
ATTACHMENT B - FEE ESTIMATE (1-17-2017)

| Principal | Sr. Proj Mgr | Proj Eng’r | Sr. Estimator | Designers/Technicians | Admin | GC | Total Labor Hours | Total Labor Amount | Percent of Total Labor
<table>
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<tr>
<td>PRIMROSE WAY WATER LINE</td>
<td>2</td>
<td>34</td>
<td>24</td>
<td>199</td>
<td>164</td>
<td>10</td>
<td>4</td>
<td>407</td>
<td>$55,177</td>
</tr>
</tbody>
</table>

### A Preliminary Phase (30%)

1. Project Management & DAOC
   - Hours: 1
   - Markup: 110%

2. Meetings & Site Visits
   - Hours: 4
   - Markup: 110%

3. Field Survey
   - Hours: 4
   - Markup: 110%

4. Topographic Surveying (Subconsultant Expense Listed Separately Below)
   - Hours: 4
   - Markup: 110%

5. Utility Coordination
   - Hours: 10
   - Markup: 110%

   - Hours: 12
   - Markup: 110%

7. Environmental and Permitting Review
   - Hours: 2
   - Markup: 110%

8. Cultural Resources Review (Subconsultant Expense Listed Separately Below)
   - Hours: 2
   - Markup: 110%

9. Opinion of Probable Construction Cost
   - Hours: 2
   - Markup: 110%

### B Design Phase (30%)

1. Project Management & DAOC
   - Hours: 1
   - Markup: 110%

2. Meetings (50% Site Visit)
   - Hours: 2
   - Markup: 110%

3. 30% Submittals
   - General/Detail/ & Details Sheets
     - Hours: 10
     - Markup: 110%
   - Plan Sheets (Profile Not Required for Inlets)
     - Hours: 10
     - Markup: 110%
   - Traffic Control Plan (Dividends Details Only)
     - Hours: 10
     - Markup: 110%
   - Erosion/Sedimentation Control
     -_hours: 10
     - Markup: 110%

4. 50% Submittals
   - Drawings
     - Hours: 10
     - Markup: 110%

5. 60% Submittals
   - Drawings & Checklists
     - Hours: 10
     - Markup: 110%

### C Bidding Phase (20%)

1. Plan Review
   - Hours: 8
   - Markup: 110%

2. Construction Phase (5%)

### D Record Drawing Phase (5%)

1. Project Management & QA/QC
   - Hours: 2
   - Markup: 110%

### E Supplemental Services (5%)

1. Subsurface Utility Locates (Subconsultant Expense Listed Separately)
2. Geotechnical Bores (Subconsultant Expense Listed Separately)
3. Project Management & Quality Control/Quality Assurance

### TOTAL LABOR

- Total Labor Hours: 407
- Total Labor Amount: $55,177
- Percent of Total Labor: 100.0%

### TOTAL EXPENSES (see breakdown below)

- Subconsultant Expenses: $14,201
- Reimbursable Expenses: $556

### TOTAL EXPENSES (see breakdown below)

- Total Subconsultants: $14,201
- Total Reimbursables: $556
- Total Expenses: $14,757

### BREAKDOWN - PRIMROSE WAY WATER LINE

#### SUBCONSULTANT EXPENSES

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<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<th>Markup</th>
<th>Fee ($)</th>
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<td>CA</td>
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<td>CG</td>
<td>Civil Engineer Consultant</td>
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<td>Electrical Consultant</td>
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<td>-</td>
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<tr>
<td>CG</td>
<td>Geotechnical Consultant</td>
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<tr>
<td>CM</td>
<td>Mechanical Consultant</td>
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<td>CY</td>
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<td>7,000</td>
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<td>C1</td>
<td>Surveying Consultant (Easements)</td>
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<td>GI</td>
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#### REIMBURSABLE EXPENSES

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<td>In-House Reproduction</td>
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<tr>
<td>RV</td>
<td>Telecommunications</td>
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#### TOTAL SUBCONSULTANT EXPENSES

- Total: $14,201
- Total: $14,201

#### TOTAL REMBURSABLE EXPENSES

- Total: $556
- Total: $556

The hours listed above are an estimate. The hours assigned to the Phase are not exclusive to the Phase which they are assigned. The total fee will not exceed the total contract amount as discussed in Article 2.

Payment to the ENGINEER will be made as follows:

1. Basic Services - The amounts of these invoices will be based upon the extent of work completed by the Engineer on an hourly basis.
2. Supplemental Services - The Engineer will receive approval in writing before performing supplemental services. The amounts of these invoices will be based upon the extent of work completed by the Engineer on an hourly basis.
3. Reimbursable expenses - Reimbursable expenses including such things as expenses for plotting, reproduction of documents, auto travel mileage (current IRS approved mileage rates), delivery charges, long distance communications, freight, and state accessibility will be invoiced with appropriate backup documentation.

Invoice and Time of Payment:

Invoices will be submitted in a format approved by the City prior to submission of the first monthly invoice. Invoices shall be submitted monthly and paid within 30 days.
CERTIFICATE OF INSURANCE

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

DATE (MM/DD/YY)

COVERAGE

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 OTHER TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<th>INSURER</th>
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<th>POLICY EFFECTIVE DATE (MM/DD/YY)</th>
<th>POLICY EXPIRATION DATE (MM/DD/YY)</th>
<th>LIMITS</th>
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<td>EACH OCCURRENCE $1,000,000</td>
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<td>FIRE DAMAGE (Any one fire) $50,000</td>
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<td>MED EXP (Any one person) $5,000</td>
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<td>PERSONAL &amp; ADV INJURY $1,000,000</td>
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<td>GENERAL AGGREGATE $1,000,000</td>
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<td>COMBINED SINGLE LIMIT (Ea accident) $1,000,000</td>
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<td>E.L. EACH ACCIDENT $</td>
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<td>E.L. DISEASE-POLICY LIMIT $</td>
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</table>

DESCRIPTION OF OPERATIONS / LOCATION / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of San Marcos is named as additional insured on all Commercial General Liability and Automobile Liability policies. General Liability, Automotive Liability and Worker’s Compensation policy to include a Waiver of Subrogation in favor of the City of San Marcos. (All Endorsements must be submitted with the certificate.)

CERTIFICATE HOLDER

ADDITIONAL INSURED: INSURER LETTER: CANCELLATION

City of San Marcos
Attn: Capital Improvements
630 E. Hopkins
San Marcos, Texas 78666

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL Endeavor to mail 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ATTACHMENT "D" - THE CITY OF SAN MARCOS INSURANCE REQUIREMENTS
Attachment E

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

PROJECT NAME: Primrose Way Water Project
CITY PROJECT MANAGER/REP: Angel Sosa, Engineering Technician II
CONSULTANT/VENDOR: Alan Plummer Associates, Inc.
AUTHORIZATION NO:
CONTRACT EXECUTION DATE:
DATE OF THIS CHANGE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

<table>
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<tr>
<th>Previous contract amount:</th>
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<tbody>
<tr>
<td>Net increase/decrease in contract amount:</td>
<td>$__________________</td>
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<tr>
<td>Revised contract amount:</td>
<td>$__________________</td>
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Alan Plummer Associates, Inc.

By:___________________________ Date:__________________

___________________________
Printed name, title

Approved by:

City of San Marcos:

By:___________________________ Date:__________________

___________________________
Printed name, title

City Department (PM, etc.) only below this line.

Account Number(s): __________________________________________

Previous Changes in Service:
#_____; date; amount
#_____; date; amount
#_____; date; amount
AGENDA CAPTION:
Consider approval of Resolution 2017-72R, approving the procurement of an Oracle Software License update and four years of associated support for the City’s Metersense application from Mythics Inc. in the total amount of $237,030.12 through the Texas Comptroller of Public Account’s Department of Information Resources Program (contract DIR-TSO-2548) for Oracle branded manufacturer hardware, software and related products; authorizing the Interim City Manager or his designee to execute the appropriate purchasing documents on behalf of the City and declaring an effective date.

Meeting date:  April 18, 2017

Department: Information Technology Department - Mike Sturm, Director (By Cheryl Pantermuehl, Purchasing Manager)

Funds Required:  $237,030.12 FY17 $19,752.51
Account Number:  22006335.52395; 21006322.52395 (split evenly between these)
Funds Available:  $20,000
Account Name:  Software License and Maintenance

CITY COUNCIL GOAL:
Goal #5 - Maintain and improve City’s infrastructure
Goal #7 - Maintain fiscal responsibility
Goal #8 - Provide for the efficient and effective delivery of services

COMPREHENSIVE PLAN ELEMENT(s):  [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
The City of San Marcos is authorized by the Local Government Code, Chapter 271, to participate in cooperative purchasing programs. The Texas Comptroller of Accounts (“TCPA”) Department of Information Resources (“DIR”) has awarded contract #DIR-TSO-2548 for Oracle Branded Manufacturer Hardware, Software, and Related Products and Services to Mythics, Inc., located in Virginia Beach, Virginia.

This is a fee to update the Oracle software and continue support over the course of four (4) years for twelve (12) Oracle database licenses. The Oracle database licenses are required by Metersense to operate the
City’s meter data management solution that allows us to interpret smart meter data.

The cost of each annual support term is as follows:

- May 29, 2017 - May 31, 2018............$59,257.53
- May 29, 2018 - May 31, 2019............$59,257.53
- May 29, 2019 - May 31, 2020............$59,257.53
- May 29, 2020 - May 31, 2021............$59,257.53

Total Cost $237,030.12

By securing a four (4) year contract and locking in the annual price, the City is saving between $8,000 to $10,000 on software upgrades and license support over the course of those four (4) years. If the City does not secure the four (4) year contract, the annual cost will increase upon each year renewal.

The annual amount of the contract is $59,257.53; however, the estimated amount for the remainder of FY17 is $19,752.51. Purchases against this contract for FY18 are contingent upon the approval of the FY18 budget by the City Council.
RESOLUTION 2017-__________R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PROCUREMENT OF AN ORACLE SOFTWARE LICENSE UPDATE AND FOUR YEARS OF ASSOCIATED SUPPORT FOR THE CITY’S METERSENSE APPLICATION FROM MYTHICS INC. IN THE TOTAL AMOUNT OF $237,030.12 THROUGH THE TEXAS COMPTROLLER OF PUBLIC ACCOUNT’S DEPARTMENT OF INFORMATION RESOURCES PROGRAM (CONTRACT DIR-TSO-2548) FOR ORACLE BRANDED MANUFACTURER HARDWARE, SOFTWARE AND RELATED PRODUCTS; AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASING DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The procurement of an Oracle Software License Update and four years of associated support for the City’s Metersense application from Mythics, Inc. in the total amount of $237,030.12 through the Texas Comptroller of Public Account’s (“TCPA”) Department of Information Resources (“DIR”) Program (Contract DIR-TSO-2548) Oracle Branded Manufacturer Hardware, Software and Related Projects is approved.

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

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

ADOPTED this the day of , 2017.

John Thomaides,
Mayor

Attest:

Jamie Lee Case,
City Clerk
**Company Name:** City of San Marcos  
**Quote Number:** COSM 6714532 FY17MY  
**Valid Through:** April 28, 2017

**Contact:** Kayla Lamm  
**Phone:** (512) 393-8124  
**Email:** klamm@sanmarcostx.gov

---

### ORACLE SUPPORT RENEWAL

#### Software Update License & Support

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<tr>
<th>Line</th>
<th>Item</th>
<th>CSI</th>
<th>Product Description</th>
<th>Term</th>
<th>License Type</th>
<th>Number of Licenses</th>
<th>License Level</th>
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<td>Processor Perpetual</td>
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<td>$19,448.05</td>
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**~SUPPORT TOTAL** $59,257.53

Option Year 2 (May 29, 2018 through May 31, 2019): $59,257.53  
Option Year 3 (May 29, 2019 through May 31, 2020): $59,257.53  
Option Year 4 (May 29, 2020 through May 31, 2021): $59,257.53

Total for 4 Years of Support: $237,030.12

---

***Please reference Mythics Quote Number on your purchase order:*** COSM 6714532 FY17MY  
~Applicable state and local sales tax will be applied unless an exemption is provided.

---

**Addition Information:**

This quotation is an estimate and is an invitation for you to offer to purchase products and services from Mythics. Your order is subject to Mythics’ acceptance and to software licensing terms and conditions per reference to an existing license/contract or a newly executed license accompanying your order.

Mythics Fed Tax ID# 54-1987871  
Support services are provided under Oracle’s then current technical support policies located at: http://www.oracle.com/support/policies.html

You agree that Mythics has the right to cancel your support due to non-payment.

Media is available for download at no additional cost at http://edelivery.oracle.com/

In reliance on your order, Mythics will issue a non-cancellable order with its supplier for software or hardware products ordered. Therefore all orders are non-cancellable.

This is an Oracle Software Support Renewal for a period of 4 years from May 29, 2017 through May 28, 2021. This PO represents the initial 12 months of the contract period that are funded between May 29, 2017 through May 28, 2018 pursuant to quote # COSM 6714532 FY17MY. Additional future purchase orders will be issued for succeeding fiscal years.

**Purchasing Instructions:**

Please include the following statements in your order:

1. This order is placed pursuant to the terms and conditions of Texas DIR- TSO-2548.
2. Payment terms are: Net 30
3. Mythics Quote Number COSM 6714532 FY17MY

Fax order to 757-965-9486 or email to: jbarnes@mythics.com
AGENDA CAPTION:
Consider approval of Resolution 2017-73R approving a Commercial Aviation Ground Lease Agreement with Berry Aviation, Inc. for a tract of land at the San Marcos Regional Airport; authorizing the City Manager to execute the Agreement; and declaring an effective date.

Meeting date: April 18, 2017

Department: San Marcos Regional Airport

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL: Economic Development

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

N/A

BACKGROUND:

Berry Aviation, Inc. is an airline and FBO that has been based at the San Marcos Regional Airport since 1992. Berry currently has over 230 employees and conducts airline, maintenance, FBO, and aircraft storage activities from a terminal building and two (2) aircraft hangars.

Berry desires to lease land at the airport for the construction of an approximately 30,500 square foot hangar and office building. The total investment for construction and equipment assets is estimated at $3.5 million. The facility would be primarily used for the maintenance of their airline fleet. Berry’s existing maintenance hangar would be used to store additional tenant aircraft, increasing their customer capacity and fuel flowage.

Texas Aviation Partners is recommending the approval of a forty (40) year ground lease with an initial lease rate of $0.20 per square foot. Rent will increase 10% every 5 years.
RESOLUTION NO. 2017- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE TERMS AND CONDITIONS OF A COMMERCIAL AVIATION GROUND LEASE AGREEMENT WITH BERRY AVIATION, INC. FOR LEASE OF A TRACT OF LAND AT THE SAN MARCOS REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Commercial Aviation Ground Lease Agreement between the City of San Marcos and Berry Aviation, Inc. is hereby approved.

PART 2. The City Manager is authorized to sign the Commercial Aviation Ground Lease Agreement on behalf of the City.

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT
COMMERCIAL AVIATION GROUND LEASE AGREEMENT
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CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT
COMMERCIAL AVIATION GROUND LEASE AGREEMENT

THIS COMMERCIAL AVIATION GROUND LEASE AGREEMENT (“Lease”) is made between the City of San Marcos, a municipal corporation of the State of Texas (“Lessor” or “City”), and Berry Aviation, Inc., a Texas corporation (“Lessee”).

AGREEMENT:

In consideration of the covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: AIRPORT OWNERSHIP; DEMISE; ACCEPTANCE; CERTAIN RULES AND OTHER MATTERS

1.01. Airport. Lessor is the owner of the San Marcos Regional Airport (the “Airport”), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.

1.02. Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the following described real property (hereinafter referred to as the “Leased Premises”), located at the Airport in Caldwell County, Texas:

40,280 unimproved square feet as described in Exhibit A attached hereto;

1.03. Acceptance. Lessee acknowledges that, subject to Lessor’s express obligations herein: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purpose or the presence of environmental, geologic or other site conditions that may affect Lessee’s use of the Leased Premises; (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; (iii) Lessee has had the opportunity to inspect and perform tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee is accepting the Leased Premises in its present condition.

1.04. Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations adopted November 2, 2015, pursuant to City Ordinance Number 2015-46 (the “Rules and Regulations”), a copy of which is attached hereto as Exhibit B, and (ii) San Marcos Regional Airport Minimum Standards last updated August 18, 2015 (the “Minimum Standards”), a copy of which are attached hereto as Exhibit C. Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee’s ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.

1.05. Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by Lessor to the United States of
America and, as applicable, the State of Texas. In connection with such sponsor assurances, a list of which is set forth in Exhibit D attached hereto, Lessee agrees that this Lease and Lessee’s rights and privileges hereunder shall be subordinate to such sponsor assurances.

1.06. Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways owned by the City for automobiles and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations, applicable laws and regulations of the City, the Federal Aviation Administration (“FAA”) and other governmental authorities with jurisdiction over the Airport and this Lease.

ARTICLE 2: COMMENCEMENT, TERM AND RENT

2.01. Commencement. Rental (“Rent”) shall accrue commencing upon the Commencement Date (as defined below). Rent shall be payable at the place designated in Section 2.04.

2.02. Term. The term of this Lease (“Term”) will commence on April 18, 2017 (the “Commencement Date”) and will terminate on April 18, 2057 (the “Expiration Date”), subject to earlier termination or renewal as provided herein. As used herein, “Lease Year” means each period of twelve (12) full calendar months from and after the Commencement Date.

2.03. Rent. During the Term, Lessee hereby promises and agrees to pay Lessor Rent for the Leased Premises on a “per square foot per Lease Year” basis, as follows:

<table>
<thead>
<tr>
<th>Lease Year</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement Date through Lease Year 5:</td>
<td>$8,056.00</td>
</tr>
<tr>
<td>Lease Year 6 through Lease Year 10:</td>
<td>$8,861.60</td>
</tr>
<tr>
<td>Lease Year 11 through Lease Year 15:</td>
<td>$9,667.20</td>
</tr>
<tr>
<td>Lease Year 16 through Lease Year 20:</td>
<td>$10,875.60</td>
</tr>
<tr>
<td>Lease Year 21 through Lease Year 25:</td>
<td>$11,681.12</td>
</tr>
<tr>
<td>Lease Year 26 through Lease Year 30:</td>
<td>$12,889.60</td>
</tr>
<tr>
<td>Lease Year 31 through Lease Year 35:</td>
<td>$14,098.00</td>
</tr>
<tr>
<td>Lease Year 36 through Lease Year 40:</td>
<td>$15,709.92</td>
</tr>
</tbody>
</table>

Rent shall be paid in equal monthly installments, initially in the amount of $8,056.00; Rent will be prorated in the event of any partial month. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.

Lessee agrees to pay the first (prorated, if applicable) Rent installment within three (3) business days after the Commencement Date. Such payment shall be credited against Rent due for the first month in the Term.

2.04. Form and Place of Payment. The monthly Rent shall be due on or before the first day of each calendar month. A payment shall be considered past due if, after the fifth (5th) day of the month in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos,
Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.

2.05. **Late Charges.** Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5th) day of the month in which such Rent is due will be considered late, and a $15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.

2.06. **No Release.** Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) **is obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.**

2.07. **Holdover.** In the event Lessee holds over after the expiration of this Lease, such hold over status will create a month-to-month tenancy. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the month-to-month holdover rate. Holdover tenancy will be subject to all other terms and conditions of this Lease.

2.08. **Other Fees and Charges.** Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use (and in no event shall Lessor charge Lessee for use unless all other tenants at the Airport are also required to, and do, pay for such use). New charges for Airport Facilities (including, without limitation, tie-down fees), if any, will be established by resolution hereafter adopted by Lessor.

**ARTICLE 3: USE AND CARE OF PREMISES**

3.01. **Authorized Use:** During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: aviation related activities and business, including, but not limited to, aircraft and aircraft parts storage; aviation fuel sales; aircraft sales; aircraft maintenance, modification and repair; aircraft repair station; air carrier (charter) service; air taxi operations; training; FAA Part 141 approved flight school; pilot’s lounge; aircraft part sales; aviation insurance marketing and sales; avionics business; aircraft management; aircraft refurbishing; aviation-related equipment; fixed base operator; hangar space; aviation-related office use; and all other uses ancillary to any of the foregoing (herein, the “**Authorized Use**”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.

3.02. **Conduct of Business.** Except as provided in Section 15.01.f., Lessee shall not fail to occupy and use the Leased Premises for Authorized Use and, subject to Applicable Laws, shall not fail to keep the Leased Premises open for business as required by the Minimum Standards.
3.03. **Parking.** Except during any period of construction of the Facilities (as defined below) or the Alterations (as defined below) approved by Lessor, during any period of repair or reconstruction following the occurrence of a casualty or eminent domain event, or as indicated on any Plans (as defined below) approved by Lessor, Lessee agrees that (i) neither it, nor any of its officers, directors, employees, contractors, subcontractors, licensees or invitees, will park or allow any non-aviation-related motor vehicle to be parked on the Leased Premises; and (ii) all aviation-related or business-related motor vehicles brought onto the Leased Premises in connection with Lessee’s business will be parked only in areas designated as motor vehicle parking areas.

3.04. **No Unlawful Use.** Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s) and that such unlawful use shall result in the removal from the Leased Premises by Lessor of any person(s) using the same. Lessee’s unlawful use of the Leased Premises shall constitute a breach of this Lease.

3.05. **No Insurance Invalidation; Risk of Lessee.** Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor’s prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.

3.06. **No Waste or Nuisance; Compliance with Laws.** Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with applicable laws and regulations of the City (except to the extent any of the same which are enacted after the Effective Date preclude or adversely affect Lessee’s rights hereunder), the FAA and other governmental authorities with jurisdiction over the Leased Premises (“Applicable Law”).

3.07. **Trash and Debris.** Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents, contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee’s expense.

3.08. **Storage.** Lessee shall store all equipment, materials and supplies within the confines of a building or other structure located on the Leased Premises. Outside storage is specifically prohibited without the advance written consent of Lessor.

3.09. **Use of Airport Facilities.** Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities to the same extent as other Airport users.

3.10. **Additional Airport Facilities.** Notwithstanding any provision of this Lease, any element of the Approved Plans (as defined below) or otherwise, Lessee shall have no obligation to build or construct any improvements or facilities on or off the Leased Premises which constitute Airport Facilities, including, without limitation, offsite utility lines or other improvements, and any agreement to the contrary shall be made set forth in a writing signed
ARTICLE 4: CONSTRUCTION OF FACILITIES; ALTERATIONS AND FIXTURES

4.01. Facilities: Approvals.

a. Lessee, at its sole cost and expense, shall provide for the construction of building improvements on the Leased Premises (the “Facilities”), and a parking lot adjacent thereto (“Parking Lot”), generally located as described in Exhibit E attached hereto and the total cost of which shall not exceed $2,000,000 (the “Maximum Amount”). Lessor and Lessee acknowledge and agree that the first row of parking spaces in the Parking Lot are for Lessee’s exclusive use, and the remainder of the parking spaces are for non-exclusive use. Construction of the Facilities and the Parking Lot shall be in accordance with sealed plans prepared by an architect or structural engineer licensed or registered in the State of Texas. The plans, together with the architect or engineer’s estimated cost of construction of the Facilities (the “Estimate”) and related construction schedule, based on time required and not on specific dates (“Schedule”), shall be submitted to the City through Airport Management for review and approval no later than sixty (60) days after the Effective Date. In addition to the plans for the Facilities, the City may review Lessee’s proposed lighting, landscaping plan and exterior building façade, inclusive of material type(s) and color (“Facilities Detail”). The City shall reasonably approve or disapprove the plans, Facilities Detail, Estimate and Schedule (collectively, the “Construction Documents”) and notify Lessee of the City’s approval or disapproval in writing within thirty (30) days after receipt, and failure to approve or disapprove any of the Construction Documents within said thirty (30) day period shall constitute deemed approval. In the event of disapproval of any of the Construction Documents, the City shall state, in writing, the specific document(s), the reason(s) for disapproval and the requested change(s), in which event Lessee shall promptly revise the disapproved item(s) and resubmit the subject Construction Documents to the City through Airport Management. The City shall approve or disapprove such resubmittal within fifteen days after receipt, and failure to approve or disapprove the same within said fifteen day period shall constitute deemed approval. In the event the City again disapproves, the same process shall be followed until the City has approved all of the Construction Documents; provided, in the event the City fails to approve all such items within six (6) months after the Effective Date or if the cost of the Facilities and Parking Lot will exceed, in the aggregate, the Maximum Amount, Lessee shall have the right to terminate this Lease upon written notice to Lessor (in the case of the City’s failure to approve all of Construction Documents, delivered to the City at any time prior to receipt of approval of all such items), in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder. Lessee is responsible for securing all necessary permits from the City's Planning and Development Department to complete the Facilities and Parking Lot.
b. Lessee is prohibited from undertaking or allowing any party to undertake the construction or development of the Facilities, Parking Lot or any Alterations which require approval by the FAA without first submitting Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required by the FAA, to the FAA.

c. Upon Lessor’s approval of the Construction Documents, the same shall constitute the “Approved Plans”, and the date of approval by Lessor shall constitute the “Approval Date”.

4.02. Construction of the Facilities and Parking Lot. Subject to force majeure, Lessee shall commence construction of the Facilities and Parking Lot within ninety (90) days after the Approval Date and, thereafter, diligently and continuously pursue construction to completion in accordance with the Approved Plans. Subject to force majeure, substantial completion of the Facilities and Parking Lot shall occur on or before the date which is nine (9) months after the Approval Date.

4.03. As Built Survey; Confirmation of Construction Costs. Following completion of construction of the Facilities, Lessee shall (i) prepare as built plans, at its sole cost and expense, and deliver a copy of the same to Lessor; and (ii) certify to Lessor in writing the actual amount of construction costs for the Facilities and Parking Lot (the “Construction Costs”).

4.04. Ownership. Except for onsite improvements owned by Lessor or third parties (such as, for example, utility improvements), (i) the Facilities, Parking Lot and all other improvements made to the Leased Premises by Lessee which constitute fixtures are owned by Lessee during the Term and any renewal thereof, and (ii) upon termination or expiration of the Term and any renewal thereof, title to the same shall vest in Lessor.

4.05. Alterations. Except for alterations required by Applicable Law and alterations which cost less than One Hundred Thousand and NO/100 Dollars ($100,000.00) and do not affect the structural integrity of the Facilities, all alterations to the Leased Premises, including alterations made following a casualty or eminent domain event (“Alterations”) must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, and, if applicable, Lessee shall submit Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required, to the FAA. All such plans, specifications and work shall conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the “ADA”). Notwithstanding the foregoing right of Lessee to construct alterations required by Applicable Law and certain alterations without first obtaining the City’s consent, to the extent permits or other authorizations are required by Applicable Law, Lessee shall comply with the same and, if plans are required to be submitted and approved, the process in Section 4.01.a. shall apply.

4.06. Exterior Lighting and Signage.

a. Except as set forth in the Approved Plans or any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any exterior lighting, shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and
dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of the Facilities and permitted or approved Alterations and “for sale” or “for lease” signs on the Leased Premises without the consent of Lessor, subject to compliance with applicable sign ordinances and rules.

b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Further, Lessee will install a sign indicating that the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be approved by Lessor prior to installation. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition.

4.07. **Condition on Surrender.** Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted.

4.08. **No Liens.** Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. **LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.**

**ARTICLE 5: MAINTENANCE AND REPAIR OF PREMISES**

5.01. **Lessee Obligations.** Lessee shall, at its sole cost and expense, maintain, repair and keep in good repair the Leased Premises, the Facilities, including routine maintenance and repair of the Parking Lot, vehicular driveway and ramp tie-in, landscaping, equipment, electrical, mechanical, plumbing and fire protection systems, roofs, floors, load-bearing and exterior walls and utilities on the Leased Premises and, subject to Section 6.01, all other fixtures constructed or installed on the Leased Premises by Lessee, including exterior lighting facilities (collectively, the “**Improvements**”). In addition, Lessee shall maintain landscaping on the Leased Premises. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary Improvements repairs or perform any necessary Improvements maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable cost of such work shall be payable by Lessee within thirty (30) days of Lessee’s receipt of such notice.
5.02. **Lessor’s Right of Access.** When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following notice to Lessee during Lessee’s regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs to the Improvements for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.

**ARTICLE 6: UTILITIES AND TAXES**

6.01. **Utilities.** Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, impact fees, the installation of meters, any deposits and any other customary prerequisites for such utility service. Lessee further covenants and agrees that Lessee will pay all customary costs and expenses for initial service and any extension of the same to the Leased Premises and, if applicable, Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor’s property. In addition, Lessee shall maintain and repair all utility service lines located on the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, shall be abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.

6.02. **Taxes.**

a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) Lessee’s leasehold interest in the Leased Premises, (ii) the Improvements, and (iii) Lessee’s equipment, inventory and other personal property, including, but not limited to, Lessee’s aircraft used for commercial purposes. Lessee shall deliver to Airport Management evidence of timely payment of all such taxes.

b. Lessee may, at Lessee’s expense, contest the validity or amount of any taxes for which Lessee is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, the Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor’s reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such amount of the taxes as
may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent. Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein.

ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE

7.01. Grant of Rights. Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:

a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, “Airport Facilities” includes, but is not limited to, runways, taxiways, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.

b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR

8.01. Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure (exclusive of the Facilities) which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.

8.02. Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee’s business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee’s business at the Leased Premises.
8.03. Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.

8.04. War; National Emergency. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments owing under this Lease shall likewise be suspended until Lessee’s normal operations resume at the Leased Premises. In addition, if Lessee’s normal business operations are materially affected for a period in excess of one eighty (180) days, Lessee may terminate this Lease upon written notice to Lessor, in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07. Lessee may remove its personal and other property within thirty (30) days after the date of Lessee’s notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee’s leasehold estate or for any loss or damage caused to Lessee by the United States of America.

8.05. Operation as Public Airport. Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

ARTICLE 9: OPERATION OF THE AIRPORT

9.01. Non Discrimination Requirements.

a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee’s election, this Lease shall be modified to reflect the more favorable material terms.

b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee’s use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no
person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

9.02. **Airport Development.** The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit. If the future development of the Airport requires the relocation of Lessee’s Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises a location which is consistent with and suitable for Lessee’s current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee’s business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee’s reasonable agreement, taking into account impacts on Lessee’s use thereof) or promptly reconstruct the Improvements at no cost to Lessee.

9.03. **Aeronautical Services Grant and Requirements.** The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:

a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.

b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

**ARTICLE 10: INSPECTION AND PREMISES ACCEPTANCE**

10.01. **Fire Safety.** Lessee will permit the Fire Marshal to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to insure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.

10.02. **Acceptance.** Lessee agrees and covenants that Lessee has inspected the Leased Premises and is fully advised of its own rights without reliance upon any representation made by Lessor as to the condition of the Leased Premises, and accepts same in their present condition.
ARTICLE 11: INSURANCE AND INDEMNITY

11.01. Required Insurance. Lessee shall procure and maintain at all times, in full force and effect, a policy or policies of insurance as set forth in the Minimum Standards and related to Lessee’s lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).

11.02. Lessee Responsibility. In the event Lessee fails to obtain and maintain required insurance, Lessee shall nevertheless be responsible for related losses and, to the extent any obligation of Lessee hereunder is uninsurable, Lessee shall nevertheless be responsible for such obligation. To the extent that Lessee maintains insurance which does not comply with the Minimum Standards, the same does not operate to release Lessee from its obligations pursuant to Section 11.01.

11.03. No Conflicts. Lessee shall not do or permit anything to be done on any portion of the Leased Premises, or bring or keep anything thereon, which (i) is in violation of any required insurance, (ii) operates to increase the rate of insurance upon the Leased Premises, or (iii) unreasonably interferes with the rights of other tenants at the Airport.

11.04. Casualty Coverage: Notwithstanding and, as applicable, in addition to the Minimum Standards, during the Term and any renewal thereof, Lessee shall, at its sole cost and expense, cause all Improvements on the Leased Premises to be insured to the full insurable value thereof against the perils of explosion, fire, extended coverage and the like.

11.05. Indemnity and Security.

a. Indemnity. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “LESSEE PARTIES”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR
IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR’S CITY ATTORNEY.

b. Limitation of Liability. The foregoing and any other indemnity of Lessee herein shall not be interpreted as requiring Lessee to indemnify any of the Indemnified Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations.

c. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.

d. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.

e. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any accident on the Leased Premises or Airport. To the extent Lessee’s officers are aware of any defects in Airport runways, taxiways, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee’s obligation, and that such notice is provided as a courtesy to Lessor).

f. Security. Lessor does not guarantee police protection or security to Lessee or its property and, except as provided in subsection b above, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

ARTICLE 12: CONDEMNATION

12.01. Taking in Entirety. If the entire Leased Premises are taken by any public or governmental
body by right of eminent domain, this Lease shall terminate as of the date the condemning authority takes possession.

12.02. **Partial Taking.** If less than all of the Leased Premises are taken by any public or governmental body by right of eminent domain, and in Lessee’s reasonable judgment, the remainder lacks adequate area, location, configuration or improvements to carry out the purposes for which the Leased Premises were leased, Lessee shall have the right to terminate the Lease in its entirety, by giving Lessor written notice within thirty (30) days after the date the condemning authority takes possession. If Lessee does not terminate the Lease, the Lease shall continue in full force and effect as to the remainder of the Leased Premises.

12.03. **Damage Award for Continuation of Lease.** Subject to the terms and conditions of any subordination, attornment and non-disturbance agreement (“SNDA”) executed by Lessor, Lessee and Lessee’s lender, in the event of a partial taking pursuant Section 12.02 where there is not a termination of this Lease, (i) an amount equal to (a) the amount awarded for the loss of Lessee’s leasehold estate, plus (b) the amount awarded for the loss of Lessee’s trade fixtures and other tangible personal property, plus (c) the amount awarded for the Improvements and Alterations so taken (which shall not be less than actual costs incurred by Lessee in development and construction of the same) multiplied by a fraction, the numerator of which is the total number of months from the date of the taking until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof, shall belong to Lessee, and Lessor assigns to Lessee all right, title and interest in and to any and all such compensation; and (ii) the remainder of amounts awarded as damages shall belong to Lessor and, subject to payment of an award to Lessee of amounts due pursuant to (i) above, Lessee assigns to Lessor all right, title and interest in and to any and all such compensation. Lessee is authorized to assert a claim for, and receive, an award and compensation based on (i) above for the taking of Lessee’s property.

12.04. **Damage Award for Termination of Lease.** Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee’s lender, in the event of a termination of this Lease pursuant to this Section 12, any condemnation award shall be determined and distributed in accordance with the provisions of Section 12.03. The termination of this Lease under this Article 12 shall not affect the rights of the respective parties to such awards and compensation, which rights shall survive termination.

12.05. **Definition of Taking.** As used in this Article 12, a taking shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

**ARTICLE 13: DAMAGE BY CASUALTY**

13.01. **Notice Required.** Lessee shall give immediate verbal notice, followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.

13.02. **Restoration Upon Casualty Loss.** Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee’s lender, if the Improvements are wholly or partially destroyed or damaged by fire or any other casualty (“Casualty”), Lessee shall cause the same to be restored and reconstructed with available insurance proceeds (and such other proceeds as are made available to Lessee), unless otherwise agreed by Lessor in writing,
and subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee’s lender, the following provisions shall apply:

a. **New Construction Requirements.** The design of all portions of the Leased Premises to be restored and reconstructed shall meet the requirements of this Lease, and Lessor shall have the same rights of review, comment and approval with respect to such design as it has hereunder for new construction.

b. **Commencement and Completion.** Restoration and reconstruction shall commence by the later of six (6) months after the date of the Casualty or sixty (60) days after the plans for such construction are approved by Lessor and, as applicable, the FAA. Thereafter, construction shall be pursued with all due diligence to substantial completion.

c. **Construction Funding.** Lessee shall use available proceeds of Lessee’s casualty insurance for the restoration and reconstruction of the Improvements.

13.03. **No Restoration Following Casualty Loss.** Notwithstanding the provisions of Section 13.02, subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee’s lender, the following provisions shall apply:

a. **By Agreement.** If Lessee and Lessor agree not to restore and reconstruct the Improvements, either party may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty upon thirty (30) days’ written notice to the other, and the following provisions shall apply:

1) With available proceeds of Lessee’s casualty insurance, Lessee shall establish reasonable security for the Leased Premises and, as soon as practicable, remove all debris resulting from the Casualty and bring the Leased Premises to a clean and safe condition.

2) The remainder of the available proceeds of Lessee’s casualty insurance shall be divided between Lessor and Lessee, Lessee’s portion thereof being an amount determined by multiplying the remaining amount by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

3) In the event of termination, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee’s casualty insurance shall be distributed in accordance with 1 and 2 above.

b. **Cannot be Constructed Timely.** If the Improvements cannot be reconstructed within two hundred forty (240) days following the date of the Casualty, Lessee may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty or in its entirety upon thirty (30) days’ written notice to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder; provided, the termination of this Lease under this Article 13 shall not affect the rights of the
respective parties to available proceeds of Lessee’s casualty insurance, which rights shall survive termination. In such event, the available proceeds of Lessee’s casualty insurance shall be divided between Lessor and Lessee, Lessee’s portion thereof being an amount determined by multiplying the amount of available proceeds by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

13.04. Rent Abatement. During any period of reconstruction or repair of the Improvements on the Leased Premises, this Lease shall continue in full force and effect except that Rent shall be abated for the length of time necessary for the reconstruction or repairs based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease.

13.05. Casualty During Last 60 Months. Notwithstanding anything to the contrary herein, the parties further agree that Lessee shall have the right to decline to repair and restore the Leased Premises if the Casualty occurs within the last sixty (60) months of the Term and any renewal thereof unless Lessor and Lessee agree, on mutually agreeable terms, to an extension. If Lessee declines to repair and restore the Leased Premises, this Lease shall terminate upon delivery of Lessee’s notice of termination to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee’s casualty insurance shall be distributed in accordance with Section 13.02.b. The termination of this Lease under this Article 13 shall not affect the rights of the respective parties to available proceeds of Lessee’s casualty insurance, which rights shall survive termination.

ARTICLE 14: ASSIGNMENT AND SUBLETTING

14.01. Assignment by Lessee. Except as otherwise provided herein with respect to Lessee’s financing and with respect to a Permitted Assignment (as defined below), Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, including by operation of law, without the prior written consent of Airport Management; provided (i) no change in the direct or indirect control of Lessee or any ownership interests therein shall be considered an assignment, and (ii) Lessor shall not unreasonably withhold, condition or delay its consent to a proposed assignment. In connection with any request by Lessee for Lessor’s consent to a proposed assignment, Lessor’s denial of such consent shall be based upon the following:

a. In the reasonable judgment of Lessor, the assignee (i) is of a character or engaged in a business or proposes to use the Leased Premises in a manner which is not in keeping with Airport standards or would diminish the value of the Airport, or (ii) in Lessor’s reasonable opinion, is not creditworthy (provided, consent shall not be denied if Lessee agrees to remain liable under this Lease);

b. The occupancy of the Leased Premises by the proposed assignee would cause Lessor’s insurance to be cancelled (or increased, unless such costs will be reimbursed by the proposed assignee);

c. The use is not a use generally in keeping with uses allowed at the Leased Premises;
d. The use is prohibited at the Airport.

Such consent shall be deemed to have been granted if written notice of non-consent is not received by Lessee within thirty (30) days of a written request for consent.

14.02. **Sublease.** Notwithstanding the provisions of Section 14.02, Lessee may sublease office, hangar and tie-down space to subtenants without Airport Management’s prior consent provided that (i) the sublease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, and (ii) the terms of the sublease or other use or occupancy agreement are consistent with the terms and conditions of this Lease. Additionally, Lessee shall provide Airport Management with a list of subtenants no more than two times per calendar year.

14.03. **No Release.** Except for a Permitted Assignment or assignment to a Qualified Lessee (as defined below) to which Lessor has consented pursuant to Section 14.01, no assignment, sublease or grant of use and occupancy rights shall relieve Lessee of its obligations to Lessor hereunder. Any assignment, transfer or sublease that is not permitted under this Lease and has not been authorized by Lessor in writing shall be void. As used herein:

1) **“Permitted Assignment”** means the transfer of all of part of Lessee’s interest in this Lease or all or part of the Leased Premises to the following types of entities without the written consent of Lessor:

   a) Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);

   b) Any transfer to an affiliate (by common ownership) or subsidiary of Lessee.

   c) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged, consolidated or reorganized, so long as Lessee’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation or reorganization.

   d) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee’s or of Tenant’s business operations in the Leased Premises.

   e) Any transfer to a Qualified Lessee.

2) **“Qualified Lessee”** means a person or entity with a net worth equal to or greater than an amount equal to three hundred percent (300%) of the then-unpaid Rent obligations of Lessee hereunder.
14.04. Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor’s obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION

15.01. Events of Default by Lessee. The following shall constitute “events of default” by Lessee under this Lease:

a. Rent. Failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee under this Lease when due where such failure continues for a period of ten days after written notice by Lessor to Lessee; provided, after the second such failure in a calendar year, only the passage of time, but no further written notice, shall be required to establish an event of default in the same calendar year; or

b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a. above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee’s obligation which it has failed to perform is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced, thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or

c. Certain Voluntary Acts. Lessee (i) files, or consents by answer or otherwise to the filing against it if, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee’s property; or

d. Receivership; Bankruptcy. Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee’s property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or

e. Vacation or Failure to Operate. Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days; or
f. **Levy or Attachment.** Except as permitted pursuant to a SNDA executed by Lessor, Lessee and Lessee’s lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.

**15.02. Lessor Remedies.** If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor’s rights or remedies as a result of the event of default, Lessor may do the following:

a. **Terminate this Lease.** Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and, except as provided in Section 11.05.b., without being liable for any resulting damages. Lessee agrees to pay to Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor’s request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements, and such shall become the property of Lessor.

b. **Relet the Leased Premises and Receive the Rent.** Lessor may terminate Lessee’s right to possession of the Leased Premises and enjoyment of the rents, issues and profits there from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee’s obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.

c. **Enter and Perform.** Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.

d. **Other Remedies.** Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.

**15.03. Default by Lessor.** Lessor shall be deemed to be in default of this Lease (herein, a “Lessor Default”) if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor’s breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 3.09, 7.01(a), 9.02, and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period,
Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.04. **Lessee’s Remedies.** If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

a. **Terminate this Lease.** Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee’s rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or

b. **Other Remedies.** Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.
ARTICLE 16: LESSOR’S LIEN

16.01. Subordination of Lessor’s Lien. Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord’s liens on the Improvements or Lessee’s personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

ARTICLE 17: LESSEE’S MORTGAGE OF LEASEHOLD INTEREST

17.01. Mortgage of Leasehold Estate.

a. Consent to Mortgage. Lessor grants permission to Lessee to mortgage of Lessee’s leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.

b. Lender Rights and Obligations. Lessee’s lender may, in case of default by Lessee, assume the rights and obligations of Lessee under this Lease and become a substituted Lessee, with the further right to assign Lessee’s interest to a third party, subject to the approval of the Airport Management. Lessee’s lender’s obligations under this Lease as substituted Lessee shall cease upon assignment to an Airport Management-approved third party. Lessor agrees to execute SNDAs as Lessee’s lender may reasonably request consistent with this Lease. Lessor agrees to give Lessee’s lender a duplicate copy of any notice of a breach of this Lease or potential event of default that Lessor gives Lessee. Except as otherwise provided in a SNDA executed by Lessor, Lessee, and Lessee’s lender, the lender may then cure the breach or potential event of default, for the account of Lessee or the lender (as the lender may elect), in the same manner and in the same period of time as allowed Lessee.

ARTICLE 18: MISCELLANEOUS

18.01. Gender Neutral. When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

18.02. Amendment. This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.

18.03. Headings. The headings used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this lease.

18.04. Nonwaiver of Rights. No waiver of default by either party of any terms, covenants and
conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

18.05. **Force Majeure.** Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, “force majeure”) shall be excluded from the computation of any such period of time.

18.06. **Quiet Enjoyment.** Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.

18.07. **No Partnership.** This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.

18.08. **No Brokers.** Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.

18.09. **Governing Law; Venue.** The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas.

18.10. **Permits.** Lessee shall, at its sole expense, be responsible for obtaining and keeping in effect all licenses and permits necessary for the operation of its business at the Leased Premises.

18.11. **Entire Agreement.** This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.

18.12. **Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been included in the Lease.

18.13. **Charitable Immunity or Exemption.** If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.
18.14. **Action through Airport Management.** All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.

18.15. **Notices.** Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

**If to Lessor:**

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

**If to Lessee:**

Berry Aviation, Inc.  
1807 Airport Drive  
San Marcos, Texas 78666  
Attn: Dakota Peterson

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.15.

18.16. **Consent.** In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.

18.17. **Attorney Fees.** Each party will be required to pay its own attorneys’ fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney’s fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.

18.18. **Recordation.** Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.

18.19. **Reservation of Immunities.** TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE
18.20. **No Third Party Beneficiaries.** This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

18.21. **Survival.** Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.

18.22. **Right of First Offer.** In consideration of this Lease, Lessor hereby grants Lessee a right of first offer ("ROFR") to lease certain property adjacent or near the Leased Premises, on the terms set forth in Exhibit F attached hereto.

18.23. **Exhibits.** The exhibits to this Lease are as follows:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Description of Leased Premises</td>
</tr>
<tr>
<td>B</td>
<td>Copy of Rules and Regulations</td>
</tr>
<tr>
<td>C</td>
<td>Copy of Minimum Standards</td>
</tr>
<tr>
<td>D</td>
<td>List of Sponsor Assurances</td>
</tr>
<tr>
<td>E</td>
<td>Location of Facilities</td>
</tr>
<tr>
<td>F</td>
<td>ROFR</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of ____________, 2017 (the “Effective Date”).

LESSOR:

CITY OF SAN MARCOS, TEXAS

By:____________________________________
Name Printed:___________________________
Title:___________________________________

ATTEST:

_______________________________________

LESSEE:

BERRY AVIATION, Inc., a Texas corporation

By:____________________________
    Harry M. Berry III, Chairman and CEO
EXHIBIT A

Description of Leased Premises
EXHIBIT B

Copy of Rules and Regulations
Chapter 10 - AVIATION

Footnotes:

--- (1) ---

Editor's note—Ord. No. 2015-46, § 1, adopted November 2, 2015, amended chapter 10 in its entirety to read as herein set out. Former chapter 10, §§ 10.001, 10.026—10.027, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Cross reference—Airport commission, § 2.331 et seq.

ARTICLE 1. - GENERAL

Sec. 10.001. - Minimum standards for commercial aeronautical activities.

(a) The minimum standards for commercial aeronautical activities at the regional airport owned by the city are approved and adopted by resolution and filed in the office of the city clerk, the same as if set out fully in this section. The minimum standards govern the activities of all tenants at the airport including fixed base operators and operators of specialized aviation services. The adoption of minimum standards is recommended by Federal Aviation Administration Advisory Circular 150/5190-7.

(b) Copies of the minimum standards adopted in subsection (a) of this section are maintained for public inspection in the office of the city clerk and airport management.

(Ord. No. 2015-46, § 1, 11-2-15.)


ARTICLE 2. - STANDARD OPERATING PROCEDURES AND REGULATIONS

Sec. 10.026. - Definitions.

In this article:

*Accident* means an unintentional occurrence which results in property damage, personal injury or death.

*Airport* means all lands within the legal boundaries of the San Marcos Regional Airport under the control of the city.

*Airport management* means the company or entity contracted by the city to operate, maintain, manage and develop the airport on behalf of the city.

*Commercial activities* means the activities and operations of any aeronautical business or nonprofit organization with a valid lease agreement authorized by the city council including fixed-based operators, specialized aviation services, flight schools, flight clubs, and any other aeronautically related activity.

*Federal Aviation Administration (FAA)* means the federal agency established by the Federal Aviation Act of 1958 and reestablished in 1967 under the Department of Transportation.
Fixed base operator (FBO) means any person engaged in a business of an aviation nature under provisions, contracts or leases with the city and in accordance with applicable federal air regulations.

Motor vehicle means any self-propelled ground conveyance other than an aircraft.

Movement area means the area of the airport containing taxiways and runways separated from the ramp by two yellow lines, one solid and one dashed, requiring direct communication with the air traffic control tower during operating hours.

(Ord. No. 2015-46, §1, 11-2-15)

Sec. 10.027. - Authority.

The procedures and regulations in this article are promulgated under the power granted to the city under Federal Law (Title 46 of the Code of Federal Register) and State Law (Chapter 22 of the Texas Transportation Code) and the home-rule authority granted to the city under Article XI, Section 5 of the Texas Constitution.

(Ord. No. 2015-46, §1, 11-2-15)

Sec. 10.028. - Enforcement.

(a) Applicability. All aircraft, pilots, operators, companies, business organizations, government agencies and all persons coming upon airport property for any purpose are subject to this article.

(b) Compliance. The city council and airport management and its duly authorized representatives are empowered to enforce compliance with this article. In addition to the penalty prescribed in section 1.015, violators can be removed or evicted from the airport premises or denied use of the airport or its facilities if the action is determined by airport management or a city official charged with enforcing City code provisions to be reasonably necessary to protect public property or persons or ensure safety.

(Ord. No. 2015-46, §1, 11-2-15)

Sec. 10.029. - Revisions; validity; liability.

(a) Revisions. The city council reserve the right to revise, make changes to or waive the procedures and regulations in this article with only notice required by state law.

(b) Validity. The voiding of any particular procedure or regulation in this article does not affect the validity of the remainder of these procedures and regulations.

(c) Liability. The city assumes no responsibility for loss, injury or damage to persons or property because of fire, theft, vandalism, wind, flood, earthquake or collision, nor does it assume any liability for injury to persons while at the airport.

(Ord. No. 2015-46, §1, 11-2-15)

Sec. 10.030. - Safety.

(a) Policy. The policy of the airport is that safety is of primary and overriding priority. All persons on the airport are required to comply with this policy. This article is intended to promote safety as well as good operating practices. If any deviation is required in the interest of safety, such deviation is both authorized and encouraged. However, any deviation shall be reported to airport management as soon as practical after the occurrence.
(b) **Hazard identification.** Hazard identification and abatement are continuing programs at this airport. Any person with knowledge of a hazard at the airport shall immediately report this information to airport management.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.031. - Operations.

(a) **Aeronautical activities.** All aeronautical activities at the airport shall be conducted in conformity with the current regulations of the Federal Aviation Administration and other laws and rules promulgated by applicable federal, state and local agencies with jurisdiction over airport matters. Only properly registered aircraft and legally certified pilots are authorized to operate at the airport.

(b) **Tiedown of aircraft.** Aircraft not hangared will be tied down and secured. The aircraft owner and the owner's agent and the pilot are legally responsible for tiedown and security of the aircraft at all times including inclement weather. Inspection of tiedown equipment is the responsibility of the owner and the owner's agent and the pilot.

(c) **Parking of aircraft.**
   
   (1) Aircraft will not be parked in a manner that impedes the normal movement of other aircraft and traffic. It is the responsibility of the pilot when leaving a parked aircraft on the airport to ensure the brakes are set, the aircraft is properly chocked, and the aircraft is tied down.
   
   (2) Aircraft will not park within or under a structure for which they are not the rightful lessee or owner. Any unauthorized aircraft may be towed, seized, impounded, and/or locked by airport management at the owner's expense. Airport management will not be held liable for any damage that may occur as a result.

(d) **Unairworthy and/or abandoned aircraft.** Unairworthy aircraft shall not be parked or stored anywhere on the airport. Exception: aircraft awaiting repairs to return the aircraft to an airworthy condition may be parked or stored up to six months. Any parking or outside storage of unairworthy aircraft in excess of six months shall require written permission of airport management. In the event of failure to comply with this provision, such disabled aircraft and any abandoned or unairworthy aircraft may be removed by airport management at the owner's expense and without liability on the part of the airport for any damage which may result in the course of such removal. Airport management may recommend parking fees to the city council.

(e) **Responsibility for disposal of disabled aircraft.** The owner of wrecked and disabled aircraft shall be responsible for the prompt removal and disposal of such aircraft after release by airport management and the Federal Aviation Administration or National Transportation Safety Board.

(f) **Damage.** Any person damaging any light fixture, or other airport property will immediately report the damage to airport management. Persons causing damage to approach, runway and/or taxiway lights or fixtures, or other airport property as a result of negligent acts may be liable for the replacement or repair costs. Tenants shall be held fully responsible for any damage to any building, equipment, or real property owned by the airport. Any damage to or malfunctioning of buildings, structures, utilities or other property owned by the airport shall be reported to airport management.

(g) **Taxing aircraft.**
   
   (1) **Speed.** Aircraft will be taxied at a safe and prudent speed and under full control of the pilot at all times in accordance with Federal Aviation Administration Advisory Circular 120-74B.
   
   (2) **Consideration.** No person will start or run an aircraft in a manner to risk damage to other aircraft or property or in a manner to blow paper, debris or other objects across the taxiway or runway or in a manner to endanger any operations on the airport.

(h) **Air traffic control tower and radio procedures.** All pilots are required to communicate with the tower during operating hours prior to entering the movement area. The airport frequencies are: tower
126.825 and ground 126.125. Pilots are encouraged to announce their intentions and communicate with other pilots via CTAF when the tower is closed, in accordance with Federal Aviation Administration Advisory Circular 90-66.

(i) **Traffic patterns.**

(1) **Direction.** All VFR traffic is expected to make left traffic patterns to all runways when the tower is closed.

(2) **Altitude.** Recommended traffic pattern altitude for the airport is 1600 feet MSL/1000 feet AGL.

(j) **Authority to suspend operations.** Airport management or its designated representative may suspend or restrict any or all operations on the airport whenever such action is determined necessary.

(k) **Closing of airport.** In the event airport management believes conditions at the airport are unsafe, it is within its authority to close the entire airport or any part thereof. A notice to airmen (NOTAM) will be immediately filed with Federal Aviation Administrative Flight Safety Services.

(Ord. No. 2015-46, § 1.11-2-15.)

Sec. 10.032. - Public and tenant usage.

(a) **Commercial activities.** No person will use the airport for business or commercial activities without obtaining the approval of the city council through airport management.

(b) **Advertisements.** No person shall post, distribute, or display signs, advertisements, circulars, or any other printed material on airport property without the prior approval of airport management. Airport management is authorized to rescind any permission granted if the advertisement does not remain in compliance with this ordinance and the minimum standards adopted by the city council.

(c) **Demonstrations, shows and exhibitions.** No person will engage in any show, demonstration, or exhibition without prior written permission from airport management.

(d) **Lost articles.** Any person finding lost articles on the airport will deposit them at the airport management office located at 4400 Airport Highway 21, San Marcos, TX 78666. Articles unclaimed after 60 days by the owner may be turned over to the finder or otherwise legally disposed of by the city as determined by the city manager or his designee.

(e) **Right of entry.** Airport management has the right of entry at reasonable times for repairs, maintenance, modification or inspection of all rooms, areas and buildings on the airport.

(f) **Construction or alteration.** No construction work or alterations to grounds or structures, other than minor repairs or maintenance, will be performed on the airport without written permission from the city as determined by the city manager or his designee. No person may modify any equipment or building, or change any mechanical, electrical, electronic, or plumbing equipment owned by the airport without first obtaining written permission from airport management. No person may move or install any equipment, signs, or other structure in the public areas of the airport without first obtaining written permission from airport management.

(g) **Restricted areas.** No person shall enter any restricted area on the airport without the authorization of airport management.

(h) **Sanitation.**

(1) **Disposal.** No person will dispose of garbage, papers, refuse or other waste materials on the airport, except as provided by city ordinance.

(2) **Burning.** No open fires are allowed on the airport without the approval of the city fire marshal or his designee. No trash or refuse will be burned on the airport at any time.

(3) **Use of sewers and drains.** No materials may be put in the sanitary sewer system, or any other drainage system, which do not conform to the regulations of the city.
(i) Alcohol and narcotics.
   (1) Legal compliance. All applicable local, state and federal laws pertaining to handling or use of alcoholic beverages, narcotics, and drugs apply on the airport.
   (2) Under the influence. No person under the influence of alcohol or other substance shall operate a motor vehicle or aircraft on the airport. The city, through its appropriate law enforcement agency, reserves the right to remove or evict violators from the airport premises or deny use of the airport or its facilities by the violator.

(j) Disorderly conduct. No person on the airport shall commit any disorderly, obscene, or indecent act or commit any act prohibited by Texas Penal Code § 42.01.

(k) Preservation of property. It is unlawful for any person to:
   (1) Destroy, injure, deface or disturb any building, sign, equipment, marker, structure, lawn, or public property on the airport.
   (2) Trespass on agricultural areas without the approval of airport management.
   (3) Abandon property on the airport.
   (4) Interfere with, tamper, or injure any part of the airport operation, or any aircraft on the airport.

(l) Hunting and firearms. Except as authorized by state law, no person may carry firearms on the airport. No hunting or shooting is allowed on the airport.

(m) Storage. No person shall use any property of the airport for outside storage without first obtaining written permission from airport management. No tenant or lessee of airport property shall store or stock material or equipment in such a manner as to constitute a hazard to any person or property, or in such a manner as to create an unattractive appearance.

(n) Pets and animals. It is unlawful for the owner or person responsible for a pet or animal to permit same to be at large. The term "at large" means a dog or cat which is not restrained by leash and which is also off the premises of its owner or the person responsible for it. Pets and animals found running at large will be picked up and impounded.

(o) Drip pans. Whenever oil leakage, dripping or spillage is possible, drip pans shall be placed under each engine of an aircraft.

(p) Authority to detain aircraft. Airport management has the authority to detain any aircraft for non-payment of any debt due to the airport.

(q) Denial of use. Airport management is authorized to deny use of the airport to any aircraft or pilot violating these or Federal Regulations at the airport or elsewhere.

(r) Special events. Special event(s) means an activity which may not completely comply with these rules or which, although it may comply with these rules, will require an accommodation by other users of the airport. Special events include, but are not limited to, fly-ins, ramp space rentals, skydiving exhibitions, balloon operations, or similar events or activities. Any person wishing to sponsor a special event shall obtain the prior written approval of airport management. Airport management shall require such safeguards as deemed necessary to protect the airport, the city, the county, aircraft using the airport, and the general public. These requirements may include, but are not limited to, bonds, insurance policies, additional security personnel, facilities, special operating procedures, city permits, and any required waiver/authorization to the Federal Aviation Regulations issued by the FAA. Airport management is prohibited by the FAA from closing the airport for any activity which is not an aeronautical activity. The city council may establish, upon recommendation from airport management, general reasonable fees and requirements for special events. The fee schedule adopted by the city council will provide limited flexibility to allow airport management, with the approval of the city manager or his designee, to adjust fees for special events that may require specialized accommodations. Any signage for the special event must be approved by airport management.
(s) **Unlawful to drop handbills or other matter.** It is unlawful for any person in any aircraft flying over the airport or over the territory within the boundaries of the airport to cause or permit to be thrown out, discharged, or dropped, any handbills, circulars, card or other matter whatsoever which falls upon the airport property.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.033. - Fire prevention.

(a) **Applicability and compliance.** All persons, companies, and agencies engaged in any activity at the airport, whether occupying airport-owned facilities or otherwise, shall comply with fire regulations as issued by the city and shall comply with all applicable county, state and federal laws and regulations related to fire prevention or safety.

(b) **Enforcement.** Airport management or other duly authorized officials may direct the removal of fire hazards, arrangement and modification of equipment, or alter operating procedures in the interest of fire prevention.

(c) **Fire prevention.** All persons using the airport, or the facilities of the airport will exercise the utmost care to guard against fire and injury to persons and property.

(d) **Cleaning of parts.** The cleaning of engine parts or other parts of aircraft will be with non-flammable liquids unless the engine or aircraft part being cleaned is located a safe distance away from other aircraft or airport facilities. If volatile liquids are employed, cleaning operations must be in open and clear areas or in a suitable room of the repair facility and separated from storage and operational areas by fire resistant partitions in compliance with the requirements of the National Board of Fire Underwriters.

(e) **Hangar floors.** Floors will be kept clean and free from oil.

(f) **Empty containers.** All empty oil, paint and varnish cans, bottles and other containers will be removed immediately from the premises and not allowed to remain on floors, wall stringers, or overhead storage areas in or about hangars, shops and other buildings. Empty containers must be disposed of in accordance with the stormwater pollution prevention plan for the airport.

(g) **Trash.** No boxes, crates, rubbish, paper, or litter of any kind will be stored in or about hangars, except in proper receptacles provided for this purpose. Commercial operators shall be responsible for providing containers for all trash on their leased premises and shall arrange for the regular removal of the trash. Commercial operators will provide an appropriate receptacle for trash removal to be used by its contractors, employees, and invitees.

(h) **Flammable, corrosive and toxic materials.** Containers of gasoline, kerosene or other flammable liquids, explosives, toxic or corrosive substances will not be stored in hangars.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.034. - Fueling and flammables.

(a) **Fueling and defueling procedures.**

(1) **Hot refueling.** Hot refueling is the fueling of aircraft while the engine is running. Hot refueling shall be permitted only under special circumstances and then only when authorized by airport management. Hot refueling may be permitted only by appropriately trained and certified FBO personnel in accordance with generally accepted industry standards.

(2) **Electrical storm.** No aircraft will be fueled or defueled during an electrical storm.

(3) **Smoking.** No person will smoke within 100 feet of an aircraft being fueled or defueled.
(4) **Radio operation.** No person will operate a radio transmitter or electrical systems in an aircraft while it is being fueled or defueled.

(5) **Grounding.** During fueling and defueling, the aircraft and dispensing apparatus will both be properly grounded.

(6) **Equipment status.** Fueling hoses and equipment will be maintained in a safe, operational, and non-leaking condition and will be approved by the National Board of Fire Underwriters, or equivalent standard.

(7) **Spillage.** No person will start the engine where fuel spillage is on the ground in the vicinity of the aircraft. A person responsible for spillage will take proper measures to ensure removal of the spilled fuel pursuant to the stormwater pollution prevention plan for the airport.

(8) **Fire extinguishers.** Adequate fire extinguishers will be within reach of all persons engaged in fueling or defueling operations. All extinguishers will be inspected and recertified as required by law. All persons engaged in fueling and defueling will be familiar with the proper use of fire extinguishers.

(9) **Passengers.** No aircraft will be fueled or defueled while passengers are on board the aircraft unless the aircraft doors are in the open position.

(10) **Location of aircraft.** No aircraft will be fueled while parked in a hangar.

(b) **Cleaning of aircraft.** No person will use volatile liquids in the cleaning of an aircraft, aircraft engines, propellers, parts, or for any other purposes, unless such operations are conducted in the open or in a facility specifically equipped and approved for that purpose.

(c) **Storage.**

(1) **Flammables.** No person will keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport, unless such materials are kept in an aircraft in the proper receptacles installed in the aircraft for such purposes or in rooms or areas specifically approved for such storage.

(2) **Waste oil.** No person will keep or store waste oils in or about the hangars unless stored in a proper receptacle pending removal. Waste oil must be disposed of in accordance with the stormwater pollution prevention plan for the airport.

(d) **Liquid disposal.** No fuels, oils, dopes, paints, solvents, or acids will be disposed of or dumped on the ramp area, agricultural lands or elsewhere on the airport. All disposal will be in accordance with city ordinances, Environmental Protection Agency (EPA) rules, and FAA standards.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.035. - Motor vehicles.

(a) **General requirements.** Persons will operate motor vehicles on the airport in accordance with the procedures and regulations of this section and in full compliance with all state licensing, registration, and operating requirements.

(b) **Speed.** No person will operate a motor vehicle on the airport in a reckless or negligent manner, or in excess of a safe and prudent speed. Posted speed limits will not be exceeded. The posted speed limit for the ramp is 15 miles per hour and the posted speed limit for roadways is 35 miles per hour.

(c) **Parking.**

(1) **Location.** No person will park a motor vehicle at the airport other than in areas specifically established for public and tenant parking. No persons shall park a motor vehicle so as to obstruct roadways or taxiways. No person shall park a motor vehicle in public aircraft parking areas.
(2) **Abandoned vehicles.** No personal shall park a motor vehicle on the airport for an extended period of time without prior notification to airport management.

(3) **Towing for violation.** Airport management has the authority to tow or otherwise remove motor vehicles which are parked on the airport in violation of this section. The vehicle will be towed at the owner's expense and without liability for damage which may result in the course of such moving.

(d) **Vehicle repairs.** No person will clean or make any repairs to motor vehicles on the airport, except for airport support vehicles and minor emergency repairs.

(e) **Operation restrictions.**

1. **Ramp.** No motor vehicles, other than support vehicles, are permitted to operate on the airport parking ramp, except for the loading and unloading of aircraft occupants or cargo without the approval of airport management. Vehicle operators must utilize the ramp vehicle lane and will obey all markings pertaining to speed and stops.

2. **Runways and taxiways.** No person or motor vehicle is permitted within the movement area except as specifically authorized by airport management or air traffic control.

3. **Right-of-way procedures.** All motor vehicles will pass to the rear of taxing aircraft and no vehicle will approach closer than 100 feet of any aircraft when an aircraft's engine is operating.

4. **Airport based support vehicles.** Support vehicles regularly using the ramp, such as fuel trucks or tugs, shall be equipped with a two-way radio that can communicate with air traffic control and an amber strobe, LED, or rotating beacon visible from at least 300 feet.

(Ord. No. 2015-46, § 1.11-2-15)

Sec. 10.036. - Emergency procedures.

(a) **Emergency notification and response.** Emergency notification and response procedures are as follows:

1. **Generally.** The city provides emergency services of fire, police, and medical response to the airport.

2. **Notification procedures.** In addition to standard FAA emergency notification procedures, local emergency notification may be initiated during emergencies by contacting the air traffic control tower, operating hours through San Marcos Tower/CTAF on 126.825. During all hours, emergency notification can be initiated by calling San Marcos Police 911. Airport management can be notified at (512) 218-8039.

(b) **Volunteer assistance.** Volunteer assistance and/or access to the scene of any aircraft accident will be approved and controlled by the authorized emergency response personnel and the appropriate law enforcement authorities, and air traffic control if during operating hours.

(c) **Accident reporting.** In addition to required FAA notification and reporting actions, the operator of any aircraft involved in an incident or accident at the airport will notify airport management within 24 hours. When a written report is required by the FAA, a copy of such report will suffice for the airport requirement.

(Ord. No. 2015-46, § 1.11-2-15)
EXHIBIT C

Copy of Minimum Standards Premises
<table>
<thead>
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<th>Date</th>
<th>Section</th>
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San Marcos Regional Airport
Minimum Standards

Section 1
General

1.1 Introduction

The City of San Marcos, as Owner of the San Marcos Airport, establishes these Minimum Standards for persons who are or wish to become Commercial Operators, or anyone who makes use of Airport property. These Minimum Standards consider the significant role of the Airport in aviation, facilities that currently exist at the Airport, services being offered at the Airport, and the future development planned for the Airport. These Minimum Standards serve the following purposes:

1. Ensure that all commercial operators, tenants, and the City of San Marcos are not exposed to illegal, unsafe, or irresponsible practices.

2. Serve the public interest and discourage substandard business practices and construction, thereby protecting both the established aeronautical activity and the San Marcos Airport customers.

1.2 Purpose*

In accordance with the Airport and Airway Improvement Act of 1981, the Airport Improvement Program (AIP) sponsor assures the owner or operator of the Airport (the Airport Sponsor) that has been developed or improved with federal grant assistance or conveyance of Federal property assistance is required to operate the Airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These federal obligations involve several distinct requirements. Most important is that the Airport and its facilities must be available for public use as an Airport. The terms imposed on those who use the Airport and its services must be reasonable and applied without unjust discrimination, whether by the Airport Sponsor or by a contractor or licensee who has been granted a right by the Airport sponsor to offer services or commodities normally required to serve aeronautical users of the Airport.

Federal law requires that recipients of federal grants sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an Airport Sponsor assumes in exchange for federal assistance. The FAA’s policy recommending minimum standards stems from the Airport Sponsor’s grant assurances and similar property conveyance obligations to make the Airport available for public use on reasonable conditions and without unjust discrimination.
1.3 Policy*

The Airport Sponsor of a federally obligated Airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the Airport Sponsor. The Airport Sponsor’s purpose in imposing standards is to ensure a safe, efficient, and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory.

1.4 Objective*

The FAA objective in recommending the development of minimum standards serve to promote safety in all Airport activities, protect Airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all Airport users, promote the orderly development of Airport land, and ensure efficiency of operations. Therefore, Airport Sponsors should strive to develop minimum standards that are fair and reasonable to all on-Airport aeronautical service providers and relevant to the aeronautical activity to which it is applied.

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. Under certain circumstances, an Airport Sponsor could deny Airport users the opportunity to conduct aeronautical activities at the Airport for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. These standards should be tailored to the specific aeronautical activity and the Airport to which they are to be applied. Considerations for applying these standards may include the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;

2. Imose conditions that ensure safe and efficient operation of the Airport in accordance with FAA rules, regulations, and guidance;

3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;

4. Ensure standards are relevant to the activity to which they apply; and

5. Ensure standards provide the opportunity for newcomers to meet the minimum standards to offer their aeronautical services within the market demand for such services.

* Federal Aviation Administration Advisory Circular Number 150/5190-7, August 28, 2006
1.5 Application of Minimum Standards

Any Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must comply with these Minimum Standards and any amendments thereto. If there is a conflict between a Minimum Standard and the provision of a lease, permit, or agreement, the provision in the lease, permit, or agreement governs.

Whenever an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant conducts multiple aeronautical activities under one lease, permit or agreement with the City, the Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant must comply with these Minimum Standards for each activity being conducted. If the Minimum Standards for one of the aeronautical activities are inconsistent with the Minimum Standards for another aeronautical activity, the City may apply the Minimum Standards that are most beneficial to Airport operations.

The City may waive or modify any Minimum Standard for the benefit of any governmental agency or when the City determines that a waiver or modification is in the best interest of Airport operations and will not result in unjust discrimination among Aeronautical Commercial Operators, Nonprofits, or Executive Hangar Tenants.

In addition to the requirements set forth in this document, an annual review of existing leases may be conducted for each tenant/lessee at any time to ensure compliance with these Minimum Standards.

1.6 Insurance

All individuals and entities providing commercial aeronautical activities shall protect the public generally, its customers or clients, and the City of San Marcos from any and all unlawful damages, claims, or liability and shall carry comprehensive general liability insurance with a company authorized to do business in the State of Texas with limits of not less than that specified herein; and such policies must be written with the City of San Marcos named as an additional insured; such policies must be approved by the Airport and a certificate of insurance furnished to same. It is further understood that as circumstances may justify in the future, the City may modify these insurance requirements.

All tenants will have three months, or until expiration date of current insurance policy, whichever is greater, to update their insurance coverage in order to comply with these Minimum Standards.

All insurance requirements can be found in Appendix A of this document.

1.7 Personnel

Each Aeronautical Commercial Operator must employ a sufficient number of trained, on-duty personnel to provide for the safe, efficient, and orderly conduct of all its operations utilizing the
San Marcos Regional Airport
Minimum Standards

Airport, and for proper compliance with its obligations under its lease, permit, or agreement. Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must control the conduct and demeanor of its personnel, subtenants, invitees, and, upon objection by the City concerning the conduct or demeanor of any such person, the Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must immediately take all lawful steps necessary to remove the cause of the objection.

Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must conduct its operations in a safe, orderly, efficient, and proper manner so as not to unreasonably disturb, endanger, or be offensive to others.

1.8 Common Rights and Privileges

All Aeronautical Commercial Operators, Nonprofits, and Executive Hangar Tenants shall have the right to use common areas of the airport (including runways, taxiways, and roadways).

The City reserves the right to take any actions it considers necessary to protect the aerial approaches to the Airport against obstructions.

The City reserves the right to enter upon any premises at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of these Minimum Standards.

1.9 Land and Facility Use

The City reserves the right to lease an existing facility or any portion of an existing facility to an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant in order to maximize facility use and business opportunities. A lease of this nature shall be at the City’s sole discretion, and shall be considered to meet the minimum facility requirements as specified in these Minimum Standards.

1.10 Compliance

In the event modified or updated Minimum Standards create a situation whereby an existing tenant is not in compliance, the City has the sole right to establish a plan for correcting such non-compliance. The City will work with the tenant to help provide a fair and reasonable solution in a timely manner.
Section 2
Aeronautical Operators & Tenants

2.1 Authority

Airport Management reserves the right to adjust and/or combine the square footage of building space or area if more than one category of service is provided by one individual, firm, or corporation. Airport Management also reserves the right to make any changes to these Minimum Standards dictated by changing conditions or circumstances. The time of operations shown for each category is considered reasonable but may be adjusted from time to time as agreed on by Airport Management and the Lessee in writing.

2.2 Fixed Base Operator (FBO)

A Fixed Base Operator (FBO) is an Aeronautical Commercial Operator engaged in the sale of products, services, and facilities to aircraft operators including aviation fuels and lubricants; ground services and support; tie-down, hangar, and parking; aircraft maintenance, and aircraft rental/flight training.

A Fixed Base Operator shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with FBOS.

2. Provide at least one type of fuel for aircraft use (JET A or Jet A).

3. Maintain one metered and filter equipped dispenser, fixed or mobile, for dispensing each separate type of fuel offered.

   - For mobile fuel dispensing of each type of fuel offered, lessee shall furnish a separate fuel truck or fuel trailer with a minimum capacity of five hundred (500) gallons each. Mobile dispensing equipment shall be properly maintained, operated, and equipped in accordance with applicable Federal Aviation Administration, Airport Lessor, and National Fire Protection Association recommendations, requirements, and regulations.

   - For fixed fuel dispensing, lessee shall furnish separate dispensing pumps and meters for each type of fuel offered. Such fixed fuel dispensing equipment shall be attended or automated so that fuel is available to the public without discrimination, any unusual requirements, or any advance arrangements of any kind.
San Marcos Regional Airport
Minimum Standards

4. Furnish fuel storage tanks with a minimum capacity of ten thousand (10,000) gallons each for either 100LL or Jet A. Fuel storage tanks shall be ground mounted in properly bunkered and approved closures in a location approved by the Airport Lessor and shall comply with applicable uniform building code standards, fire codes and ordinances, and the recommendations of the National Fire Protection Association.

5. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

6. Provide personnel on duty during normal business hours seven days a week.

2.3 Specialized Aviation Service Operation (SASO)

A Specialized Aviation Service Operation (SASO) is an Aeronautical Commercial Operator that is authorized to offer a single or limited service according to established Minimum Standards. Examples of a SASO include, but are not limited to, the following commercial aeronautical activities: aircraft maintenance, avionics maintenance, avionics sales, flight training, aircraft charter, aircraft sales, aircraft storage, specialized commercial aeronautical operations, and aircraft refurbishing.

A SASO shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with the intended facility use.

2. Ensure that customers, clients, and/or employees have the appropriate and current FAA pilot’s license and current Airman Medical Certificate as necessary.

3. Have adequate facilities or arrangements for storing, parking, servicing, and repairing all of its aircraft.

4. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

2.4 Temporary Aeronautical Commercial Activity (TACA)

A Temporary Aeronautical Commercial Activity is a single aeronautical service offered on a temporary basis without an established place of business on the Airport. Examples of a TACA include, but are not limited to, mobile versions of Specialized Aviation Service Operations (SASO). The TACA must be permitted by San Marcos Airport and may be denied access to the Airport. San Marcos Airport may or may not allow this type of servicing to exist on the Airport.
2.5 Executive Hangar

An Executive Hangar is a small to medium size hangar, owned or based by an individual or business to store their own aircraft. The uses of an Executive Hangar shall be limited to the storage of wholly owned or leased aircraft and service and maintenance on wholly owned or leased aircraft. Executive Hangar Tenants may not hangar aircraft owned by others nor offer, nor provide, any services whatsoever to others, except however, other's aircraft may be temporarily hangared without compensation.

Executive Hangar Tenants shall:

1. Construct a hangar with a minimum structure size of 50' x 50'.

2. Determine the necessity of certain Development Design Standards, such as restroom facilities and vehicle parking, with the assistance of Airport Management prior to construction.

2.6 Nonprofit

A Nonprofit serves and/or educates the aviation community without the intent to distribute profits or dividends or without the intent to operate as a commercial business. The City may request articles of incorporation filed with the Secretary of State to ascertain nonprofit status.

Due to the variety of nonprofit aviation organizations, minimum lease area, building size, and insurance requirements will be determined on a case-by-case basis.

Section 3
Application Process

3.1 Improvements to Airport Property

Prospective tenants wishing to establish a permanent business on Airport property or to construct a hangar for personal use must first complete a Project Development Questionnaire.

All improvements constructed on Airport property are subject to the requirements of these Minimum Standards, the Airport’s Development Design Standards, and all applicable municipal, state, and federal codes. Plans for construction will be approved by the City and Airport Management prior to the commencement of work.

A Project Development Questionnaire packet may be found at Airport Management office.
3.2 Temporary Aeronautical Commercial Activities (TACA)

Temporary or mobile business activities are permitted after the proper Temporary Permit Application has been completed and approved by Airport Management, all applicable fees have been paid, and proper proof of insurance has been provided.

A Temporary Permit Application may be found in Appendix B of this document or online.

3.3 Additional Requirements

The City’s designated representative may require the Applicant to provide additional information to ensure compliance with the City of San Marcos ordinances, Airport Standard Operating Procedures and Regulations, or these Minimum Standards.

Applicant shall satisfy the Airport that they are technically and financially able to perform the services associated with the proposed nature of their business. This may include the responsibility for demonstrating continued financial solvency and business ability by submitting financial statements, credit references, a business plan, and any other data that Airport Management and the City may require from time to time. In each instance, the City shall make the final determination as to qualifications and financial ability of the applicant.

3.4 Action on Application

All applications will be reviewed and acted upon by Airport Management within 30 days from the receipt of the application. Applications may be denied for one or more of the following reasons:

1. The applicant does not meet qualifications, standards, and requirements established by these Minimum Standards.

2. The applicant’s proposed operations or construction will create a safety hazard on the Airport.

3. The granting of the application will require the expenditure of local funds, labor, or materials on the facilities described in or related to the application, or the operation will result in a financial loss to the Airport.

4. There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.

5. The proposed operation, development, or construction does not comply with the approved Airport Layout Plan (ALP).
Appendix A: Insurance Requirements
San Marcos Airport Minimum Insurance Requirements

Basic airport operations minimum requirements:

<table>
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<th>CLASSIFICATION</th>
<th>COMPREHENSIVE AIRPORT LIABILITY</th>
<th>AIRCRAFT LIABILITY</th>
<th>HANGARKEEPERS</th>
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<td>FBO</td>
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<td>Value of aircraft in care, custody, or control</td>
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<tr>
<td>SASO</td>
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<td>Value of aircraft in care, custody, or control</td>
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<td>TEMPORARY</td>
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<td>AERONAUTICAL ACTIVITY</td>
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<td>NONPROFIT</td>
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<td>EXECUTIVE HANGAR</td>
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<td>T-HANGAR/T-SHELTER</td>
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<td>All: CSL with coverage for Bodily Injury &amp; Property Damage</td>
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Other minimum requirements based on other miscellaneous activities:

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<tr>
<th>ACTIVITY</th>
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<tr>
<td>AIR CHARTER</td>
<td>$1,000,000</td>
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<td>AIR CARGO</td>
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<td>AIRCRAFT SALES</td>
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<td>FUEL STORAGE TANKS</td>
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<td>PRODUCT LIABILITY</td>
<td>≥ $1,000,000</td>
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<td>REMARKS</td>
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<td>* Minimums increase based on passenger capacity</td>
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Property Insurance:

All tenants who own or lease property at the Airport are required to carry Property Liability insurance. If the hangar/facility is owned, the lessee must carry insurance equal to the market replacement value of the building and underlying slab. If the hangar/facility is leased, lessee must insure the contents of the facility.

Auto Insurance:

Any vehicle operating in the Aircraft Operations Area (AOA), whether owned, not owned, or hired, must carry Automobile Liability of at least $500,000.
Appendix B: Temporary Permit Application
San Marcos Regional Airport
Temporary Permit Application

Brief description of temporary business or activity, event, or signage:


Requested permit date(s): _______________ to _______________

These activities are governed by the Airport minimum standards.

Applicant:
Authorized Representative: ____________________ Title: __________________
Address: ____________________
City, State, Zip: ____________________
Phone (work): ____________________ (fax): ____________________ (emergency): ____________________
Email Address: ____________________

The Applicant hereby requests the above action(s) from the city for the privilege of conducting commercial aeronautical activities on the Airport in consideration of this request being granted agrees to the following:

FEE PAYMENT: Based on requested activity and date range.

PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to only the approved business activity listed above for the approved date(s).

INFORMATION CHANGES: The Applicant shall notify Airport Management Office in writing within fifteen (15) days of any change to the information provided on this form.

COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations.

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of copy of this permit.

Authorized Representative’s Signature ____________________ Date ____________________
For office use only:

Application has been ☐ APPROVED.

Approved permit use:

____________________________

____________________________

Approved permit date(s): ____________________________

Approved by: ____________________________ On: __________

Application has been ☐ DENIED.

Reason for denial:

____________________________

____________________________

Denied by: ____________________________ On: __________
EXHIBIT D

List of Sponsor Assurances

(to be attached by Lessor)
EXHIBIT E

Facilities Location
EXHIBIT F

RIGHT OF FIRST REFUSAL

This Right of First Refusal is attached to and a part of that certain Commercial Aviation Ground Lease Agreement effective as of April 30, 2017 (the “Lease”), by and between the City of San Marcos, a municipal corporation of the State of Texas (“Lessor”), and Berry Aviation, Inc., a Texas corporation (“Lessee”), as follows:

Lessor hereby grants Lessee a right of first refusal (“ROFR”) to lease or otherwise use (“Lease”) the unimproved property located adjacent to/near the Leased Premises in Caldwell County, Texas, as more particularly described in Schedule 1 attached hereto (the “Adjacent Property”).

Prior to offering the Adjacent Property for lease to any third party (other than in connection with the development of Airport Facilities (as defined in the Lease)), Lessor shall first offer to lease the Adjacent Property to Lessee in “AS-IS” condition.

Such offer shall be in writing and specify the material terms of lease of the Adjacent Property, including the ground rent, the date by which lease must occur and other operative terms of significance to Lessor (the “Offer Notice”).

Lessee shall notify Lessor in writing whether Lessee elects to lease the Adjacent Property within thirty (30) days after Lessor delivers the Offer Notice to Lessee.

If Lessee timely elects to lease the Adjacent Property, then Lessor and Lessee shall execute a mutually agreeable lease agreement, on the terms set forth in the Offer Notice and such other terms as Lessor and Lessee may agree in writing.

If Lessee fails or is unable to timely exercise its ROFR hereunder, then such ROFR shall lapse, time being of the essence with respect to the exercise thereof, and Lessor may thereafter lease the Adjacent Property to third parties on such terms as Lessor may elect. Notwithstanding the preceding sentence, if Lessor fails to lease the Adjacent Property within one hundred eight (180) days following the date on which Lessee receives the Offer Notice, Lessee’s rights under this Exhibit F shall be automatically reinstated.
AGENDA CAPTION:
7:00PM Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2017-74R, approving a Budget Policy Statement for preparation of the 2017-2018 fiscal year budget, declaring an effective date; and consider approval of Resolution 2017-74R.

Meeting date: April 18, 2017

Department: Finance Department-Heather Hurlbert, Finance Director

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:
Maintain fiscal responsibility

BACKGROUND:
The budget policy statement is formulated to reflect the current financial policies and goals. As started in the City Charter, by April 30th of each year City Council is required to hold a public hearing and formulate a policy statement to be used by the City Manager as direction during the preparation of the FY2017-18 proposed budget. A City Council workshop was held on March 27th to discuss high level financial projections, budgetary assumptions and anticipated budgetary needs for the fiscal year 2018 budget. From these workshops, staff authored the Budget Policy Statement. City Council will have an opportunity to give additional input and make needed modification if needed before the final policy is adopted. This policy will guide the formation of the proposed budget that will be brought to City Council during two workshops scheduled for July 12th and July 13th. The budget is scheduled for adoption in September and up until adoption on that day, City Council will be able to propose, modify or remove any items included in the proposed budget.
RESOLUTION NO. 2017-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A BUDGET POLICY STATEMENT FOR PREPARATION OF THE 2017-2018 FISCAL YEAR BUDGET; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. Section 8.02(b) of the San Marcos City Charter requires the city council to formulate a policy statement to be used by the city manager as direction during the preparation of the proposed budget.

2. The city council conducted a public hearing regarding the formulation of the budget policy statement at its regular meeting on April 18, 2017.

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

PART 1. The budget policy statement attached to this resolution is hereby approved and the city manager shall use this statement to direct the preparation of the proposed budget for the 2017-2018 fiscal year.

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
City of San Marcos
20178 Adopted-Proposed Budget Policy
Statement

I. Fund Balance Goals

- General Fund: Minimum of 25% (of recurring operating expenses)
- Water/Wastewater Fund: Minimum of 25% (of recurring operating expenses)
- Electric Utility Fund: Minimum of the equivalent of 60 days of operating expenses including purchased power.
- Drainage Utility Fund: Minimum of 25% (of recurring operating expenses)

II. Capital Improvements Program

- In-depth review of Capital Improvements Projects underway. Will evaluate funding needs on existing projects, staff capacity to complete current and future projects. Initial Recommendations will be presented to Council
- Total general fund project cost, not including any voter approved bond projects, will be limited to approximately $10 million annually
- Issue only up to an appropriate amount of debt in the general fund to maintain the 50/50 debt to operations ratio
- Utility CIP capacity calculated through the rate model

III. Revenue Goals

GENERAL FUND

- Property tax rate increase will be limited to voter approved amounts
- No property tax rate increase
- Property values increase based on a conservative trend estimated at 8%
- Maintain utility fund franchise fee transfers to the General Fund at 7%
- Sales tax will be projected based on current trends with a maximum 35% increase to recurring revenues over prior year
- Adjust Development Community Services fees based on the results of the cost of service study
- All other revenues will be increased 1% unless known increases exist based on historical trends
- Fees for services will be adjusted 1% based on the average CPI index for the calendar year 20156

WATER FUND

- Rate study to determine possible rate increases and structure changes
- Recommendations related to rate structure and future rate increases will be made by Citizens Utility Advisory Board
Preliminary rate study results available in June

ELECTRIC FUND
- Rate study to determine possible rate increases and structure changes. No rate adjustment anticipated.
- Recommendations related to rate structure and future rate increases will be made by Citizens Utility Advisory Board
- Preliminary rate study results available in June

DRAINAGE FUND
- Explore needed rate increase to support operations and needed capital improvement projects
- Drainage Master Plan anticipated to be completed by early summer. Will provide recommendations for additional funding that may include drainage impact fees, fee-in-lieu of fees, and/or traditional rate increases.

DEBT SERVICE FUND
- Maintain at least a 50/50 property tax debt to operation ratio between the general fund and the debt service fund

IV. Fund Expenditures
The FY2016-17 Operating Budget and CIP Plan will strive to support the goals and objectives as outlined in the Vision San Marcos: A River Runs Through Us Comprehensive Master Plan.

GENERAL FUND
- Additional personnel based on need, with emphasis on code enforcement, inspectors and park rangers
- Funding year 23 of the Meet and Confer agreement with Police and Fire
- Estimated 105% increase in health insurance premium beginning January 1, 2017
- Continued required contribution of an estimated 18.3517.66% for TMRS
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed
  - Move $100,000 of Street Maintenance from one-time expense to recurring expense
- Capital Outlay funding of $1.795M to include utilizing the planned replacement of vehicles scheduled through the Enterprise Fleet Management agreement, replacement of a minimum of 1/7 of the police pursuit and essential vehicles fleet, the second third year of financing 18 police pursuit vehicles purchased in FY2016 and financed over 3 years, and other capital related requests based on need and capacity
  - Explore opportunities to increase code enforcement efforts and compliance
Continue to budget recurring expenses less than recurring revenues to continue building capacity for future expenses such as:

- Fire Based EMS
- Facility expansion
- Potential debt service related to a future bond election

**WATER/WASTEWATER FUND**

- Additional personnel based on need and capacity.
- Estimated 105% increase in health insurance premium beginning January 1, 2017.
- Continued required contribution of an estimated 18.35% for TMRS.
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed.
- Utility fund transfers to the General Fund budgeted at 7%.
- Capital Outlay amounts determined through the rate model based on the planned replacement of vehicles scheduled through the Enterprise Fleet Management agreement, needed new and replacement large equipment, and other requests based on need.

**ELECTRIC UTILITY FUND**

- Additional personnel based on need and capacity.
- Estimated 105% increase in health insurance premium beginning January 1, 2017.
- Continued required contribution of an estimated 18.35% for TMRS.
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed.
- Utility fund transfers to the General Fund budgeted at 7%.
- Capital Outlay amounts determined through the rate model based on the planned replacement of vehicles scheduled through the Enterprise Fleet Management agreement, needed new and replacement large equipment, and other requests based on need.

**V. Other Initiatives**

- Continue funding Capital Maintenance Funds and additional one-time funds related to:
  - Maintain Building Maintenance, Parks Repair and IT Maintenance—same level as FY2016.
  - Maintain Police, Fire, and Activity Center Routine Capital—same level as FY2016.
  - Restore IT Capital Maintenance funding to $200K from the temporary funding level of $50K in FY2016.
Street Maintenance: Move $100,000 of Street Maintenance from one-time expense to recurring expense. Explore appropriate level of funding moving forward for maintenance.

Education and Youth Initiatives
- Continue allocation of $150,000 to fund the existing Youth Services Manager position and youth focused programs identified in the youth master plan.

Social Services
- Maintain funding levels at $450,000.

Hotel Motel Fund
- Revenue based on conservative trends reflecting new hotel rooms.
- Funding for special programs remains flat. Organizations can request increases during the budget process for specific programs.
- Evaluate funding for potential events and projects such as:
  - Music Festival/Airshow
  - Lighting replacement at Ramon Lucio baseball fields
  - Other special events
- Transition Convention and Visitors Bureau into a City department.

Economic Development Funding
- Continued funding by the three major funds of a total of $200K annually to provide a funding source for potential economic incentives in the absence of 4A/4B funding. Fiscal year 2017 will be the 3rd year of annual funding.
- Use of existing funds from fiscal years 2015 and 2016 to fund the BIG (Business Improvement and Growth) program. Funding may be added in future fiscal years based on need.

Potential Bond Election
- Two bond propositions will be decided by voters in May 2017.
- Budget will be adjusted appropriately based on the results of the election.
- Plan for a future bond election in the 2017 timeframe.
- A proposed bond program will be submitted to Council after facility studies are complete and a recommendation formulated.

Potential Additional Budget Items to be added after final City Council Visioning
- City Council will finalize visioning on May 13, 2016.
- Potential items that could be added to the budget include:
  - City Auditor
  - Educational opportunities for citizens
  - Expanded analysis and compilation of city data.
I. Fund Balance Goals

- General Fund: Minimum of 25% (of recurring operating expenses)
- Water/ Wastewater Fund: Minimum of 25% (of recurring operating expenses)
- Electric Utility Fund: Minimum of the equivalent of 60 days of operating expenses including purchased power
- Drainage Utility Fund: Minimum of 25% (of recurring operating expenses)

II. Capital Improvements Program

- In-depth review of Capital Improvements Projects underway. Will evaluate funding needs on existing projects, staff capacity to complete current and future projects. Initial Recommendations will be presented to Council
- Total general fund project cost, not including any voter approved bond projects, will be limited to approximately $10 million annually
- Issue only up to an appropriate amount of debt in the general fund to maintain at least a 50/50 debt to operations ratio
- Utility CIP capacity calculated through the rate model

III. Revenue Goals

GENERAL FUND

- Property tax rate increase will be limited to voter approved amounts
- Property Values increase based on a conservative trend estimated at 8%
- Maintain utility fund franchise fee transfers to the General Fund at 7%
- Sales tax will be projected based on current trends with a maximum 3% increase to recurring revenues over prior year
- Adjust Community Services fees based on the results of the cost of service study
- All other revenues will be adjusted based on historical trends
- Fees for services will be adjusted 1% based on the average CPI index for the calendar year 2016

WATER FUND

- Rate study to determine possible rate increases and structure changes
- Recommendations related to rate structure and future rate increases will be made by Citizens Utility Advisory Board
- Preliminary rate study results available in June

ELECTRIC FUND
- Rate study to determine possible rate increases and structure changes. No rate adjustment anticipated.
- Recommendations related to rate structure and future rate increases will be made by Citizens Utility Advisory Board
- Preliminary rate study results available in June

**DRAINAGE FUND**
- Explore needed rate increase to support operations and needed capital improvement projects
- Drainage Master Plan anticipated completion by end of summer. Will provide recommendations for additional funding that may include drainage impact fees, fee-in-lieu of fees, and/or traditional rate increases.

**DEBT SERVICE FUND**
- Maintain at least a 50/50 property tax debt to operation ratio between the general fund and the debt service fund

**IV. Fund Expenditures**

The FY2017-18 Operating Budget and CIP Plan will strive to support the goals and objectives as outlined in the Vision San Marcos: A River Runs Through Us Comprehensive Master Plan.

**GENERAL FUND**
- Additional personnel based on need and capacity with emphasis on code enforcement, inspectors and park rangers
- Funding year 3 of the Meet and Confer agreement with Police and Fire
- Estimated 5% increase in health insurance premium beginning January 1, 2018
- Continued required contribution of an estimated 17.66% for TMRS
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed
- Capital Outlay funding of $1.95M to include utilizing the planned replacement of vehicles scheduled through the Enterprise Fleet Management agreement, replacement of a minimum of 1/7 of the police pursuit and essential vehicles fleet, the third year of financing 18 police pursuit vehicles purchased in FY2016 and financed over 3 years, and other capital related requests based on need and capacity
- Continue to budget recurring expenses less than recurring revenues to continue building capacity for future expenses such as:
  - Fire Based EMS
  - Facility expansion
  - Potential debt service related to a future bond election
WATER/WASTEWATER FUND

- Additional personnel based on need and capacity
- Estimated 5% increase in health insurance premium beginning January 1, 2018
- Continued required contribution of an estimated 17.66% for TMRS
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed
- Utility fund transfers to the General Fund budgeted at 7%
- Capital Outlay amounts determined through the rate model based on the planned replacement of vehicles scheduled through the Enterprise Fleet Management agreement, needed new and replacement large equipment, and other requests based on need

ELECTRIC UTILITY FUND

- Additional personnel based on need and capacity
- Estimated 5% increase in health insurance premium beginning January 1, 2018
- Continued required contribution of an estimated 17.66% for TMRS
- Base operations budgets flat. Additions to the department budgets must be requested, justified, and ranked by priority.
- Fuel/Contractual Obligations/Consumer Price Index increases allowed
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V. Other Initiatives

★ Continue funding Capital Maintenance Funds and additional one-time funds related to:
   - Maintain Building Maintenance, Parks Maintenance, and IT Maintenance - same level as FY2017
   - Maintain Police, Fire, and Activity Center Routine Capital - same level as FY2017

★ Education and Youth Initiatives
   - Continue allocation of $150,000 to fund the existing Youth Services Manager position and youth focused programs identified in the youth master plan

★ Social Services
   - Maintain funding levels at $450,000

★ Hotel Motel Fund
   - Revenue based on conservative trends reflecting new hotel rooms
   - Funding for special programs remains flat. Organizations can request increases during the budget process for specific programs
★ Evaluate funding for potential events and projects

★ **Economic Development Funding**
  ★ Continued funding by the three major funds of a total of $200K annually to provide a funding source for potential economic incentives in the absence of 4A/4B funding. Fiscal year 201 will be the 4\textsuperscript{rd} year of annual funding.
  ★ Use of existing funds from fiscal years 2015 and 2016 to fund the BIG (Business Improvement and Growth) program. Funding may be added in future fiscal years based on need.

★ **Potential Bond Election**
  ★ Two bond propositions will be decided by voters in May 2017
  ★ Budget will be adjusted appropriately based on the results of the election
## FY 2018 Budget Calendar

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 27</td>
<td>Budget Policy Workshop</td>
</tr>
<tr>
<td>April 12</td>
<td>Departmental Budget Kickoff</td>
</tr>
<tr>
<td>April 15</td>
<td>Estimate of taxable value due</td>
</tr>
<tr>
<td>April 18</td>
<td>Public hearing and adoption of Budget Policy</td>
</tr>
<tr>
<td>May 12</td>
<td>Completed Departmental Budgets Due to Finance</td>
</tr>
<tr>
<td>May 15 – May 31</td>
<td>Department Budget Review Meetings with Finance</td>
</tr>
<tr>
<td>June</td>
<td>Budget Reviewed by City Manager</td>
</tr>
<tr>
<td>July 12</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; Budget review workshop</td>
</tr>
<tr>
<td>July 13</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt; Budget review workshop</td>
</tr>
<tr>
<td>July 18</td>
<td>Set Public Hearing Dates for the budget and tax rate</td>
</tr>
<tr>
<td>July 25</td>
<td>Tax Rolls Certified</td>
</tr>
<tr>
<td>July 31</td>
<td>Proposed Budget Filed with City Clerk and Council</td>
</tr>
<tr>
<td>August 6&lt;sup&gt;th&lt;/sup&gt;</td>
<td>Publish notice for the Budget Public Hearing</td>
</tr>
<tr>
<td>August 15</td>
<td>Record vote to set the proposed maximum tax rate above effective rate; Potential agenda items to discuss any outstanding budget items from workshops.</td>
</tr>
<tr>
<td>August 20</td>
<td>Publish notice of effective tax rate to include the dates of two public hearings and explanation of how the increase will be used no sooner than 30 days before the hearing and later than 10 days. This notice must remain on the City website and be included on the City's television channel until the tax rate is adopted.</td>
</tr>
<tr>
<td>September 5</td>
<td>First public hearing on the tax rate; Budget public hearing; 1st reading of utility rates, budget and tax rate ordinances.</td>
</tr>
<tr>
<td>September 15</td>
<td>Second public hearing on tax rate (Packet Meeting)</td>
</tr>
<tr>
<td>September 19</td>
<td>2nd Reading of Utility Rates ordinance; record vote to adopt budget on second reading; ratification of the tax rate reflected in the budget; Tax Rate adoption on second reading (requires an affirmative vote of five if tax rate is increasing).</td>
</tr>
</tbody>
</table>
AGENDA CAPTION:
Consider approval of Ordinance 2017-18, 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 CM Allen Parkway between Grove Street and IH 35 Access Road, from 8am-11pm every day, during and including the months of February through November; amending the Traffic Register to reflect such Designated Permit Area; and providing for an effective date.

Meeting date:  
April 18th, 2017 - 1st Reading  
May 2nd, 2017- 2nd Reading

Department: Public Services (Tom Taggart)-Transportation Div. (Sabas Avila)

Funds Required: $900
Account Number: 10006147.53230
Funds Available: $43,973
Account Name: Traffic-Signs

CITY COUNCIL GOAL:
Beautify and Enhance the Quality of Place

COMPREHENSIVE PLAN ELEMENT(s):
Neighborhood and Housing Goal 4: Well maintained, stable neighborhoods protected from blight or the encroachment of incompatible land uses

BACKGROUND:
Residents of 400-700 CM Allen Parkway (from Grove Street to IH 35 Access Road) are requesting the creation of a “designated permit area,” in accordance with Section 82.189 of the San Marcos City Code, on the west side of CM Allen, from 8 am - 11 pm daily, February to November. The East side of CM Allen in these blocks is the Ramon Lucio Park and ball field complex. CM Allen in this area is classified as a major arterial street.

The petition was circulated and submitted by Mr. Johnny Garcia. Mr. Garcia is a resident of the neighborhood; however, his property does not abut the requested designated permit area as required in the enabling ordinance. Over 66 % of these residents signed in favor of the designated permit area. Specifically, 15 residential homes are located on this stretch of the west side of CM Allen. The petition is supported by 10 homes and the remaining 5 provided no response.

City staff has reviewed the request and the request generally meets the requirements for residential permit
parking. However, staff has identified several potential negative effects of implementing the requested permitted parking restriction:

1. During baseball season, most of the parking on CM Allen is used by ball field users.

2. These on-street parking spaces are also used by hundreds of visitors to the park and Rio Vista falls on weekends.

3. If this request is approved, it will remove general public access to 28 on-street parking spaces on the west side of CM Allen that are frequently used by park and ball field visitors. This may in turn push park users to park in purely residential street areas further from the park areas with narrower ROW widths.

4. This request would also affect the ability to create paid parking zones adjacent to the parks in the future.

Staff recommends denial of the request for the above-stated reasons.

Pursuant with 82.067- The traffic engineer shall develop and maintain a traffic register containing a record of every location in the city where any traffic control device or special regulation is made applicable, whether by ordinance or by the traffic engineer's authority established under this chapter.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS 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 CM ALLEN PARKWAY, BETWEEN GROVE STREET AND THE IH-35 ACCESS ROAD, FROM 8:00 A.M. TO 11:00 P.M. EVERY DAY, DURING AND INCLUDING THE MONTHS OF FEBRUARY THROUGH NOVEMBER; AMENDING THE TRAFFIC REGISTER TO REFLECT SUCH DESIGNATED PERMIT AREA; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS:

1. Section 82.189 of the San Marcos City Code authorizes the creation of a Designated Permit Area upon the request of a property owner whose property abuts the requested Designated Permit Area, the submittal of a petition and fulfillment of the requirements of Section 82.189(b) of the San Marcos City Code.

2. The San Marcos Transportation Department has received a request and a petition for the creation of a Designated Permit Area that allows parking by permit only on the west side of CM Allen Parkway between Grove Street and the IH-35 access road from 8:00 a.m. to 11:00 p.m. every day, during and including the months of February through November.

3. City Transportation Department staff recommends the creation of this Designated Permit Area within which parking will be restricted to permit parking only during the hours indicated in paragraph 2.

4. A public hearing on the application as required by Section 82.189(d) of the San Marcos City Code was held on April 4, 2017.

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

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of San Marcos.

SECTION 2. The City Council hereby approves the creation of a Designated Permit Area that allows parking by permit only on the west side of CM Allen Parkway between Grove Street and the IH-35 access road from 8:00 a.m. to 11:00 p.m. every day during and including the months of February through November. The Designated Permit Area is depicted in the map attached hereto and incorporated herein for all purposes as Exhibit “A.”

SECTION 3. No parking shall be allowed in the Designated Permit Area at any time without a valid permit and the Traffic Register is amended to reflect such restriction.
SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. This ordinance shall be in effect upon adoption on second reading.

PASSED AND APPROVED on first reading on April 18, 2017.

PASSED, APPROVED AND ADOPTED on May 2, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
EXHIBIT A
Map of Designated Permit Area
CM Allen Residential Parking Zone
(8AM-11PM Daily, February - November)

Property supports the petition

Property has no response to the petition
NEIGHBORHOOD SURVEY

The City of San Marcos has received a request to install Residential Parking Permit System as described below. This survey serves to assess neighborhood and business consent of the proposed Residential Parking area. This survey will be used in conjunction with other City evaluations to assess the feasibility of this restriction or variation thereof. The results of this survey do not guarantee the installation of the signs.

<table>
<thead>
<tr>
<th>Street Name (for Restriction:)</th>
<th>Block No.(s) (for Restriction:)</th>
<th>Proposed Regulation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CM Allen Parkway</td>
<td></td>
<td>Residential Parking Zone - Residential Permit Only</td>
</tr>
<tr>
<td>(e.g. N. LBJ Drive)</td>
<td>(e.g. 100 block, 100 - 300 block, etc.)</td>
<td>(e.g. NO PARKING-TOW AWAY, 2-HOUR PARKING, etc.)</td>
</tr>
<tr>
<td></td>
<td>(e.g. 8 A.M. - 5:00 P.M.)</td>
<td>(e.g. 8 A.M. - 5:00 P.M.)</td>
</tr>
</tbody>
</table>

We the undersigned are residents and/or property owners of the proposed designated permit area described in this application. We understand that: (i) if this area is designated, certain restrictions will be placed upon on-street parking within the area; (ii) residents and/or residential property owners of the area will be entitled to obtain a limited number of parking permits exempting their vehicles from such parking restrictions, but if a resident and/or property owner owns a vehicle without having a permit displayed, that vehicle will be subject to the parking restrictions; (iii) parking permits will be issued for a term of one year and require replacement each year; (iv) the cost of the annual parking permits will be paid by the resident and/or property owners. This restriction will be valid for a minimum of one year.

<table>
<thead>
<tr>
<th>NAME (print)</th>
<th>ADDRESS</th>
<th>PHONE NUMBER</th>
<th>APPROVE RESTRICTION (check one)</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zamar Chanco</td>
<td>572 CM Allen</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Matthew Rodriguez</td>
<td>520 CM Allen</td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Patricia Del Carmen</td>
<td>607 CM Allen</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Roque Del Carmen</td>
<td>607 CM Allen</td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Caleb Jones</td>
<td>710 CM Allen</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Shannon Alvarado</td>
<td>412 CM Allen Parkway</td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Ruth Benavis</td>
<td>712 cm allen parkway</td>
<td></td>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>Edna A. Hernandez</td>
<td>206 CM Allen Parkway</td>
<td></td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

Johnny Garcia 512-878-7438

Ester Garcia
AGENDA CAPTION:
Consider approval of Ordinance 2017-19, on the first of two readings, amending the term limit of key constituency representatives in Chapter 2, Article 3, Division 24, Section 2.370.26, San Marcos Commission on Children and Youth; including procedural provisions; and providing an effective date.

Meeting date: April 18, 2017 - 1st Reading
      May 2, 2017 - 2nd Reading

Department: City Clerk

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

BACKGROUND:
On April 4, 2017, the Council provided direction, following discussion, to bring back an Ordinance to extend and stagger the terms of the Key Constituency Representatives. Currently they serve a one-year term.
ORDINANCE NO. 2017-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE TERM LIMIT OF KEY CONSTITUENCY REPRESENTATIVES IN CHAPTER 2, ARTICLE 3, DIVISION 24, SECTION 2.370.26, SAN MARCOS COMMISSION ON CHILDREN AND YOUTH; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Sections 2.370.26 of the San Marcos City Code pertaining to the San Marcos Commission on Children and Youth are hereby amended to read as follows (Added text is indicated by underlining. Deleted text is indicated by strikethroughs):

Sec. 2.370.26. San Marcos Commission on Children and Youth; established; composition; appointment of representatives.

(a) The San Marcos Commission on Children and Youth is hereby established. The Commission shall consist of 17 voting members, 15 members and two ex-officio members. The two ex-officio members shall be the City Council Member and SMCISD Board Trustee. The commission shall have representation by individuals who hold elected or executive level positions with the following partners, who will provide a letter of nomination accompanied by the individual’s commission application:

(1) City of San Marcos.
(2) San Marcos Consolidated Independent School District.
(3) United Way of Hays County.
(4) Texas State University.
(5) Hays County.
(6) Austin Community College.
(7) Central Texas Medical Center.
(8) Greater San Marcos Partnership.
(9) San Marcos Youth Commission Chair.
(10) San Marcos City Council Member, ex-officio.
(11) SMCISD Board Trustee, ex-officio.

Each city council member shall appoint one seven at-large key constituency group representatives. The seven at-large members appointed shall endeavor to represent key constituency groups in the community to include:

- Family Member – through parent and guardian groups such as PTO/PTA/Booster Clubs/Home School Association.
- Youth service providers.
- Faith based community.
- Non-profit.
- Public Safety.
- Community members that have experience as teachers and/or expertise in early childhood, youth or general education policy.

(b) The representatives of partner organizations shall serve a term of two years. Representatives of key San Marcos partner organizations such as SMCISD, United Way of Hays County and Texas State University may be appointed to serve multiple terms to ensure accountability and buy-in by those organizations.

(c) Representatives of key constituency groups will serve staggered two one-year terms, so that new representatives are able to participate over time. The representatives shall be approved by City Council and shall consist of community members with expertise in children, youth and family issues, which may include public safety, medical/health or nonprofit experience related to the desired outcomes of the Youth Master Plan.

(d) The city council shall confirm the appointment of individuals nominated by partner organizations to serve as representatives on the commission.

(e) The commission may appoint teams or committees comprised of citizens or groups that are not members of the commission to work on projects or implement the recommended strategies of the Youth Master Plan. Those wishing to serve on a subcommittee shall submit a volunteer application to the commission.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This Ordinance will take effect after its adoption on second reading.

PASSED AND APPROVED on first reading on April 18, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 2, 2017.
John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney
AGENDA CAPTION:
Consider approval of Ordinance 2017-20, on the first of two readings, amending Chapter 2, Article 5, Code of Ethics, of the San Marcos City Code; requiring Financial Disclosure Forms to be updated within 30 days following acquisition of additional interests in real property; requiring Financial Disclosure Forms to be filed by members of temporary boards, commissions, subcommittees or similar groups; and providing an effective date.

Meeting date: April 7, 2017

Department: City Attorney’s Office

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:

In September of 2016, the City Council approved several amendments to the San Marcos Code of Ethics upon the recommendation of the Ethics Review Commission. The definition of “Officer or official” was amended to include members of temporary boards and commission for purposes of complying with the standards of conduct and conflicts of interest regulations.

The attached ordinance amends the definition of “Board member” to include members of temporary boards, commissions, subcommittees or similar groups for purpose of requiring those members to file the same financial disclosure forms as permanent board members within 15 days following appointment.

Pursuant to City Council’s direction, the Ethics Review Commission also recommends and amendment to Section 2.462 to require all financial disclosure forms to be updated within 30 days after a council member or a board member acquires an additional interest in real property. The attached ordinance includes that amendment.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2, ARTICLE 5, CODE OF ETHICS, OF THE SAN MARCOS CITY CODE; REQUIRING FINANCIAL DISCLOSURE FORMS TO BE UPDATED WITHIN 30 DAYS FOLLOWING ACQUISITION OF ADDITIONAL INTERESTS IN REAL PROPERTY; REQUIRING FINANCIAL DISCLOSURE FORMS TO BE FILED BY MEMBERS OF TEMPORARY BOARDS, COMMISSIONS, SUBCOMMITTEES OR SIMILAR GROUPS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Chapter 2, Article 5, Code of Ethics, of the San Marcos City Code is hereby amended to read in its entirety as follows (added text is indicated by underlining, deleted text is indicated by strikethroughs.):

ARTICLE 5. CODE OF ETHICS

DIVISION 1. GENERALLY

Sec. 2.421. Policy and purposes.

(a) General policy statement. It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city’s service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds.

(b) Appearance of impropriety. Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.

(c) This code of ethics has five purposes:

(1) To encourage ethical conduct on the part of city officials and employees;

(2) To encourage public service with the city;

(3) To establish standards for ethical conduct for city officials and employees by defining and prohibiting conduct that is incompatible with the interests of the city;

(4) To require disclosure by city officials and employees of their economic interests that may conflict with the interests of the city; and
(5) To serve as a basis for disciplining those who fail to abide by its terms.

(d) This code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. The officials charged with administration of this code of ethics shall administer it in a manner that avoids any such use of this code of ethics.

Sec. 2.422. Definitions.

In this article:

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value. *Benefit* includes a pecuniary gain or pecuniary advantage to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law, including a nonprofit organization or governmental entity.

Economic interest includes a legal or equitable interest in real property, personal property, or intangible property, or a contractual right. Service by a city official or employee as an officer, director, advisor, or other active participant in a nonprofit educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in the securities or other assets unless the person in question participates in the management of the fund.

Employee means any person employed by the city, whether under civil service regulations or not, including those individuals on a part-time basis, and employees of an independent contractor that serve as a staff liaison to a city board or commission.

Immediate family means the spouse, children, brothers, sisters and parents of an officer or employee.

Officer or official means the mayor or any member of the city council and any appointive member of a city board, commission or committee established by ordinance, charter or state law on a permanent basis or a temporary board, commission, or similar group.

Sec. 2.423. Prohibition against involvement in actions affecting economic interests.

(a) General rule. It is unlawful for a city official or employee to take any official action that he or she knows is likely to:
(1) Affect an economic interest of:

(A) The official or employee;

(B) His or her immediate family member;

(C) A member of his or her household;

(D) An outside employer of the official or employee or of his or her immediate family member;

(E) A business entity in which the official or employee or his or her immediate family member holds an economic interest;

(F) A business entity for which the city official or employee serves as an officer or director or in any other policy making position; or

(G) A person or business entity from whom the official or employee, or his or her immediate family member, has solicited, received and not rejected, or accepted any benefit or an offer of employment within the past twenty four months; or

(2) Confer a benefit on the official or employee, or deprive the official or employee of a benefit, where the effect of the action on the official or employee is distinguishable from the effect of the action on members of the public in general or a substantial segment of the public.

(b) Meaning of “affect”.

(1) In subsection (a)(1) above, an action is likely to affect an official’s or employee’s economic interest if it meets all of the following:

(A) The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public.

(B) The effect of the action on that interest is direct, and not secondary or indirect. However, the action need not be the only producing cause of the effect in order for the effect to be direct.

(C) The effect on the interest must be more than insignificant or de minimis in nature or value.

(2) In determining whether a person, entity or property is or was affected by a vote or decision, it will not be necessary to prove the actual existence or occurrence of an economic effect or consequence if the effect or consequence would be reasonably expected to exist or
(c) Recusal and disclosure. A city official or employee whose conduct would otherwise violate subsection (a), or a state conflict of interest law, if he or she took an action must abstain from participation in the action in accordance with the following:

(1) Immediately refrain from further participation in the matter, including communications with any persons likely to consider the matter, such as any department, agency, commission or board of the city, from the time he or she discovers or reasonably should have discovered the matter triggering the recusal and until a decision regarding the matter has been made by the council, board or commission having final approval authority.

(2) Promptly file a form for disclosing the nature and extent of the interest triggering the recusal with the city clerk, if the person is an official, or with the person’s supervisor, if the person is an employee;

(3) Promptly notify the person’s supervisor of the nature and extent of the interest triggering the recusal, if the person is a city employee, so that the supervisor can reassign responsibility for handling the matter to another person; and

(4) Promptly disclose the interest triggering the recusal, if the person is a member of a city board or commission, to other members of the board or commission, and leave the room in which the board or commission is meeting during the board or commission’s discussion of, or voting on, the matter.

Sec. 2.424. Standards of conduct.

(a) Standards for immediate family members. It is unlawful for an immediate family member to intentionally or knowingly:

(1) Solicit, accept or agree to accept from another person any benefit that the member’s relative, who is a city officer or employee, is prohibited from soliciting, accepting or agreeing to accept under state law;

(2) Misuse any official information obtained from the member’s relative, who is a city officer or employee, to which the relative has access by virtue of the relative’s office or employment and that has not been made public, in a manner prohibited as to the relative under state law; or

(3) Misuse, as defined in V.T.C.A., Penal Code §39.01, any city property, services, personnel or any other thing of value belonging to the city that has come into the member’s custody or possession by virtue of the office or employment of the member’s relative who is a city officer or employee.

(b) Representation and appearance at meetings. No city officer or employee shall knowingly:
(1) Appear before the body of which the officer or employee is a member, as a representative for any private person, including the officer or employee or any immediate family member, or any group or interest;

(2) Represent, directly or indirectly, any private person, including the officer or employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party;

(3) Accept other employment or engage in outside activities incompatible with the full and proper discharge of city duties or that might impair independent judgment in the performance of city duties; or

(4) Make a false statement of material fact at a public meeting.

This subsection shall not be construed to deprive an officer or employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

(c) Representation by council members. No city council member shall knowingly represent any private person, including the city council member or any immediate family member, or any group or interest in any matter before any department, agency, commission or board of the city, except that city council members may represent their interests in their owner-occupied homesteads before a board, agency, commission or department of the city other than the city council.

(d) Representation in municipal court. In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties:

(1) No city council member shall knowingly represent any private person other than himself or herself. If a city council member elects to have a trial in municipal court, the city council, without the participation of the affected city council member, will appoint a special judge to preside over the trial.

(2) No city officer or employee shall knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.

(e) Representation in land use and development matters. A member of the planning and zoning commission shall not knowingly represent the member or any other person, group or interest in any matter before the zoning board of adjustments involving land use or development, and a member of the zoning board of adjustments shall not knowingly represent the member or any other person, group or interest in any matter before the planning and zoning commission involving land use or development. This subsection does not apply to members representing their interests in their owner-occupied homesteads.

(f) Prohibited use of city position. A city official or employee shall not use his or her position
to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official or employee who represents to a person that the official or employee may provide an advantage or impediment to the person based on the official's or employee’s office or position violates this rule.

Sec. 2.425. Contracts with city; eligibility for appointment or election to office.

(a) No member of the city council and no city employee shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person’s position with the city. Any person having an interest shall be ineligible for election as a city council member or appointment as a city employee, and any city council member or city employee who acquires an interest shall forfeit the office or employment. Any violation of this subsection with the actual or constructive knowledge of the city council member or employee shall render the contract voidable by the city manager or the city council.

(b) In subsection (a) of this section and in subsection 2.425(c), the term “sale to the city” includes a sale to city-sponsored entities and organizations subject to substantial control by the city in one or more of the following respects:

1. All or a majority of the governing body of the entity or organization is appointed by the city council;
2. The city provides more than one-half of the operating funds of the entity or organization;
3. The city has approval authority over purchasing decisions made by the entity or organization;
4. The city has approval authority over bonds or other indebtedness issued by the entity or organization; or
5. The city has approval authority over the budget of the organization.

(c) This section does not apply to acquisition of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

Sec. 2.426. Restrictions on former employees.

(a) No former city employee shall, for a period of two years from the date of leaving city employment, knowingly:

1. Appear at a meeting of a board or commission staffed by members of the department of which the employee was a member, as a representative for any private person, including the employee or any immediate family member, or any group or interest.
(2) Represent, directly or indirectly, any private person, including the former employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party.

This subsection shall not be construed to deprive a former employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

(b) In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties, no former city employee shall, for a period of two years from the date of leaving city employment, knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.

(c) For a period of two years from the date of leaving employment, a former city employee shall not have any financial interest in the sale to the city of any land, materials, supplies or service. Any violation of this subsection with the actual or constructive knowledge of the former city employee shall render the contract voidable by the city manager or the city council. This subsection shall not apply to a former city employee whose employment was terminated as part of a reduction in force or to a former employee whose skills or experience are so unique that failure to contract with him or her would be a detriment to the city as determined by the city manager.

Secs. 2.427--2.440. Reserved.

DIVISION 2. ETHICS REVIEW COMMISSION

Sec. 2.441. Established; composition; term of members.

An ethics review commission is established, to be composed of seven members, all of whom will reside in the city. Members of the commission will be appointed for staggered three year terms, and will serve until their respective successors are appointed.

Sec. 2.442. Organization; rules and regulations.

The ethics review commission each year will elect from its membership its chairperson and will promulgate its own rules and regulations as to its forms and procedures and maintain proper records of its opinions and proceedings.

Sec. 2.443. Authority and duties.

(a) Generally. The ethics review commission shall act as authorized by section 12.02 of the Charter concerning conflicts of interest, ethical conduct or interests of city officials and employees.
(b) **Review and recommendations.** The commission will meet at least once a year to review this article and may make recommendations to the city council.

(c) **Hearings.** The commission shall consider and conduct hearings on complaints of violations of this article and of state conflict of interest laws in accordance with Section 2.444.

(d) **Advisory opinions.** The commission shall render advisory opinions on potential conflicts of interest or violation of this article at the request of a public official or employee subject to the terms of this article. The opinion must relate to an action proposed to be taken by the person requesting the opinion.

(e) **Opinions binding.** Any advisory opinion rendered by the commission to a person is binding on the commission in any subsequent complaint concerning the person about whom the opinion was requested and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in connection with the opinion.

**Sec. 2.444. Complaints; review and hearings; sanctions for violations.**

(a) **Complaint procedure.**

(1) Any resident or employee of the city who believes a person has violated a provision of this article or a state conflict of interest law may file a written complaint with the city attorney. The complaint must:

(A) Identify the complainant and the person who allegedly committed the violation;

(B) Provide a sufficient statement of the facts which if true would constitute a prima facie violation of a provision of this article or a state conflict of interest law;

(C) Specify the provision of this article or a state conflict of interest law which is alleged to have been violated;

(D) Identify sources of evidence, if any, that the complainant recommends should be considered by the commission; and

(E) Be filed on a form prescribed by the commission available on the City of San Marcos website and from the city attorney’s office.

(F) No complaints shall be filed within a period beginning on the 60th day prior to the first day of early voting for any city election and ending on the later of the regular election day or runoff election day.
(2) The city attorney will acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the commission and to the person accused within seven business days of accepting the complaint form.

(b) Review of complaints by commission.

(1) The commission shall review each complaint in executive session prior to conducting a hearing to determine whether the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law.

(2) If the commission determines that the complaint is defective in form or does not allege sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law, the commission shall dismiss the complaint, and provide notice, including the reasons for the dismissal, to the complainant and to the person accused.

(3) If the commission determines that the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law, the commission shall schedule a hearing on the complaint.

c) Hearings.

(1) The commission will adopt rules of procedure to govern hearing on complaints. The rules will allow for the presentation of evidence by the complainant and the person accused, and cross examination of witnesses.

(2) The chair of the commission or any person acting in that capacity, and the recording secretary of the commission, are authorized to administer oaths to persons who testify at hearings conducted by the commission.

d) Ex parte communications. It is unlawful for a person who has filed a complaint alleging a violation of this article or a state conflict of interest law by a city officer or employee, or a person against whom such a complaint has been filed, to communicate verbally or in writing about the subject matter of the complaint with a member of the ethics review commission at any time other than during a public meeting of the commission. All such communications by such persons to the commission outside of a public meeting of the commission must be directed to the city attorney. The city attorney will collect all such communications and provide them to the commission with the agenda materials for the meeting at which the complaint is considered. The city attorney will make copies of these communications available to interested persons in accordance with state law.

e) Sanctions. If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the following sanctions:

(1) A letter of notification, if the violation is clearly unintentional, or when the official or employee’s action was made in reliance on a written opinion of the city attorney. A letter of
notification shall advise the official or employee of any steps to be taken to avoid future violations.

(2) A letter of admonition, if the commission finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.

(3) A reprimand, if the commission finds that the violation:

(A) was minor and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or

(B) was serious and may have been unintentional.

A copy of any reprimand directed to an official shall be sent to the city council. A copy of any reprimand directed to an employee shall be sent to the city manager and included in the employee’s personnel file.

(4) A recommendation of suspension from office or employment, if the commission finds that the violation:

(A) was serious and that was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or

(B) was minor but similar to a previous violation by the person, and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law.

A recommendation of suspension of an official appointed by the city council shall be transmitted to the city council, and the council will have final authority on whether to impose a suspension. A recommendation of suspension of an employee shall be directed to the city manager, who will have final authority on whether to impose a suspension.

(5) A recommendation for recall or removal from office or employment, if the commission finds that the violation was serious and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law. A recommendation for recall of a city council member or removal of an official appointed by the city council will be forwarded to the city council. A recommendation for removal of an employee will be forwarded to the city manager.

(6) In addition to a sanction under subdivisions (1) through (5) above, the commission may recommend to appropriate authorities that a person be prosecuted for a violation of this article or a state conflict of interest law.

Sec. 2.445. Special counsel.

An independent outside attorney approved by the city council, who does not otherwise represent the city, shall be retained to serve as special counsel to the ethics review
commission in the following situations:

(1) When a complaint is filed alleging that the mayor or a member of the city council, or the city manager, city attorney, city clerk or municipal court judge violated this article or a state conflict of interest law.

(2) When an advisory opinion is requested under section 2.443(d) by the mayor or a member of the city council, or by the city manager, city attorney, city clerk or municipal court judge.

Sec. 2.446. Criminal Penalty and Discipline for violations.

(a) A person who violates any provision of this article shall be punished, upon conviction thereof, by a fine not to exceed $500.00.

(b) The penalties prescribed in the preceding subsection do not limit the power of the city manager to discipline employees under the city manager's supervision or the power of the city council to discipline its members for violations of this article or a state conflict of interest law.

Secs. 2.447--2.460. Reserved.

DIVISION 3. FINANCIAL DISCLOSURE

Sec. 2.461. Definitions.

In this division:

Board member means a member of a board or commission whose membership is wholly appointed by the city council, including any temporary board, commission, subcommittee or other similar group.

Business entity means a corporation, partnership, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other entity organized for profit.

Candidate means every person who declares for or files for any city office to be filled by election.

Compensation means any benefit received in return for labor, services, property or investment.

Family member means the spouse and any dependent children of any official or candidate.

Gift means a benefit received other than as compensation, but not including campaign contributions reported as required by state law.
Identification means, for an individual, the person’s name, street address, city and state. For any entity other than an individual, the term “identification” means the name, address, city and state of the entity’s principal location or place of business; the type or nature of the entity’s principal location or place of business; the type or nature of the entity; the date on which it came into existence; the state of incorporation, if any; and the names of the partners or officers of the entity.

Income means a benefit received.

Source of income means any business entity, employment, investment or activity which earned or produced income, including interest, dividends, royalties or rents.

Sec. 2.462. Financial disclosure statement required.

(a) Between March 15 and April 30 of each year, every city council member, every member of the planning and zoning commission, and the city manager, city attorney, municipal court judge, and city clerk shall file a sworn financial disclosure statement with the city clerk reflecting the financial situation of the official as of December 31 of the previous year and the official’s financial activity between January 1 to December 31 of the previous year.

(b) A newly elected city council member, and a newly appointed planning and zoning commission member, city manager, city attorney, municipal court judge, or city clerk shall file a sworn financial disclosure statement with the city clerk within 30 days from the date the position is assumed. The statement shall reflect the financial condition as of the date and financial activity for the previous 12 months.

(c) A candidate for city council shall file a sworn statement with the city clerk not later than ten days from the date the candidate files with the city clerk an application to be placed on the official ballot. This statement shall include:

1. A list of any financial interest the person has, direct or indirect, in real property located within the corporate limits or within the extraterritorial jurisdiction of the city.

2. A list of any financial interest the person has, direct or indirect, in any business entity located in the city or its extraterritorial jurisdiction or any business entity doing business with the city.

3. The financial interests listed by the person shall include those held at any time during the 12 months preceding the date of filing for office and shall include any interest held by the candidate or a family member of the candidate.

(d) All board members shall file a disclosure statement with the city clerk within 30 days after their initial appointment, and thereafter between October 1 and October 31 of each year, regarding their relevant substantial interests in business entities and real property during the 12-month period preceding the date of the statement. Members of temporary boards, commissions, subcommittees, or other similar groups shall file a disclosure statement with
the city clerk within 15 days after their initial appointment. The statement shall be on a form provided by the city. For purposes of this section, the term “business entity” and the determination of substantial interests in business entities and real property shall be as defined and determined under V.T.C.A., Local Government Code Chapter 171. The form shall note whether the person claims a homestead exemption on any real property owned by the person. The form to be used by members of the planning and zoning commission shall contain the information required under Section 2.463.

(e) Any person filing a statement required by this section may include additional time periods.

(f) Any disclosure statement filed under this Section 2.462 shall be updated within 30 days after acquisition of an additional interest in real property by a council member, planning and zoning commission member, council appointee, board member, or member of any temporary board, commission, subcommittee, or other similar group.

Sec. 2.463. Information required on financial disclosure statement.

(a) Every person required to file a financial disclosure statement under subsection 2.462(a) or (c) shall include in that statement the following information:

(1) The person’s name, the name of each family member and all names under which the person or family members do business.

(2) Identification of each source of income amounting to more than $100.00 received in the reporting periods by the person or family members, stating the name, address, and nature of the source of income and stating the amount of income received; and identification of each option held, owned, acquired or sold during the reporting period, stating the nature of the option, the amount of transaction, and identification of the other parties to the transaction.

(3) Identification of each business entity, nonprofit entity or union in which the person or family member:

a. Was a partner, manager, officer, member of the board of directors, proprietor or beneficiary, during the reporting period, stating the position held; or

b. Had an ownership interest of more than $100.00 at the fair market value at any time during the reporting period, stating the value and a description of that ownership interest; provided that, where the ownership interest includes or consists of shares of stock, the number of shares owned shall be stated together with the number of outstanding shares; and if sold during the reporting period a statement of the net gain or loss realized from the sale.

(4) Identification by street address, legal or lot-and-block description of all real property located within the city and its extraterritorial jurisdiction, together with its fair market value and present use, in which the person or family member has an interest as:
a. Fee simple owner;

b. Beneficial owner;

c. Partnership owner, naming the partners;

d. Joint owner with an individual or corporation, naming them;

e. Board member, officer or the owner of more than five per cent of a corporation that has title to the real property, naming the corporation; or

f. A leaseholder, naming the person or corporation from whom the property is leased and the amounts of annual rental.

The form shall note whether the person claims a homestead exemption on any real property owned by the person.

(5) Identification of persons, business entities or guarantors to whom the person or a family member owed a debt of more than $100.00 during the reporting period, stating the amount, but not including debts owed to persons related within the second degree of consanguinity or affinity and excluding loans to a political campaign which were reported as required by law. If this debt was repaid during the reporting period, the date and amount of repayment shall also be stated.

(6) Provided this information is not privileged by law, identification of persons, entities or guarantors who owed the person or a family member a debt of more than $100.00 during the reporting period, stating the amount, including all bonds, notes and other commercial paper held or owed by the person reporting or any family member during the reporting period, but not including debts owed by persons related within the second degree of consanguinity or affinity. If this debt was repaid during the reporting period, the date and amount of repayment shall also be stated.

(7) Identification of the source of each gift or accumulation of gifts from one source of more than $100.00 in value received by the person or family member, or received by another person for the use and benefit of the person or family member, within the reporting period, stating the amount; but this requirement does not include:

a. A gift received from a relative if given because of kinship; or

b. A gift received by will, by intestate succession or as distribution from an inter vivos or testamentary trust established by a spouse or ancestor.

(8) Provided this information is not privileged by law, if the person filing the statement is the owner of five per cent or more of any business entity, the person shall list all customers from whom the entity received at least ten per cent of its gross income during the reporting
(9) Identification of any financial interest in or any transaction during the reporting period with any holder of any franchise issued by the city, other than as a utility or franchise customer or patron, stating the nature and amount of interest and transaction, including transactions by any family member and any business entity in which the person filing the statement has an ownership interest of five per cent or more.

(b) Except for the identification of transactions and amounts required by subsection (a)(9) of this section, any amount required to be reported under subsection (a) of this section may be reported by categories as follows:

(1) Category I. At least $100.00 but less than $10,000.00;

(2) Category II. At least $10,000.00 but less than $20,000.00; or

(3) Category III. At least $20,000.00 but less than $50,000.00.

(4) Category IV: At least $50,000.00 but less than $75,000.00;

(5) Category V: At least $75,000.00 but less than $100,000.00; and

(6) Category VI: $100,000.00 or more, report to nearest $100,000.

Sec. 2.464. Retention of statements and inspection.

(a) The city clerk shall maintain all statements required to be filed with the city clerk under section 2.462 as public records and shall retain them for a period of three years, after which the statements will be returned to the person filing them or will be destroyed.

(b) The financial disclosure statement file maintained by the city clerk under this section shall be kept in alphabetical order for each year in which statements are filed. This file is open to public inspection during normal hours. The city clerk shall maintain a list of all persons requesting to inspect these files, identifying the files inspected.

Sec. 2.465. Forms of statements.

Financial disclosure statements shall be filed on the form promulgated by the city clerk. The city clerk will provide a form to any person requesting one and, not less than ten days before the last day set for filing a statement by any person, shall send a form to the person.

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

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

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

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

PASSED AND APPROVED on first reading on April 18, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 4, 2017.
Attest: Jamie Lee Case
City Clerk

Approved: Michael J. Cosentino
City Attorney
AGENDA CAPTION:
Consider approval of Ordinance 2017-21, on the first of two readings, amending Chapter 58 of the San Marcos City Code regarding Public Facilities, Parks and Recreation by eliminating the requirement of a verbal warning before issuance of citations for public display or consumption of alcoholic beverages in city parks, prohibiting charcoal grills in city parks, and limiting the use of shelters or tents in city parks; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.
Meeting date: April 18, 2017 - 1st Reading
May 2, 2017 - 2nd Reading

Department: Community Services - Parks and Recreation Division

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
On February 21, 2017, the Council received a presentation from the Parks and Recreation Staff and Parks and Recreation Board regarding San Marcos River Parks Overcrowding and Capacity issues. During the presentation, the Council was presented with short term recommendations from the board that included, removing charcoal grills from the parks, allowing pop-up tents and propane grills only at city installed picnic sites and not between the trail and river and no parking zones established on Cheatham street. During the meeting it was also requested to remove the requirement of a verbal warning before a citation could be given for an alcohol violation. The direction received was to move forward with these recommendations. At a subsequent council meeting the no parking zones on Cheatham were approved by ordinance. These amendments to the Parks Ordinance need to be brought back for Council consideration that would allow Park Rangers the ability to enforce violations related to these recommendations. These amendments will aid in the control of overcrowding and will enhance public safety for park patrons.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 58 OF THE SAN MARCOS CITY CODE REGARDING PUBLIC FACILITIES, PARKS AND RECREATION BY ELIMINATING THE REQUIREMENT OF A VERBAL WARNING BEFORE ISSUANCE OF CITATIONS FOR PUBLIC DISPLAY OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN CITY PARKS, PROHIBITING CHARCOAL GRILLS IN CITY PARKS, AND LIMITING THE USE OF SHELTERS OR TENTS IN CITY PARKS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The adoption of this Ordinance is in the interest of the public health, safety and welfare.

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

SECTION 1. Chapter 58, Public Facilities, Parks and Recreation, of the San Marcos City Code is hereby amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by strikethroughs.

SECTION 2. Section 58.033(a) is hereby amended as follows:

Sec. 58.033. Public display or consumption of alcoholic beverages in city parks.

(a) It is unlawful for any person to publicly consume or display alcoholic beverages within a city park. No person shall be issued a citation or arrested for an offense under this section unless the person has first been issued a verbal warning and given an opportunity to comply with this section.

(b) It is a defense to prosecution that the alcohol was consumed or displayed within a special event contract designated area of a rented pavilion, park, facility, or picnic tables, and the person is a part of the group that rented the area.

(c) It is a defense to prosecution that the alcohol was consumed or displayed while conducting water activities that include but not limited to tubes, canoes, kayaks and within the river or waterway of city parks.

(d) It is not a defense to prosecution that the alcohol was consumed or displayed while standing, sitting, or walking along the water's edge.
(e) The department may establish entry and exit points designated along the river where display of alcohol may be permitted. Open containers or consumption of alcohol are not permitted in these areas.

(f) A person convicted of a violation of littering beverage containers in the San Marcos River or convicted of littering any materials or objects in any city park is subject to being fined in an amount of not less than $250.00 but not more than $500.00.

SECTION 3. Section 58.039(b) is hereby amended as follows:

Sec. 58.039. Miscellaneous rules.

(a) The mayor or city manager may, in order to protect the public's health, safety or welfare, or preserve city park resources, impose temporary restrictions on the use of city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location.

(b) It is unlawful for a person to:

(1) Enter or remain in an area of a city park that has been posted by the department as closed; or

(2) Violate any restrictions on the use of city park areas or facilities where the restrictions have been posted or the person has received notice of the restrictions.

(3) Solicit, sell or offer to sell any good, service or merchandise of any kind in a city park except by authority of an approved concession contract or permit properly issued or approved by the director.

(4) To remove notices posted by the department or post notices not approved by the department.

(5) Fail to display or present permit upon request a permit issued by the department.

(6) Place any table, grill, tarp, tent, or shelter between the closest trail, pathway, or sidewalk and the river or anywhere restricted by signs.

(c) Employees of the department, peace officers, park rangers, and emergency personnel are exempt from these rules to the extent these rules conflict with the discharge of their official duties.
SECTION 4. Section 58.041 is hereby amended as follows:

Sec. 58.041. Use of barbeque grills, pits or other cooking appliances.

(a) The department director may, in order to protect the public's health, safety or welfare, or preserve city park resources, place restrictions on the use of barbeque grills, containers or other cooking appliances in city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location. In a city park or natural area, it is unlawful for a person to:

(1) Use any type of electric cooking appliance, except in facilities approved by the director.

(2) Use any type of charcoal or wood cooking appliance, grill, pit, smoker, or apparatus.

(3) Use any type of cooker, fryer, or other oil based appliance for cooking or heating food.

(4) Have or use any type of open flame other than for the purpose of lighting a propane grill.

(5) Have or use a propane grill at any location other than at a department approved fixed picnic table.

(b) One propane grill with a lid is permitted at each department provided fixed picnic table.

(c) The director may permit uses in subsection (a) for designated events as part of the special event permit.

(d) The director may, in order to protect the public’s health, safety or welfare, or preserve city park resources, place restrictions on the use of barbeque grills, containers or other cooking appliances in city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location.

SECTION 5. Section 58.042 is hereby amended as follows:

Sec. 58.042. Styrofoam products prohibited. Prohibited Items.

(a) It is unlawful for any person to use, carry, dispose, or possess styrofoam products in any city park or in or upon the waters of the San Marcos River. Styrofoam products include but are not limited to coolers, ice chests, cups, plates, toys, floats, kickboards, rings or swimgear.
(b) Styrofoam linings used as floatation devices or dock supports are exempt from this section if fully encapsulated by water-based acrylic or latex coating, or fully enclosed within the structural framework of a boat.

(c) No portable tables, or any other types of tables are permitted without an approved event permit.

(d) No tents, tarps, or shelters are permitted except as provided in subsection (e) without an approved event permit.

(e) One pop up shade tent having dimensions of 12 feet by 12 feet or smaller is permitted at each department approved fixed picnic table.

SECTION 6. If any word, phrase, clause, sentence, or paragraph of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 7. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this Ordinance are repealed.

SECTION 8. This Ordinance will take effect after its adoption on second reading.

PASSED AND APPROVED on first reading on April 18, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 2, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 58 OF THE SAN MARCOS CITY CODE REGARDING PUBLIC FACILITIES, PARKS AND RECREATION BY ELIMINATING THE REQUIREMENT OF A VERBAL WARNING BEFORE ISSUANCE OF CITATIONS FOR PUBLIC DISPLAY OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN CITY PARKS, PROHIBITING CHARCOAL GRILLS IN CITY PARKS, AND LIMITING THE USE OF SHELTERS OR TENTS IN CITY PARKS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The adoption of this Ordinance is in the interest of the public health, safety and welfare.

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

SECTION 1. Chapter 58, Public Facilities, Parks and Recreation, of the San Marcos City Code is hereby amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by strikethroughs.

SECTION 2. Section 58.033(a) is hereby amended as follows:

Sec. 58.033. Public display or consumption of alcoholic beverages in city parks.

(a) It is unlawful for any person to publicly consume or display alcoholic beverages within a city park. No person shall be issued a citation or arrested for an offense under this section unless the person has first been issued a verbal warning and given an opportunity to comply with this section.

(b) It is a defense to prosecution that the alcohol was consumed or displayed within a special event contract designated area of a rented pavilion, park, facility, or picnic tables, and the person is a part of the group that rented the area.

(c) It is a defense to prosecution that the alcohol was consumed or displayed while conducting water activities that include but not limited to tubes, canoes, kayaks and within the river or waterway of city parks.
(d) It is not a defense to prosecution that the alcohol was consumed or displayed while standing, sitting, or walking along the water's edge.

(e) The department may establish entry and exit points designated along the river where display of alcohol may be permitted. Open containers or consumption of alcohol are not permitted in these areas.

(f) A person convicted of a violation of littering beverage containers in the San Marcos River or convicted of littering any materials or objects in any city park is subject to being fined in an amount of not less than $250.00 but not more than $500.00.

SECTION 3. Section 58.039(b) is hereby amended as follows:

Sec. 58.039. Miscellaneous rules.

(a) The mayor or city manager may, in order to protect the public's health, safety or welfare, or preserve city park resources, impose temporary restrictions on the use of city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location.

(b) It is unlawful for a person to:

1. Enter or remain in an area of a city park that has been posted by the department as closed; or

2. Violate any restrictions on the use of city park areas or facilities where the restrictions have been posted or the person has received notice of the restrictions.

3. Solicit, sell or offer to sell any good, service or merchandise of any kind in a city park except by authority of an approved concession contract or permit properly issued or approved by the director.

4. To remove notices posted by the department or post notices not approved by the department.

5. Fail to display or present permit upon request a permit issued by the department.

6. Place any table, grill, tarp, tent, or shelter between the closest trail, pathway, or sidewalk and the river or anywhere restricted by signs.

(c) Employees of the department, peace officers, park rangers, and emergency personnel are exempt from these rules to the extent these rules conflict with the discharge of their official duties.
SECTION 4. Section 58.041 is hereby amended as follows:

Sec. 58.041. Use of barbeque grills, pits or other cooking appliances.

(a) The department director may, in order to protect the public's health, safety or welfare, or preserve city park resources, place restrictions on the use of barbeque grills, containers or other cooking appliances in city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location. In a city park or natural area, it is unlawful for a person to:

(1) Use any type of electric cooking appliance, except in facilities approved by the director.

(2) Use any type of charcoal or wood cooking appliance, grill, pit, smoker, or apparatus.

(3) Use any type of cooker, fryer, or other oil based appliance for cooking or heating food.

(4) Have or use any type of open flame other than for the purpose of lighting a propane grill.

(5) Have or use a propane grill at any location other than at a department-provided fixed picnic table.

(6) Use any type of grill or cooking device within five feet of a combustible object.

(7) Have a propane tank in excess of 20 pounds.

(b) One propane grill or portable propane cook stove is permitted at each department provided fixed picnic table.

(c) The director may permit uses in subsection (a) for designated events as part of the special event permit.

(d) The director may, in order to protect the public's health, safety or welfare, or preserve city park resources, place restrictions on the use of barbeque grills, containers or other cooking appliances in city parks and facilities by posting notice at the main entrance of the facility, park, trail head or other conspicuous location.

SECTION 5. Section 58.042 is hereby amended as follows:

Sec. 58.042. Styrofoam products prohibited Prohibited Items.
(a) In a city park or natural area the following items are prohibited: It is unlawful for any person to use, carry, dispose, or possess

(1) Styrofoam products in any city park or in or upon the waters of the San Marcos River. Styrofoam products include, including, but are not limited to coolers, ice chests, cups, plates, toys, floats, kickboards, rings or swimgear.

(2) Portable tables, or any type of table unless authorized by an event permit.

(3) Tents, tarps, shelters, or umbrellas, other than hand-held umbrellas, except as provided in subsection (c) or an approved event permit.

(b) Styrofoam linings used as floatation devices or dock supports are exempt from this section if fully encapsulated by water-based acrylic or latex coating, or fully enclosed within the structural framework of a boat.

(c) One pop up shade tent having dimensions of 12 feet by 12 feet or smaller is permitted at each department-provided fixed picnic table, provided such tent is no farther than 10 feet from the table.

SECTION 6. If any word, phrase, clause, sentence, or paragraph of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 7. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this Ordinance are repealed.

SECTION 8. This Ordinance will take effect after its adoption on second reading.

PASSED AND APPROVED on first reading on April 18, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 2, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
AGENDA CAPTION:
Consider approval of Resolution 2017-75R, amending the ethical criteria for the award of City Contracts previously adopted by Resolution 2010-145R; and declaring an effective date.

Meeting date: April 18, 2017

Department: City Attorney’s Office

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:

In September of 2010 the City Council adopted Resolution No. 2010-145R to establish ethical criteria for the award of city contracts. The ethical criteria include a provision that bars the award of a contract for construction or services to a person or entity that has been convicted of a criminal offense committed in Hays County, Texas within the previous three years involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public servant. The Ethics Review Commission has recommended an amendment to expand the scope of this debarment provision to include conviction of such offenses if committed anywhere in the United States.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AMENDING THE ETHICAL CRITERIA FOR THE AWARD OF CITY CONTRACTS PREVIOUSLY ADOPTED BY RESOLUTION 2010-145R; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. Resolution No. 2010-145R, adopted on September 19, 2010, is hereby amended by adoption of the revised Ethical Criteria for the award of city contracts attached hereto as Exhibit “A.” These revised criteria shall be followed in each procurement process initiated after the effective date of this resolution.

PART 2. This Resolution shall be in full force and effect upon adoption.

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
EXHIBIT “A”

Ethical Criteria for the Award of City Contracts

Disqualification from award of city contracts:

No contract for construction or services, including architectural, engineering or other professional services, shall be awarded to any person, firm, corporation, partnership, or other entity (including subsidiaries) that has been convicted of a criminal offense committed in Hays County, Texas within the United States of America involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official if the conviction occurred within three years immediately preceding either the date of submission of a bid, proposal, or statement of qualifications or the date of award of the contract. A bid, proposal, or statement of qualifications from an entity disqualified under this provision shall not be considered for any purpose.

Reportable conditions:

Every bid, proposal, or statement of qualifications submitted for the award of a contract by the City of San Marcos shall include disclosures concerning the following reportable conditions which may be considered in determining the responsibility of a bidder or the qualifications of an entity proposing to perform construction work or provide services (including architectural, engineering, or other professional services) for the city:

1. Pending investigation or criminal prosecution of a criminal offense alleged to have been committed in Hays County, Texas within the United States of America involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official.
2. Pending claims, investigations, or civil litigation involving allegations of fraud, misrepresentation, or conversion. Previous final judgments against the entity for breach of contract, fraud misrepresentation, or conversion.
3. False statements in a statement of bidder’s qualifications submitted to the City of San Marcos or any other public sector entity.
4. Contractor or proposed subcontractor previously cited for safety violations.
5. Contractor or proposed subcontractor previously cited for improper disposal of demolition/construction debris, or contaminated/hazardous materials.
6. Failure to timely pay/remit sales tax, property tax, or utility payments to the City of San Marcos.
7. Previous unauthorized substitution of materials not meeting contract specifications.
8. Previous failure to obtain bonds/insurance or refusal to execute a contract following an award by the San Marcos City Council.
9. Violation of 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.

City staff shall disclose each of the foregoing reportable conditions to the City Council prior to the date of award of a contract to allow the City Council to make a determination regarding the responsibility or qualifications of an entity to perform the work or service.
AGENDA CAPTION:
Consider approval of Resolution 2017-76R, approving a first addendum to the Interlocal Agreement with Hays County regarding the collection, payments and use of tax increment in Tax Increment Reinvestment Zone No. 5 (Downtown Area) that extends the term of said agreement for five years with provision for an additional extension of five years and that establishes the process for the County’s approval of project costs; authorizing the City Manager to execute this first addendum on behalf of the City; and declaring an effective date.

Meeting date: April 18, 2017

Department: CMO - Steve Parker, Assistant City Manager / CFO

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL:
Goal #4 Economic Development
Goal #7 Maintain Fiscal Responsibility

COMPREHENSIVE PLAN ELEMENT(s):
Economic Development - Goal 5: Fiscally Responsible Incentives for Economic Development

BACKGROUND:
On December 6, 2011, the City of San Marcos adopted Resolution No. 2011-150R, approving an Interlocal Agreement between Hays County and the City of San Marcos related to the “San Marcos, Texas Tax Increment Reinvestment Zone No. 5.” The full text of Resolution No. 2011-150R is attached.

The Interlocal Agreement established the obligations of the City and County related to the funding and governance of TIRZ #5:

- The County and City agree to make payments to the City during the term of the agreement, for deposit in the Tax Increment Fund, in the amount of 70% of the tax increment attributed to the captured appraised value of the County in the Reinvestment Zone.

The Interlocal Agreement is in effect for the earlier of 1) six years from the creation of the TIRZ, or 2) the date all project costs have been paid or reimbursed. To date, no TIRZ #5 funds have been expended.

The TIRZ #5 Board convened November 4, 2016 and recommended extension of Tax Increment
Reinvestment Zone No. 5 for an additional five years, to 2022. The Board also recommended adding a provision to automatically extend the term for another five years, until 2027, unless either party provides notice of its intention not to renew at least 90 days prior to the end of the 2017-2022 term. The DRAFT minutes of the November 4th TIRZ #5 Board meeting are attached.

Upon approval of this addendum, staff will prepare an Amended Project and Finance Plan for consideration by the TIRZ #5 Board and the Hays County Commissioners Court, and final approval by the City Council.

The attached first addendum also states that Hays County’s approval of additional projects is subject to the concurrence of both of the County’s representatives on the TIRZ #5 Board. Absent such concurrence, approval by majority vote of the Hays County Commissioners Court would be necessary before the county’s tax increment could be used to pay for or reimburse any additional TIRZ projects.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A FIRST ADDENDUM TO THE INTERLOCAL AGREEMENT WITH HAYS COUNTY REGARDING THE COLLECTION, PAYMENTS AND USE OF TAX INCREMENT IN TAX INCREMENT REINVESTMENT ZONE NO. 5 THAT EXTENDS THE TERM OF SAID AGREEMENT FOR FIVE YEARS WITH PROVISION FOR AN ADDITIONAL EXTENSION OF FIVE YEARS AND ESTABLISHES THE PROCESS FOR THE COUNTY’S APPROVAL OF PROJECT COSTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THIS FIRST ADDENDUM 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 First Addendum to Interlocal Agreement between Hays County and the City of San Marcos Related to San Marcos, Texas Tax Increment Reinvestment Zone No. 5 (the “First Addendum”) is approved.

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

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
STATE OF TEXAS  
COUNTY OF HAYS  

FIRST ADDENDUM TO INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS RELATED TO SAN MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 5

THIS FIRST ADDENDUM ("Addendum") is made between the CITY OF SAN MARCOS, TEXAS (the “City”), a home rule municipality of the State of Texas, acting by and through its governing body, the City Council, and HAYS COUNTY, TEXAS acting by and through its governing body, the Commissioners Court, to amend an Interlocal Agreement Between Hays County and the City of San Marcos Relating To San Marcos, Texas Tax Increment Reinvestment Zone No. 5 (the “Agreement”) previously executed by the City on December 7, 2011 and by Hays County on November 22, 2011.

ADDENDUM:

In consideration of the mutual covenants and agreements contained herein, as well as good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the County agree as follows:

1. Section 4, Term and Termination, Subsection A, Agreement Term, of the Agreement is hereby amended to read as follows:

   “Section 4. Term and Termination.
   A. Agreement Term. This Agreement will take effect only upon designation of the Reinvestment Zone by Ordinance of the City and will be in effect for the earlier of 1) December 5, 2022, unless neither party provides notice of intent to terminate ninety (90) or more days in advance of that date, in which case the term shall expire on December 5, 2027, or 2) the date all Project Costs have been paid or reimbursed unless earlier terminated by the parties hereto. Nothing in this Agreement limits the authority of the County or City to extend the term of this Agreement. Upon termination of this Agreement, the obligation of the County to make payments to the City shall end; however, any refund obligations shall survive the termination.”

2. The following terms and conditions shall be added to the Agreement as Section 2 (E):

   No project expenditures of County monies provided under this Agreement shall be authorized without an affirmative vote of the Board, with the County representatives present for the vote and with the County representatives unanimously agreeing with a proposed expenditure. In the event that the County representatives do not unanimously agree with a proposed expenditure, County monies provided under this Agreement may not be utilized for that expenditure unless and until a subsequent vote of the Hays County Commissioners Court approves of that expenditure.
3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS HEREOF, the City and the County have made and executed this Addendum in multiple copies, each of which is an original.

CITY OF SAN MARCOS

_____________________
Mayor

_____________________
Date

ATTEST:

________________________
Jamie Lee Case
City Clerk

HAYS COUNTY

_____________________
Hays County Judge

_____________________
Date

ATTEST:

________________________
Liz Q. Gonzalez
Hays County Clerk
STATE OF TEXAS
COUNTY OF HAYS

FIRST ADDENDUM TO INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY
AND THE CITY OF SAN MARCOS RELATED TO SAN MARCOS, TEXAS TAX
INCREMENT REINVESTMENT ZONE NO. 5

THIS FIRST ADDENDUM (“Addendum”) is made between the CITY OF SAN
MARCOS, TEXAS (the “City”), a home rule municipality of the State of Texas, acting by and
through its governing body, the City Council, and HAYS COUNTY, TEXAS acting by and
through its governing body, the Commissioners Court, to amend an Interlocal Agreement Between
Hays County and the City of San Marcos Relating To San Marcos, Texas Tax Increment
Reinvestment Zone No. 5 (the “Agreement”) previously executed by the City on December 7,
2011 and by Hays County on November 22, 2011.

ADDENDUM:

In consideration of the mutual covenants and agreements contained herein, as well as good and
valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City
and the County agree as follows:

1. Section 4, Term and Termination, Subsection A, Agreement Term, of the Agreement is
   hereby amended to read as follows:

   “Section 4. Term and Termination.
   A. Agreement Term. This Agreement will take effect only upon designation of
   the Reinvestment Zone by Ordinance of the City and will be in effect for the
   earlier of 1) six (6) years from the date of designation of the Reinvestment Zone
   December 5, 2022, unless neither party provides notice of intent to terminate
   ninety (90) or more days in advance of that date, in which case the term shall
   expire on December 5, 2027, or 2) the date all Project Costs have been paid or
   reimbursed unless earlier terminated by the parties hereto. Nothing in this
   Agreement limits the authority of the County or City to extend the term of this
   Agreement. Upon termination of this Agreement, the obligation of the County
to make payments to the City shall end; however, any refund obligations shall
survive the termination.”

2. The following terms and conditions shall be added to the Agreement as Section 2 (E):

   No project expenditures of County monies provided under this Agreement shall be
   authorized without an affirmative vote of the Board, with the County representatives
   present for the vote and with the County representatives unanimously agreeing with a
   proposed expenditure. In the event that the County representatives do not unanimously
   agree with a proposed expenditure, County monies provided under this Agreement may
   not be utilized for that expenditure unless and until a subsequent vote of the Hays County
   Commissioners Court approves of that expenditure.
3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS HEREOF, the City and the County have made and executed this Addendum in multiple copies, each of which is an original.

CITY OF SAN MARCOS

_____________________
Mayor

_____________________
Date

ATTEST:

________________________
Jamie Lee Case
City Clerk

HAYS COUNTY

_____________________
Hays County Judge

_____________________
Date

ATTEST:

________________________
Liz Q. Gonzalez
Hays County Clerk
RESOLUTION 2011-150 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CONCERNING THE PROPOSED SAN MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 5 IN DOWNTOWN SAN MARCOS; APPROVING AN INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS PROVIDING FOR THE COUNTY TO MAKE PAYMENTS TO THE CITY OF SEVENTY PERCENT OF THE COUNTY’S TAX INCREMENT REVENUES FROM INCREASED PROPERTY VALUES IN THE ZONE; 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 Interlocal Agreement between Hays County and the City of San Marcos Related to San Marcos, Texas Tax Increment Reinvestment Zone No. 5 is approved.

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

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

ADOPTED on December 6, 2011.

Daniel Guerrero
Mayor

Attest:

Jamie Lee Pettijohn
City Clerk
INTERLOCAL AGREEMENT

Between the

CITY OF SAN MARCOS, TEXAS

AND

HAYS COUNTY, TEXAS

Relating to

City of San Marcos, Texas

Tax Increment Reinvestment Zone No. 5
THE STATE OF TEXAS  

COUNTY OF HAYS  

INTERLOCAL AGREEMENT  
BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS RELATED TO SAN MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 5  

THIS INTERLOCAL AGREEMENT ("Agreement") is made by and between the CITY OF SAN MARCOS, TEXAS (the "City"), a home rule municipality of the State of Texas, acting by and through its governing body, the City Council, and HAYS COUNTY, TEXAS (the "County"), acting by and through its governing body, the Commissioners Court. This Agreement is made pursuant to Chapter 791 of the Texas Government Code and Chapter 311 of the Texas Tax Code for the participation of the City and the County in REINVESTMENT ZONE NUMBER FIVE, CITY OF SAN MARCOS, TEXAS (the "Reinvestment Zone"); a reinvestment zone to be created by the City pursuant to Chapter 311 of the Texas Tax Code.  

RECITALS:  

The City Council has determined that it is necessary to create a tax increment reinvestment zone, in the area more particularly described in the attached Exhibit A and on the map attached hereto as Exhibit B. The Reinvestment Zone consists of approximately 244 acres in the downtown core of San Marcos, Texas.  

The general purpose of the Reinvestment Zone is to promote the redevelopment of the property in the Reinvestment Zone and in surrounding areas in the City and County pursuant to the tax increment finance provisions of Section 311.005(a)(1) and(2) and (a-1) of the Texas Tax Code. The specific purpose of the Reinvestment Zone is to provide a financing mechanism to pay for a portion of the costs associated with the redevelopment of the site of the current Hays County Justice Center Building through a public-private partnership. A list of the projects, including but not limited to streetscape improvements, is attached as Exhibit C (the "Project Costs.")  

The financial plan for the Project is to fund the costs associated with the design and construction of the Project (the "Project Costs"), and for the City, with assistance from the County as provided in this Agreement, to pay for or reimburse a private sector partner for a portion of the Project Costs from tax increment revenues derived from increases in property values resulting from new development in the Reinvestment Zone.
The City and the County wish to provide in this Agreement for the County to make payments to the City of a portion of the County's tax increment revenues derived from increases in property values resulting from new development in the Reinvestment Zone, which payments are to be used by the City to reimburse the Developer for a portion of the Project Costs under the terms and conditions described in this Agreement.

AGREEMENT:

In consideration of the mutual covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the County agree as follows:

SECTION 1. DEFINITIONS.

In this Agreement:

A. Captured appraised value for a year means the total appraised value of all real property taxable by the City or County and located in the Reinvestment Zone for that year, less the respective tax increment base of the City or County.

B. Project means, initially, the Project as set forth in Exhibit C. The Project may be revised or supplemented by amendments to the Project Plan that are adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City from time to time.

C. Project Plan means the Project Plan and Reinvestment Zone financing plan for the Reinvestment Zone adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City, and amendments to these plans that are adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City from time to time.

D. Tax increment for a year means the amount of property taxes levied and collected by the City or County for that year on the captured appraised value of real property taxable by the City or County and located in the Reinvestment Zone.

E. Tax increment base means the total appraised value of all real property taxable by the City or County and located in the Reinvestment Zone for the year 2011 according to the certified Hays County Tax Roll.

F. Tax Increment Fund means the tax increment fund created by the City for the Reinvestment Zone.

G. Terms other than those defined above shall have 1) their meanings as given in Chapter 311, Texas Tax Code, or 2) if not so defined, their usual and ordinary meanings.
H. References to state statutes shall include amendments to those statutes that are duly enacted from time to time.

SECTION 2. OBLIGATIONS OF THE COUNTY.

A. Payments to the City. The County agrees to make payments to the City during the term of this Agreement, for deposit in the Tax Increment Fund, in the amount of 70% of the tax increment attributed to the captured appraised value of the County in the Reinvestment Zone. The County's obligation to make these payments will accrue only as taxes on the captured appraised value are collected by the County. Payments shall be due on May 1 of each year during the term of this Agreement. No interest or penalty will be charged to the County for any payments made by the County based on collections that occur after this due date; however, the County will pay to the City, for deposit in the Tax Increment Fund, 70% of any penalty or interest received by the County on any delinquent taxes on the captured appraised value of the County. The County may offset against future payments to the Tax Increment Fund any portion of payments to the City under this Agreement that the County subsequently refunds to taxpayers pursuant to the provisions of the Texas Tax Code.

B. Limitations on Payments. The County is not obligated to make payments under this Agreement 1) unless and until taxes on the captured appraised value are actually collected by the County, or 2) from any source other than taxes actually collected on the County's captured appraised value, or 3) from any County taxes or revenues other than taxes actually collected on the County's captured appraised value. Notwithstanding any provisions contained herein, this Agreement is expressly contingent upon the availability of funds for each obligation herein for the term of this Agreement and any extension thereto. In the event that either no funds or insufficient funds are appropriated for the payments due under this Agreement for the period covered by such budget or appropriation, the contract shall terminate without penalty to the County.

C. Expansion of the Reinvestment Zone; Supplemental Projects. The County's obligation to make payments under this Agreement is limited to the county's captured appraised value on property in the Reinvestment Zone as described in this Agreement. The County is not obligated to make payments based on the addition of property to the Reinvestment Zone unless the County specifically agrees to do so by amendment to this Agreement. The County's obligation to make payments under this Agreement is also limited to use by the City for partial reimbursement of the Project Costs, as described herein. The County is not obligated to make payments towards the costs of any other improvements unless the County specifically agrees to do so by amendment to this Agreement. Any member of the County Commissioners Court may review and provide comments to the Board of Directors of the Reinvestment Zone or the City Council of the City on any proposed expansion of the Reinvestment Zone or amendment to the Project Plan prior to its approval by the City Council.
D. County Appointment to Board of Directors of the Reinvestment Zone. The Board of Directors of the Reinvestment Zone shall consist of five (5) voting members. The Commissioners Court of the County and the San Marcos City Council shall each have the unequivocal right to appoint two (2) qualified voting members. The fifth voting member shall be appointed by mutual agreement and approval of said governing bodies. Members of the Board of Directors shall meet the qualifications set forth in Section 311.009 of the Texas Tax Code. Failure of the Commissioners Court to appoint a person to the Board of Directors of the Reinvestment Zone shall not be deemed a waiver of the County's right to make an appointment at a later date. The Commissioners Court will make best faith efforts to appoint a qualified person to serve on the Board of Directors, and to fill vacancies in this position as needed.

SECTION 3. OBLIGATIONS OF THE CITY.

A. Initial Project Plan. The City agrees that the Project, as described herein will comprise the Project in the initial Project Plan to be adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City. The City agrees that the Reinvestment Zone financing plan in the initial Project Plan to be adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City shall provide for use of the County's payments under this Agreement solely to fund a portion of the Project Costs.

B. Use of County Payments. The City agrees to use payments made by the County under this Agreement solely to fund Project Costs.

C. Notice to County of Amendments to Project Plan. The City agrees to provide the County with written notice of any proposed amendments to the Project Plan at least 14 days prior to their submission to the City Council for approval. The City agrees to work with the Reinvestment Zone Board of Directors to implement the Project Plan.

D. Disposition of Tax Increments. Upon termination of the Reinvestment Zone, and after all obligations of the Reinvestment Zone have been paid, the City agrees to pay to the County, within 60 days of the termination, all monies remaining in the Tax Increment Fund that represent the County's pro rata amount of participation authorized under this Agreement.

E. Annual Reports. The City agrees to provide to the County an annual report regarding the Reinvestment Zone as required under Texas Tax Code Section 311.016.

F. Audits - Redevelopment Authority. In the event the City creates a redevelopment authority in connection with the Reinvestment Zone, the City shall provide to the County a copy of each of the audits required by the agreement between the City, the Reinvestment Zone and any such redevelopment authority within 30 days of receipt of each audit.
SECTION 4. TERM AND TERMINATION.

A. Agreement Term. This Agreement will take effect only upon designation of the Reinvestment Zone by ordinance of the City and will be in effect for the earlier of 1) six (6) years from the date of the designation of the Reinvestment Zone or 2) the date all Project Costs have been paid or reimbursed unless earlier terminated by the parties hereto. Nothing in this Agreement limits the authority of the County or City to extend the term of this Agreement. Upon termination of this Agreement, the obligation of the County to make payments to the City shall end; however, any refund obligations of the City shall survive the termination.

B. Early Termination of Reinvestment Zone. The City may terminate the Reinvestment Zone pursuant to the provisions of Section 311.017 of the Texas Tax Code.

SECTION 5. MISCELLANEOUS.

A. Cooperation. This City and the County agree to cooperate with each other, in good faith, at all times during the term hereof in order to achieve the purposes and intent of this Agreement.

B. Entire Agreement; Amendments. This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by the parties and Developer.

C. Interpretation. The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. All terms and provisions hereof are to be construed and interpreted consistently with that Act.

D. Invalid Provisions. Any clause, sentence, paragraph or article of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion.

E. Applicable Laws. This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

F. Authorization; Funding. Each party hereto acknowledges and represents that his Agreement has been duly authorized by its respective governing body, and that funding from
each party for the performance of this Agreement will be provided from current revenues available to the parties.

G. Notices. Notices required by 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 address/fax numbers:

<table>
<thead>
<tr>
<th>City</th>
<th>Hays County</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Manager</td>
<td>Hays County Judge</td>
</tr>
<tr>
<td>City of San Marcos</td>
<td>Hays County Courthouse</td>
</tr>
<tr>
<td>630 East Hopkins Street</td>
<td>111 E. San Antonio St., Ste. 300</td>
</tr>
<tr>
<td>San Marcos, Texas 78666</td>
<td>San Marcos, Texas 78666</td>
</tr>
</tbody>
</table>

H. Non-Waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

I. Successors. This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City or the Reinvestment Zone or any officer, agent or employee of the County.

J. No Waiver of Immunity. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, and agents as a result of its execution of this Agreement and performance of the covenants contained herein.

K. Third Party Beneficiary. There are no third party beneficiaries to this Agreement.
IN WITNESS HEREOF, the City and the County have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF SAN MARCOS

Mayor

12-7-11

Date

ATTEST/SEAL:

City Clerk

Date

12-7-11

APPROVED AS TO FORM AND LEGALITY:

City Attorney
EXHIBIT A

THE AREA OF LAND BOUNDED BY CONCHO STREET, MOORE STREET, NORTH STREET, COMANCHE STREET, SHADY LANE, FREDERICKSBURG STREET, HULL STREET, GUADALUPE STREET, IH-35, MCKIE STREET, LBJ DRIVE AND CM ALLEN STREET, APPROXIMATELY 244 ACRES
EXHIBIT C

Project Overview and Project Costs

This Table 1 summarizes the currently anticipated Project Costs to be financed within Zone No. 5.

3% av increase with 70% contribution

<table>
<thead>
<tr>
<th>Year</th>
<th>Assessed Value</th>
<th>Tax AV Increment</th>
<th>City of San Marcos Revenue Share</th>
<th>Hays County Revenue Share</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tax Rate</td>
<td>Annual</td>
<td>Tax Rate</td>
</tr>
<tr>
<td>2011</td>
<td>105,712,363</td>
<td></td>
<td>0.37114</td>
<td>$11,770</td>
<td>0.29736</td>
</tr>
<tr>
<td>2012</td>
<td>108,883,734</td>
<td>3,171,371</td>
<td>0.37114</td>
<td>$23,894</td>
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<tr>
<td>2013</td>
<td>112,150,246</td>
<td>6,437,883</td>
<td>0.37114</td>
<td>$36,381</td>
<td>0.29736</td>
</tr>
<tr>
<td>2014</td>
<td>115,514,753</td>
<td>9,802,390</td>
<td>0.37114</td>
<td>$49,242</td>
<td>0.29736</td>
</tr>
<tr>
<td>2015</td>
<td>118,980,196</td>
<td>13,267,833</td>
<td>0.37114</td>
<td>$62,490</td>
<td>0.29736</td>
</tr>
<tr>
<td>2016</td>
<td>122,549,602</td>
<td>16,837,239</td>
<td>0.37114</td>
<td>$83,776</td>
<td>0.29736</td>
</tr>
</tbody>
</table>

Assumptions:
70% City Contribution \((0.5302*0.7=0.37114)\)
70% County Contribution \((0.4248*0.7=0.29736)\)
3% increase per year after 2011

1. Redevelopment of Hays County “Justice Center” Property

   If Hays County issues a request for qualifications, request for proposals or other similar vehicles in order to secure a public-private partnership approach or other disposition for the redevelopment or adaptive reuse of the “Justice Center” property, then tax increment revenues of the proposed Zone No. 5 shall be made available for infrastructure or other improvements allowed by law up to the amount collected by the TIRZ by capturing increment for 5 years for reimbursement of expenditures in infrastructure or other improvements by the successful entity or consortium in connection with the disposition of the “Justice Center” Property. Reimbursements shall be based on project investments that meet the priority policies delineated in the Executive Summary in coordination with Hays County.

2. Infrastructure supporting cohesive redevelopment

   Proposed Zone No. 5 tax increment revenues not used for the disposition of the “Justice Center” through the process described in Project No. 1 above shall be made available to facilitate investment in infrastructure or other improvements allowed by law that facilitate the following:
   a. Redevelopment projects adjacent to the Texas State Campus, providing improved usage of underutilized properties and better transitions between the campus and downtown.
   b. Redevelopment adjacent to Transit Oriented Development (TOD) associated with the area identified as potential future rail station by the Lone Star Rail District.
   c. Redevelopment or other projects that provide cohesive and sustainable development advancing the Downtown Master Plan and/or that improves the better linkages among the River, the future TOD/rail station area, the Square and the Texas State Campus.
TIRZ #5 Board Meeting Minutes
Friday, November 4, 2016 at 9:00 a.m.
City of San Marcos City Hall
630 East Hopkins, San Marcos Texas 78666

Agenda

1. **Call to Order and Roll Call**
The meeting was called to order at 9:23 a.m. Board members present: Jared Miller, Council Member John Thomaides, Dr. Ed Mihalkanin, and Commissioner Will Conley. Board members not present: Commissioner Debbie Ingalsbe.

2. **Approval of November 19, 2015 Minutes**
Commissioner Conley made a motion to approve the minutes as presented. The motion was seconded by Dr. Ed Mihalkanin and approved by a vote of 4-0.

3. **Budget update**
Heather Hurlbert, City of San Marcos Finance Director, provided an update on the estimated and actual budget for TIRZ #5. Cumulative revenue available as of November 4, 2016 is $615,506.

4. **Discussion and possible action regarding extending the term of Tax Increment Reinvestment Zone No. 5**
Dr. Ed Mihalkanin made a motion to recommend extension of Tax Increment Reinvestment Zone No. 5 for an additional five years. The motion was seconded by Jared Miller and approved by a vote of 4-0.

5. **Discussion and possible action regarding a revised Interlocal agreement between the City and Hays County**
Jared Miller made a motion to recommend amending the Interlocal Agreement related to TIRZ #5 to extend the term for an additional five years and leave unchanged the amount of tax increment deposited to the Tax Increment Fund. The motion was seconded by Dr. Ed Mihalkanin and approved by a vote of 4-0.

6. **Discussion and possible direction regarding amendments to the Tax Increment Reinvestment Zone No. 5 Project and Finance Plan**
Jared Miller made a motion to direct City staff to prepare an Amended Project and Finance Plan for consideration by the TIRZ #5 Board and the Hays County Commissioners Court, and approval by the City Council. The motion was seconded by Dr. Ed Mihalkanin and approved by a vote of 4-0.

7. **Adjourn**  
The meeting was adjourned at 10:06 a.m.
AGENDA CAPTION:
Consider approval of Resolution 2017-77R, establishing a Policy Regarding Mobile License Plate Recognition (MLPR) Data Privacy; authorizing the Interim City Manager or his designee to take such measures as necessary to implement said policy; and declaring an effective date.

Meeting date: April 18, 2017

Department: City Manager’s Office

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL: N/A

COMPREHENSIVE PLAN ELEMENT(s): N/A

BACKGROUND:
The City of San Marcos utilizes Mobile License Plate Recognition hardware and software (“MLPR”) for vehicle parking enforcement and law enforcement. The purpose of this Policy is to provide guidelines for the collection, retention and privacy of license plate recognition data.

MLPR data is collected on public streets and parking lots owned or leased by the City. The City utilizes a number of mobile vehicle-mounted systems operated by trained personnel in parking locations throughout the municipality.

The MLPR system captures two photos of observed vehicles: (1) a context photo of the vehicle and its immediate surroundings and (2) a photo of the license plate. Typically, these photos are taken from the rear of the vehicle, although there are occasions where a photo is taken from the front of a vehicle backed into a space or standing in a driving aisle. The photos are not of a resolution that allows identification of the vehicle occupants if they are present.

Along with the photographic data, the system also records the global positioning system coordinates and date/time information of the observation. Further software processing of the license plate image generates an alphanumeric version of the license plate number that is also stored with the record. While no owner or driver information is stored directly with the MLPR record, vehicle MLPR data is linked to individual accounts within the parking management system.

The intended use of data collected by the MLPR system is for parking enforcement and law enforcement investigations. MLPR data is used to determine a vehicle’s location and time of use of a given parking area and support the issuance of a parking citation if needed. The data is also used by the City of San Marcos...
Police Department in conducting ongoing criminal investigations and investigations of complaints. Any use of the data for purposes outside of these stated purposes must be detailed and approved in writing by the City Manager.
RESOLUTION NO. 2017- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A POLICY REGARDING MOBILE LICENSE PLATE RECOGNITION (MLPR) DATA PRIVACY; AUTHORIZING THE INTERIM CITY MANAGER HIS DESIGNEE TO TAKE SUCH MEASURES AS NECESSARY TO IMPLEMENT SAID POLICY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Policy Regarding Mobile License Plate Recognition (MLPR) Data Privacy is hereby approved.

PART 2. The City Manager or the City Manager’s designee is authorized to take such measures as necessary to implement said policy.

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Policy Regarding
Mobile License Plate Recognition (MLPR) Data Privacy

Section 1. Purpose. The City of San Marcos utilizes Mobile License Plate Recognition hardware and software (“MLPR”) for vehicle parking enforcement and law enforcement. The purpose of this Policy is to provide guidelines for the collection, retention and privacy of license plate recognition data.

Section 2. Locations of license plate data collection. MLPR data is collected on public streets and parking lots owned or leased by the City. The City utilizes a number of mobile vehicle-mounted systems operated by trained personnel in parking locations throughout the municipality.

Section 3. Data collected. The MLPR system captures two photos of observed vehicles: (1) a context photo of the vehicle and its immediate surroundings and (2) a photo of the license plate. Typically, these photos are taken from the rear of the vehicle, although there are occasions where a photo is taken from the front of a vehicle backed into a space or standing in a driving aisle. The photos are not of a resolution that allows identification of the vehicle occupants if they are present. Along with the photographic data, the system also records the global positioning system coordinates and date/time information of the observation. Further software processing of the license plate image generates an alphanumeric version of the license plate number that is also stored with the record. While no owner or driver information is stored directly with the MLPR record, vehicle MLPR data is linked to individual accounts within the parking management system.

Section 4. Use of data. The intended use of data collected by the MLPR system is for parking enforcement and law enforcement investigations, and associated prosecutions. MLPR data is used to determine a vehicle’s location and time of use of a given parking area and support the issuance of a parking citation if needed. The data is also used by the City of San Marcos Police Department in conducting ongoing criminal investigations and investigations of complaints. Any use by the City of the data for purposes outside of these stated purposes must be detailed and approved in writing by the City Manager.

Section 5. Data retention. Data collected by the MLPR system not resulting in parking enforcement action or not part of an ongoing law enforcement investigation or prosecution is retained for 180 days. Data resulting in parking enforcement action is retained with the citation record according to established City data retention policies. Data associated with an ongoing law enforcement investigation or prosecution is retained until the investigation or prosecution is completed or as directed by investigators, prosecutors or courts.

Section 6. Access to records. Access to records created and maintained by the MLPR system is restricted to trained City of San Marcos personnel performing their duties, and including a limited number of City law enforcement personnel. All personnel with access to the system use unique identifiers and passwords to access records and all login activity, record additions, and other activity is logged. Access to the system by others within the City organization is prohibited.

Section 7. Public notification. The City of San Marcos will notify the public of its MLPR data collection activities and policies by posting of this policy on the City’s website.
Section 8. Third parties. The City may share MLPR data with vendors and contractors providing services to the City when such services facilitate the City’s collection and use of MLPR data for the purposes stated under this policy, e.g., software providers, cloud storage service providers, records management service providers, etc. We The City may share your personal information MLPR data outside the City with other governmental entities for law enforcement purposes, or as required by law, order of a governmental authority, or court order to be disclosed, or when we the City believes, in good faith, that disclosure is necessary to protect your public safety or the safety of others.

Section 9. How MLPR information is stored and protected. The City uses technical, administrative and physical security measures that are designed to protect MLPR data from unauthorized access, disclosure, use and modification including information security training for all individuals authorized to access MLPR data. Subject to the retention period in Section 8, MLPR data will be deleted after a determination is made that such data is not needed for any purposes stated in this policy.

Section 10. Changes to privacy policy. This Policy will be reviewed annually by the City Attorney, with substantive revisions forwarded to the City Manager.

Section 11. Legal disclaimer. The City of San Marcos follows generally accepted government standards to protect the personal information submitted to us. No method of transmission, or method of electronic storage, is 100% secure; therefore, we the City cannot guarantee its absolute security. This information should not be construed in any way as giving business, legal, or other advice, or warranting as fail proof, the security of information obtained via the MLPR system.
Policy Regarding
Mobile License Plate Recognition (MLPR) Data Privacy

Section 1. Purpose. The City of San Marcos utilizes Mobile License Plate Recognition hardware and software (“MLPR”) for vehicle parking enforcement and law enforcement. The purpose of this Policy is to provide guidelines for the collection, retention and privacy of license plate recognition data.

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Section 3. Data collected. The MLPR system captures two photos of observed vehicles: (1) a context photo of the vehicle and its immediate surroundings and (2) a photo of the license plate. Typically, these photos are taken from the rear of the vehicle, although there are occasions where a photo is taken from the front of a vehicle backed into a space or standing in a driving aisle. The photos are not of a resolution that allows identification of the vehicle occupants if they are present. Along with the photographic data, the system also records the global positioning system coordinates and date/time information of the observation. Further software processing of the license plate image generates an alphanumeric version of the license plate number that is also stored with the record. While no owner or driver information is stored directly with the MLPR record, vehicle MLPR data is linked to individual accounts within the parking management system.

Section 4. Use of data. The intended use of data collected by the MLPR system is for parking enforcement and law enforcement investigations, and associated prosecutions. MLPR data is used to determine a vehicle’s location and time of use of a given parking area and support the issuance of a parking citation if needed. The data is also used by the City of San Marcos Police Department in conducting ongoing criminal investigations and investigations of complaints. Any use by the City of the data for purposes outside of these stated purposes must be detailed and approved in writing by the City Manager.

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Section 7. Public notification. The City of San Marcos will notify the public of its MLPR data collection activities and policies by posting of this policy on the City’s website.
Section 8. Third parties. The City may share MLPR data with vendors and contractors providing services to the City when such services facilitate the City’s collection and use of MLPR data for the purposes stated under this policy, e.g., software providers, cloud storage service providers, records management service providers, etc. The City may share MLPR data outside the City with other governmental entities for law enforcement purposes, or as required by law, order of a governmental authority, or court order to be disclosed, or when the City believes, in good faith, that disclosure is necessary to protect public safety.

Section 9. How MLPR information is stored and protected. The City uses technical, administrative and physical security measures that are designed to protect MLPR data from unauthorized access, disclosure, use and modification including information security training for all individuals authorized to access MLPR data. Subject to the retention period in Section 8, MLPR data will be deleted after a determination is made that such data is not needed for any purposes stated in this policy.

Section 10. Changes to privacy policy. This Policy will be reviewed annually by the City Attorney, with substantive revisions forwarded to the City Manager.

Section 11. Legal disclaimer. The City of San Marcos follows generally accepted government standards to protect the personal information submitted to us. No method of transmission, or method of electronic storage, is 100% secure; therefore, the City cannot guarantee its absolute security. This information should not be construed in any way as giving business, legal, or other advice, or warranting as fail proof, the security of information obtained via the MLPR system.
AGENDA CAPTION:
Consider approval of Resolution 2017-78R, approving an agreement with Urban Mining Company and Urban Mining Development, LLC that provides economic development incentives for the location of a high technology manufacturing plant along Clovis Barker Road near Leah Avenue to include refunds of 75 percent of real and personal property taxes over ten years, waivers of certain development standards and the deferral of annexation for the site of the manufacturing facility and adjacent property until completion of the facility and platting; authorizing the Interim City Manager to execute the agreement; and declaring an effective date.

Meeting date: April 18, 2017

Department: CMO - Kevin Burke, Economic Development Administrator

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL: Economic Vitality and Responsible Finances

COMPREHENSIVE PLAN ELEMENT(s):
Economic Development Goal 4: An enhanced and diverse local economic environment that is prosperous, efficient and provides improved opportunities to residents.

Economic Development Goal 5: Fiscally responsible incentives for economic development

BACKGROUND:

- Project Enfield includes two companies, Urban Mining Company and Urban Mining Development, LLC. Urban Mining Company is engaged in the production of magnets from recycled rare earth materials and Urban Mining Development, LLC is engaged in the development of real property planned for industrial and/or commercial use.

- The parties will purchase approximately 86 acres of real property in the City limits and the City’s ETJ. Urban Mining Company will occupy approximately 10 acres, and the remaining acreage is reserved for future development per the terms of the agreement.
• Urban Mining Company intends to make a minimum capital investment in real and personal property of approximately $\underline{\underline{M}}$, and will employ a minimum of 100 persons, during the term of the agreement, in permanent, full time positions earning at least $15 per hour.

• At the parties request, Council will consider designation of all, or any portion, of the property as an “enterprise zone.”

• Urban Mining will construct their facility to meet all ETJ development standards. All permits, including building permit, will be reviewed by the City. The City will annex the Urban Mining site after issuance of a Certificate of Occupancy. Other portions of the property will be annexed at the time of final plat.

• The agreement includes a Conceptual Master Plan for all of the property. The Master Plan includes the land uses, densities, drainage, utility and roadway alignments associated with future development of the property.

• Project Enfield shall submit annual “compliance certificates” to verify job creation, and City shall rebate to Project Enfield annual payments equal to 75% of City ad valorem taxes paid on real and personal property for ten years.
RESOLUTION NO. 2017-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AGREEMENT WITH URBAN MINING COMPANY AND URBAN MINING DEVELOPMENT, LLC THAT PROVIDES ECONOMIC DEVELOPMENT INCENTIVES FOR THE LOCATION OF A HIGH TECHNOLOGY MANUFACTURING PLANT ALONG CLOVIS BARKER ROAD NEAR LEAH AVENUE TO INCLUDE REFUNDS OF 75 PERCENT OF REAL AND PERSONAL PROPERTY TAXES OVER 10 YEARS, WAIVERS OF CERTAIN DEVELOPMENT STANDARDS AND THE DEFERRAL OF ANNEXATION FOR THE SITE OF THE MANUFACTURING FACILITY AND ADJACENT PROPERTY UNTIL COMPLETION OF THE FACILITY AND PLATTING; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE SAID 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 Chapter 380 Economic Development Incentive Agreement with Urban Mining Company and Urban Mining Development, LLC (the “Agreement”) is hereby approved.

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

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

ADOPTED on April 18, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Project Enfield
Summary of Chapter 380 Agreement

- Project Enfield includes two companies, Urban Mining Company and Urban Mining Development, LLC. Urban Mining Company is engaged in the production of magnets from recycled rare earth materials and Urban Mining Development, LLC is engaged in the development of real property planned for industrial and/or commercial use.

- The parties will purchase approximately 104 acres of real property in the City limits and the City’s ETJ. Urban Mining Company will occupy approximately 10 acres, and the remaining acreage is reserved for future development per the terms of the agreement.

- Urban Mining Company intends to make a minimum capital investment in real and personal property of approximately $25 M, and will employ a minimum of 100 persons, during the term of the agreement, in permanent, full time positions earning at least $15 per hour.

- At the parties request, Council will consider designation of all, or any portion, of the property as an “enterprise zone.”

- The City will annex the Urban Mining site after issuance of a Certificate of Occupancy. Other portions of the property will be annexed at the time of final plat.

- All permits, including building permits, will be reviewed by the City. Because the Urban Mining facility will be constructed prior to annexation, they will only be required to meet ETJ site development standards. All City floodplain and environmental regulations apply.

- The City grants the following waivers:
  - Development agreement process (inclusion of development agreement terms in the 380)
  - Lot dimensional standards (to allow flag lot)
  - Exterior design standards (building articulation)

- The agreement includes a Conceptual Master Plan for all of the property. Exhibits “F and “G” identify the land uses, densities, drainage, utility and roadway alignments associated with future development of the property.

- Project Enfield shall submit annual “compliance certificates” to verify job creation, and the City shall rebate to Project Enfield annual payments equal to 75% of Personal Property Taxes and 25% of Real Property Taxes for ten years.
CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of April 18, 2017 (the “Effective Date”), this Chapter 380 Economic Development Incentive Agreement (the “Agreement”) is entered into between (i) the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and (ii) Urban Mining Company, a Delaware Corporation which is duly registered to do business in the State of Texas (“Company”) and Urban Mining Development, LLC, a Delaware limited liability company (“UMC Development”). Company and UMC Development may also be collectively referred to herein as the “Developers”. The City and Developers may also be referred to collectively as the “Parties” or individually as a “Party”.

PART 1. RECITALS

Section 1.01. The Company is engaged in the production of magnets from recycled rare earth materials to support a wide range of industrial sectors, including high performance electric motors, energy generation, transportation and military/defense.

Section 1.02. UMC Development is engaged in the development of real property planned for industrial and/or commercial use, and has contracted to purchase certain land, a portion of which is in the City and a portion of which is in the City’s extraterritorial jurisdiction (“ETJ”). UMC Development currently intends to develop the “Land” (as defined below) into an industrial, commercial and “flex-space” business park similar to the nearby Amazon.com distribution center and Philips Lighting facility or the Met Center and Tech Ridge developments in Austin, Texas.

Section 1.03. The Company seeks to conduct its business operations on a portion of the land to be acquired by UMC Development within the ETJ (the “Project Site” as defined below). As of the date of this Agreement, the Company intends to make a minimum capital investment in
real and personal property related to its business operations on the Project Site in the estimated amount of $25,000,000.

**Section 1.04.** The Developers have informed the City that providing City utility services to the Project Site, together with financial and other development incentives would enable the Company to construct and operate a high-tech facility for the recycling and manufacture of rare earth magnet materials, components and assemblies on the Project Site.

**Section 1.05.** The City wishes to bring the Company’s business operations to the City, as doing so would benefit the City by creating new jobs and generating revenues for the City from the addition of personal property inventory and of annexed real property and improvements thereto, each of which is subject to ad valorem tax assessment, as well as sales tax revenue.

**Section 1.06.** The City is authorized by Chapters 43 and 212 of the Texas Local Government Code to annex property in the ETJ under mutually agreed terms with the property owner. The City is further authorized by Chapter 380 of the Texas Local Government Code (“Chapter 380”) to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City.

**Section 1.07.** The City has determined that annexing the Project Site under mutually agreed terms with the Developers and providing economic development and other development incentives to the Company under this Agreement will promote local economic development and stimulate business and commercial activity in the City.

**Section 1.08.** For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits to and promises of the
Parties set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

**ARTICLE II**

**DEFINITIONS**

**Section 2.01.** "Affiliate" with respect to the Developers means any entity that directly or indirectly controls, is controlled by, or is under common control with any of the Developers.

**Section 2.02.** “Business” means the business activities of Company conducted in the City of San Marcos, Texas on the Project Site, including, but not limited to the activities described in Sections 1.01 and 1.04 above, which business activities are anticipated to commence after January 1, 2017.

**Section 2.03.** “Grant Payments” means the City’s annual payments to Company once per calendar year of an amount equal to 75 percent of the Personal Property Taxes and 25 percent of Real Property Taxes, beginning in the first calendar year after annexation of the Project Site and continuing during the Term in accordance with Article IV of this Agreement.

**Section 2.04.** “Job(s)” means a full-time employment position at the Project Site resulting from or provided in connection with the Project (defined below), which position provides 2,080 annual full-time hours of employment or equivalent, a wage of no less than $15.00 per hour, employer sponsored group health insurance, paid sick days, and annual paid vacation based on length of service and paid holidays. Any position not meeting such criteria does not qualify as a “Job” for purposes of this Agreement.

**Section 2.05.** “Land” means collectively (i) the 18.26 acre tract located within the City limits of the City which is more particularly described on Exhibit “A” attached hereto and incorporated herein for all purposes (the “City Limits Land”), and (ii) the 85.93 acre tract located within the City’s extra-territorial jurisdiction which is more particularly described on Exhibit “B”
attached hereto and incorporated herein for all purposes (the “ETJ Land”). The Parties acknowledge and agree that UMC Development has contracted to acquire the Land and that the Project Site is intended to be located on a portion of the Land.

**Section 2.06.** “*Personal Property Taxes*” are the City’s share of the ad valorem taxes received by the City form the Hays County Tax Assessor-Collector on the value of all materials, supplies, equipment, inventory or other personal property attributable to the Business on the Project Site subject to ad valorem taxes.

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

**Section 2.08.** “*Project Site*” means a portion of the ETJ Land on which the Company will conduct the Business, which is more particularly described on Exhibit “C” attached hereto and incorporated herein for all purposes.

**Section 2.09.** “*Real Property Taxes*” are the City’s share of the ad valorem taxes received by the City from the Hays County Tax Assessor-Collector on the value of all real property improvements on the Project Site, other than Personal Property, subject to ad valorem tax assessment.

**Section 2.10.** The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31st of the tenth calendar year after the calendar year in which annexation of the Project Site occurs (unless terminated sooner as provided in this Agreement), except that (i) the Company’s obligation to submit a Compliance Certificate (as defined in Section 4.03(a) hereof) for the last calendar year of the Term as provided under Section 9.01, together with any other information as may requested by the City under Article IX, and the City’s obligation, if any,
to complete the Grant Payments due under this Agreement for shall continue until satisfied, subject to the limitations of this Agreement.

ARTICLE III
COMPANY’S OBLIGATIONS

Section 3.01. Operation of Business. Company shall begin operation of the Business on the Project Site after January 1, 2017, but before June 30, 2018, and shall continuously operate, maintain and manage the Business for the duration of the Term. The Company further agrees to commence the initial construction necessary for the commencement of the operation of the Business on the Project Site prior to December 31, 2017, and thereafter diligently pursue completion of such construction.

Section 3.02. Job Creation. Simultaneously with the actual commencement of the operation of the Business on the Project Site as provided by Section 3.01 above, Company shall employ at least the number of persons in Jobs as set forth on the schedule attached hereto as Exhibit “D” (the “Minimum Jobs Requirement”) and maintain such level of employment during the Term. Company agrees that it will maintain, and shall use commercially reasonable efforts to enforce, employment policies that prohibit unlawful discrimination from occurring in the creation of Jobs on the basis of race, creed, color, national origin, sex or disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws.

Section 3.03. Compliance with Laws. In performing its obligations under this Article, Company shall comply with all applicable laws, regulations and ordinances.

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

Section 4.02. Payment Period for Grant Payments. Beginning with the calendar year after the calendar year in which annexation of the Project Site occurs, the City shall make up to ten annual Grant Payments to Company. The initial annual Grant Payment will be based upon Personal Property Taxes and Real Property Taxes received by the City for the period of the tax year during which the Project Site was in the city limits. Thereafter, the City would make nine additional annual Grant Payments.

Section 4.03. Time for Payment of Grant Payments. Grant Payments will be made by the City in the calendar year immediately following the calendar year in which the Personal Property Taxes and Real Property Taxes upon which the Grant Payment amount is based are generated. By way of example, if Personal Property Taxes were $100,000 for the 2017 tax year, then the City would make a Grant Payment of $75,000 in 2018. The City, however, shall not be required to make a Grant Payment during any applicable calendar year unless and until:

(a) The Company has submitted, in the form attached as Exhibit “E” hereto (the “Compliance Certificate”) and all information required under Sections 9.01 and 9.02 of this Agreement necessary to verify its compliance with the terms of this Agreement;

(b) Personal Property Taxes and Real Property Taxes for the prior calendar year are received by the City from the Hays County Tax Assessor-Collector; and

(c) Funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City’s ordinary budget and appropriations approval process.
Provided the foregoing conditions have been satisfied and Company is otherwise in compliance with this Agreement, the City shall pay to Company any Grant Payments due within thirty (30) days after the last to occur of the events in subsections (a), (b) and (c) of this Section.

**ARTICLE V**  
**ENTERPRISE ZONE**

**Section 5.01. Enterprise Zone.** If requested by Developers, the City Manager of the City shall place an item on an agenda for a regularly scheduled meeting of the San Marcos City Council for consideration and possible action, including the holding of any associated public hearings, to:

a. designate all or any portion of the Land as an “enterprise zone” as defined in Section 2303.003 of the Texas Government Code; and  

b. nominate Company and the Project for designation as an enterprise project in accordance with Chapter 2303 of the Texas Government Code.

Developers acknowledge that the City cannot and does not represent that Company’s requests above will be approved by the City Council.

**ARTICLE VI**  
**ANNEXATION & DEVELOPMENT**

**Section 6.01 Annexation Provisions.** The Developers, upon acquisition of the Land by UMC Development or its Affiliate, hereby consent to and request that the City approve annexation of the ETJ Land on the terms and conditions provided herein. The ETJ Land will be annexed into the corporate limits of the City in accordance with the provisions of this Agreement and in compliance with the applicable notice and hearing requirements of Chapter 43 of the Texas Local Government Code. The City agrees that (i) annexation of the Project Site shall not occur before and shall occur only after completion of the Real Property Improvements (as evidenced by issuance of a certificate of occupancy) proposed by the Company on the Project Site, and (ii)
annexation of the remainder of the ETJ Land shall not occur before the ETJ Land is subdivided by
recorded plat and shall only occur as portions of the ETJ Land are subdivided by recorded plat.
The City and the Developers agree and acknowledge that the Land, or portions thereof, is currently
used for agricultural purposes and subject to a property tax exemption under Chapter 23 of the
Texas Tax Code. It is the intent of Developers to continue use of such portions of the Land for
agricultural or wildlife preservation purposes until such time as they are developed. As portions
of the Land are developed and taken out of agricultural use or wildlife preservation use, the
Developers intend to continue use of the remaining, undeveloped portions of the Land for
agricultural or wildlife preservation purposes. Notwithstanding anything herein to the contrary,
the City agrees that the Developers shall be permitted to continue such agricultural use or wildlife
preservation use even upon and after annexation.

Section 6.02 Conceptual Master Plan. Except as limited by Section 6.05, the City
hereby confirms its approval of the Conceptual Master Plan for the Land attached hereto as Exhibit
“F,” including the land uses, densities, drainage, utility and roadway alignments shown on the
Conceptual Master Plan. Pursuant to Section 212.172(b)(8) of the Texas Local Government Code,
the City agrees that after annexation, both operation of the Business and the Permitted and
Conditional Land Uses shown on Exhibit “G” shall be allowed in the ETJ Land.

Section 6.03 Future Zoning of the Land. It is intended by the Parties that the Land and
portions of the Land will be zoned upon annexation in accordance with the Conceptual Master
Plan in Exhibit “F.” Thus, concurrent with initiation of each petition for annexation for the Project
Site and for subsequent platted portions of the ETJ Land, the Company or UMC Development, as
applicable, shall submit a request or requests for zoning consistent with the zoning classifications
indicated in the Conceptual Master Plan in Exhibit “F” and City staff will process such requests
in accordance with applicable ordinances on a schedule to run concurrently with the schedule for annexation, provided that the sequence for final adoption of an annexation ordinance will precede the adoption of any final zoning ordinance. If such zoning requests are not approved, Developers may apply for such comprehensive plan and zoning map amendments as Developers deem appropriate for any proposed developments in accordance with then applicable ordinances and procedures of the City or develop the portions of the ETJ Land in accordance with the allowed uses specified in Exhibit “G.”

a. **Nonconforming Status.** Upon expiration of the Term, any existing active permitted and conditional land allowed under Exhibit “G” and related improvements on any portion of the ETJ Land, if inconsistent with the zoning for any such portion, will be considered to be legally nonconforming uses and structures subject to applicable ordinances regarding changes to legally nonconforming uses and structures. For example, if a structure is destroyed by fire, the newly constructed replacement would have to comply with then current City ordinances. If, however, a lot is not developed with a permitted or conditional land use before the expiration of the Term, then later development of the lot must conform to then applicable zoning ordinances.

**Section 6.04. Review Process.** The City acknowledges that efficient and expedited City reviews are necessary for the effective implementation of the Project. Therefore, the City agrees to expedite the review and approval of all development permits required for development of the Project Site for Company’s Business. It is understood and agreed by Developers, however, that such expedited review and approval is limited to matters over which City staff operates under internal processes and schedules not governed by mandatory procedures and time periods under City ordinances or state law. For example, the City may not waive required public hearings or
time periods for notice of public hearings. As part of this process, the City will also facilitate concurrent review of applications for permits for development of the Project Site, specifically to include applications for watershed protection plans, public improvement construction plans, preliminary and final plats and site plans.

**Section 6.05 Building and Development Code Compliance.** Subject to Section 6.07 below, Developers acknowledge and agree that all phases of construction on the Land, occurring both before and after annexation, shall be subject to compliance with the City’s utility, building and development ordinances including Chapters 14, 38, 39, 86 and Subpart B-Land Development Code (“LDC”) of the City’s Code of Ordinances. Such compliance shall include consent to building inspections by the City, adherence to exterior building materials and articulation standards, payment of any application fees, impact fees, permit fees and inspection fees. Notwithstanding the foregoing, with regard to the applicability of the LDC to site development (not building design and construction) on the Project Site, only those provisions of the LDC normally applicable to site development in the ETJ shall apply to the Project Site.

**Section 6.06 Water and Wastewater Service.** Based on Developers’ consent to annexation under the terms of this Agreement, individualized out of city utility requests are not required to be filed. Upon annexation, the City agrees to make available retail water and wastewater services to and within the Land as portions are platted on the same basis that such services are available to other residents of the City and subject to compliance with the City’s Code of Ordinances. Subject to Section 6.08 below, Developers agree to provide and extend, at Developers’ sole expense all infrastructure necessary to serve the development of the Land and roughly proportional to the impact of such development.

**Section 6.07 Waiver of Development Standards.** Pursuant to the City’s authority under
section 1.4.4.1 of the LDC, the City hereby waives the following requirements of the LDC:

a. Provisions applicable to Development Agreements under Chapter 1, Article 4, Division 2.

b. As to the Project Site, the dimensional standards under Section 4.4.1.1(b) and Section 6.7.2.1(c) are waived to allow a flag lot configuration as shown in Exhibit “F.”

c. As to the Project Site, the exterior construction and design requirements under Section 4.4.2.2 of the LDC are waived to the extent they conflict with the building construction and design proposed in Exhibit “H” attached hereto and incorporated herein.

Section 6.08  Other Cooperation. To the extent the City determines that public facilities or infrastructure are required beyond what are necessary to serve all or portions of the Land as it is developed or beyond what is roughly proportional for such development, the City will coordinate with Developers in an effort to negotiate terms of an agreement for the City to participate in the cost of any oversizing of such facilities or infrastructure requested by the City, if any, pursuant to applicable laws and City policies for doing so. If the City and the Developers are unable negotiate the terms of such an agreement for such cost participation by the City, the Developers shall not be required to provide such oversized facilities or infrastructure.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

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

Section 7.01. Organization. The Company is duly organized under the laws of the State of Delaware, validly existing and in good standing under the laws of the State of Texas and is authorized to conduct business or own real property in the State of Texas. The activities that the Company proposes to carry on at the Project Site may lawfully be conducted by Company.
Section 7.02. Authority of Company. The execution, delivery and performance by Company of this Agreement are within the Company’s powers and have been duly authorized.

Section 7.03. Valid and Binding Obligation of Company. This Agreement is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 7.04. No Defaults. To the best of the Company’s current, actual knowledge, the Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on Company’s ability to perform under this Agreement.

Section 7.05. Representations of City. As of the Effective Date, the City represents and warrants to the Company, as follows:

a. The execution, delivery and performance by the City of this Agreement are within the City’s powers and have been duly authorized.

b. This Agreement is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as limited by applicable law, as in effect from time to time.

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

Section 8.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of the
performance of such employee’s or official’s public duties and within the scope of such employee’s or official’s authority in connection with this Agreement.

Section 8.02. Limitations on City Obligations. The Grant Payments made and any other financial obligations of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by the City as provided in this Agreement. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments for the City’s fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment, Company may, at its option, terminate this Agreement effective upon written notice to the City, subject to any unpaid Grant Payment properly due to Company for which a lawful appropriation of funds has occurred.

Section 8.03. No Recourse. Company shall have no recourse against the City for the City’s failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

ARTICLE XI
INFORMATION

Section 9.01. Annual Certification Related Compliance with Agreement. Beginning in first calendar year following the calendar year in which annexation of the ETJ Land occurs and continuing each calendar year thereafter during the Term, Company shall submit to the City, on or before March 1 of each such year, a certified Compliance Certificate, substantially in the form attached as Exhibit “E” hereto and signed by an authorized officer or employee of Company, that
Company is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. After receiving a timely submitted Compliance Certificate, the City shall have thirty (30) days to notify Company in writing of any questions that the City may have concerning any of the information provided by Company in its Compliance Certificate, and Company shall diligently work to respond to such questions to the City’s reasonable satisfaction.

**Section 9.02. Review of Company Records.** Company agrees that the City will have the right to review (i) employment records (including employment related tax records) of Company, (ii) the Company’s building and site plans for the Project Site, to the extent the City has not already reviewed same prior to issuance of a certificate of occupancy, and (iii) tax assessment and payment records of the Company for the Project Site in order to reasonably determine Company’s compliance with the terms of this Agreement. The City may also make on-site visits to the Project Site to verify that the Business is operating. Such review or visits shall occur at any reasonable time during Company’s regular business hours, upon at least fifteen (15) business days’ prior notice to Company, and to the extent practicable, at a mutually agreed time and date. Subject to Section 6.0 below, to the extent reasonably possible, Company shall make all such records available in electronic form or otherwise available to be accessed through the internet. Information, documents and materials that do not constitute public information under The Public Information Act (Chapter 552 of the Texas Local Government Code) or are exempt from disclosure under The Public Information Act obtained by the City in connection with the City’s review under this section shall be treated as confidential information of the Company, and the City will endeavor to maintain the confidentiality of such information to the extent permitted by applicable law. Information, documents and materials provided by Company that constitute public
information under The Public Information Act shall be treated as described in Section 9.03 of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, Company shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that is not necessary to verify Company’s compliance with this Agreement and (a) constitutes trade secrets or proprietary information, (b) in respect of which disclosure is prohibited by law or any binding agreement, or (c) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

Section 9.03. Confidentiality. Subject to the requirements of the Texas Public Information Act, or order of a court of competent jurisdiction, nothing contained herein shall require Company to disclose or make available to the City any information relating to its employees that would violate the privacy rights of its employees or would violate applicable law, or to disclose or make available proprietary or other confidential information of Company. The Parties acknowledge and agree that The Public Information Act exempts from disclosure certain types of records, materials and information, including without limitation: records confidential by law, either constitutional, statutory or by judicial decision (Section 552.101 of the Texas Government Code); social security numbers (Section 552.117(a)(2) of the Texas Government Code); trade secrets and economic development project information (Sections 552.110 and 552.131 of the Texas Government Code); and proprietary commercial information (Section 552.110 of the Texas Government Code). The City will endeavor to use adequate safeguards to maintain the security and confidentiality of all materials, communications, data and information related to this Agreement or supplied by Company in connection with this Agreement that may be subject to such exemptions from disclosure. Company acknowledges that this Agreement constitutes public information and the materials, communications, data and information related to
this Agreement may also constitute public information subject to disclosure under The Public Information Act and agrees that the City may disclose this Agreement, the annual Compliance Certificates and the portions of materials, communications, data and information related to this Agreement as required by law, provided that the City will make reasonable efforts to (a) give Company prior written notice of a request for public information (other than a request for copies of this Agreement or annual Compliance Certificates, which Company agrees may be released without notice to Company) in a reasonably practicable time period to allow Company to seek a protective order or other appropriate remedy, (b) disclose only such information as is required under the applicable law, (c) cooperate with Company in responding to any such records request (but there shall be no obligation for the City to independently request or join in any request for a ruling from the Texas Attorney General or to pursue any remedies sought by Company with regard to asserted proprietary commercial or financial information or trade secrets). In particular, the City, without waiving its right to appeal an opinion or ruling under applicable procedures, hereby agrees to comply with any opinion or ruling of the Texas Attorney General or court order recommending or requiring redaction or withholding of information in response to a specific request for public information.

ARTICLE X
DEFAULT, TERMINATION AND REMEDIES

Section 10.01. Default by Company and Termination Generally. If Company is not in compliance with the Minimum Jobs Requirement in a given year, no Grant Payment shall be due for that year and Company shall have no recourse or claim to recovery of the amount of the Grant Payment that would otherwise have been due for that year. Except as otherwise provided herein, at any time during the Term of this Agreement that Company is not in material compliance with its obligations under this Agreement, other than its obligations to comply with the Minimum Jobs
Requirement, the City may send written notice of such non-compliance to Company. If such non-compliance (other than its obligations to comply with the Minimum Jobs Requirement) is not cured within sixty (60) days after Company’s receipt of such notice or, if non-compliance is not reasonably susceptible to cure within sixty (60) days and a cure is not begun within such 60-day period and thereafter continuously and diligently pursued to completion on a schedule approved by the City (in either event, a “Cure”), then the City may, at its sole discretion, terminate this Agreement or withhold Grant Payments otherwise due for the calendar year or years in which the non-compliance occurs. If the City elects to withhold Grant Payments under this Section rather than to terminate the Agreement, then, upon a Cure by Company, Company will be eligible to receive Grant Payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. However, the Grant Payment withheld by the City for any year during which Company was not in compliance, shall be deemed forfeited by Company and the City shall not be liable for later payment of such forfeited Grant Payments. For example, if Company fails to satisfy the Minimum Jobs Requirement in the year 2018, Company will not receive a Grant Payment in 2019. Company will, however, be eligible to receive a Grant Payment in 2020 for compliance in 2019. Except as to circumstances arising from an event of force majeure, the Term shall not be extended as a result of any cure period agreed to by the City under this Section.

**a. Other Termination.** In the event either UMC Development or Company does not acquire title to the Project Site, this Agreement shall immediately terminate upon Company’s written notice to the City advising the City thereof. In such event, the Parties shall have no further obligations hereunder.
Section 10.02. Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure under Section 10.01, the City may terminate the Agreement immediately by providing written notice to Company if Company, its officers or signatories to this Agreement intentionally misrepresented or misrepresents any material fact or information: (i) upon which the City relied in entering into this Agreement; (ii) upon which the City relies in making a Grant Payment to Company; or (iii) as an inducement for the City to make a Grant Payment to Company.

Section 10.03. Other Remedies. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the City may, pursue such remedies as are available at law or in equity for breach of contract.

a. Effect of Force Majeure Event. A Party will not be deemed to be in breach, default or otherwise in violation of any term of this Agreement to the extent such Party’s action, inaction or omission is the result of Force Majeure Event. Company and the City agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a Party’s performance obligation for the duration of the event but does not excuse it. “Force Majeure Event” means any event or occurrence that is not within the control of such Party and prevents a Party from performing its obligations under this Agreement, including, without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either Party); civil disturbance; terrorist act; power outage; fire,
flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Party, over the Project or over a Party’s operations.

Section 10.05 Indemnification. The City shall not be obligated to pay any indebtedness or obligations of Company. Except to the extent of the City’s proportional responsibility arising because the City is negligent or engaged in misconduct or criminal activity, Company hereby agrees to indemnify, hold harmless and defend the City, its elected officials and employees from liabilities arising from third-party claims caused by or resulting from Company’s breach of or performance of any obligations under this Agreement. The City agrees that Company has the right to take over and manage the defense of any claims for which the City seeks indemnification. Company agrees to pay any judgments that result from Company’s breach that may be obtained against the City. Notwithstanding any other provision in this Agreement, Company will not be required to indemnify the City for any settlements reached with respect to a third-party claim unless Company has provided its prior written consent for such settlement.

Section 10.06 Offset and Overpayments. The City may deduct from any Grant Payments, as an offset, any verified overpayments to Company, delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Company; provided that before offsetting any amounts the City must provide Company with (a) advance notice of such offset; (b) 60 days to take action to remedy the situation giving rise to the offset; and (c) reasonable opportunity, at its own expense, to contest such offset.

ARTICLE XI
MISCELLANEOUS
Section 11.01. Entire Agreement. This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

Section 11.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 11.03. Assignment; Successors. Except as provided in this paragraph below, Developers may not assign any of their rights, or delegate or subcontract any of their duties under this Agreement, in whole or in part, without the prior written consent of the City.

a. Assignment by Company as to the Project. As to provisions of this Agreement relating to the Project (e.g., performance of obligations to create Jobs, operation of the Business, rights as to Grant Payments, etc.), the Company may assign this Agreement without prior City consent only to an Affiliate or as collateral to a lender, provided the Company shall first provide at least 30 days’ advance written notice of the assignment to the City.

b. Assignment as to ETJ Land. As to the provisions of this Agreement relating to annexation and development of the ETJ Land, Developers may assign this Agreement without prior City consent in connection with the sale or conveyance of any portion of the ETJ Land (including without limitation a transfer of an interest in the Land to an Affiliate), provided the Developers shall first provide at least 30 days’ advance written notice of the assignment to the City.

Section 11.04. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.
Section 11.05. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, email, or reputable overnight carrier, and shall be deemed delivered when received at the respective address of the recipient Party set forth below, or at such other address furnished in writing to the other Party hereto:

**Company:** Urban Mining Company  
8201 E. Riverside Drive, Suite 150  
Austin, Texas 78744  
Attn: Scott Dunn, CEO  
Telephone: 443-617-9253  
Email: scott@urbanminingco.com

**UMC Development:** UMC Development VII, LLC  
160 Seneca Shores Road  
Perryville, Maryland 21903  
Attn: Eric Dunn, Manager  
Telephone: 410-937-9799  
Email: ericdunn6@icloud.com

**City:** City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Attn: City Manager  
Telephone: (512) 393-8101  
Facsimile: (855) 759-2844  
Email: [City Manager’s email as available from public records]

Section 11.06. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in the State courts located in Hays County, Texas. Provided, if jurisdiction is appropriate in federal court, venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

Section 11.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it
is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**Section 11.08. Third Parties.** The City and Developers intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Developers or permitted assignees or successors of the City and Developers, except that the indemnification and hold harmless obligations by Company provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

**Section 11.09. No Joint Venture.** Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

**Section 11.10. Immunity.** This Agreement is not a contract for goods and services. The City, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

**Section 11.11. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument, and
facsimile or electronic (in PDF) copies of this Agreement and facsimile or electronic (in PDF) signatures to this Agreement shall be authorized and deemed effective.

EXECUTED in duplicate originals to be effective as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]
CITY OF SAN MARCOS, TEXAS

By: _________________________________
    Charles Daniels, Interim City Manager

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was acknowledged before me on this the ____day of ____________, 2017, by Charles Daniels, Interim City Manager of the City of San Marcos, Texas in such capacity, on behalf of the said municipal corporation.

____________________
Notary Public, State of Texas
URBAN MINING COMPANY

By: __________________________________________
   Scott Dunn, CEO

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ___ day of ____________, 2017, by Scott Dunn, CEO of Urban Mining Company, a Delaware corporation, in such capacity, on behalf of the said corporation.

____________________________
Notary Public, State of Texas
URBAN MINING DEVELOPMENT, LLC

By: ______________________________

Name: ____________________________

Title: _____________________________

ACKNOWLEDGEMENT

THE STATE OF _______ §

§

COUNTY OF _________ §

This instrument was acknowledged before me on this the ___ day of ____________, 2017, by ______________________, ______________________ of Urban Mining Development, LLC, a Delaware limited liability company, in such capacity, on behalf of the said entity.

____________________________
Notary Public, State of _________
EXHIBIT “A”

Legal Description of City Limits Land

[See attached]
EXHIBIT “B”

Legal Description of ETJ Land

[See attached]
STATE OF TEXAS  
COUNTY OF HAYS  

85.93 ACRES  
CYRUS WICKSON SURVEY  
ABSTRACT # 474

BEING AN 85.93 ACRE TRACT OF LAND SITUATED IN THE CYRUS WICKSON SURVEY, ABSTRACT # 474, HAYS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CALLED 110 ACRE TRACT OF LAND, TRACT TWO, CONVEYED TO THE EDMUND JASTER HAYS COUNTY PARTNERSHIP IN VOLUME 1276, PAGE 880, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with “ASH 5687” cap in the northeast line of the above-mentioned 110 acre Jaster tract, same being in the southwest line of Clovis Barker Road (Variable Width Public R.O.W.), and also being at the east corner of Lot 3 of the Uniprop Subdivision as recorded in Volume 18, Page 87, Plat Records of Hays County, Texas, for the north corner of the herein described tract of land;

THENCE South 45°04'53" East (South 45° East Record), with the northeast line of said 110 acre Jaster tract, and the southwest line of said Clovis Barker Road, a distance of 898.91 feet to a 1/2 inch iron rod found at an eastern corner of said 110 acre Jaster tract, for an eastern corner of the herein described tract of land, same being at the north corner of 2.39 acre R.O.W. Dedication shown as part of Lot 2 Clovis Barker Industrial Park as recorded in Volume 14, Page 310, Plat Records of Hays County, Texas, and from which a 1/2 inch iron rod found at the east corner of said 2.39 acre R.O.W. Dedication bears South 45°18'22" East, a distance of 100.22 feet;

THENCE South 45°08'56" West (South 45°09'12" West Record), with the northwest line of said 2.39 acre R.O.W. Dedication, a common line of said 110 acre Jaster tract, and the meanders of a wire fence, a distance of 882.85 feet (883.17 Record) to a 1/2 inch iron rod found at a fence intersection at the west corner of said 2.39 acre R.O.W. Dedication, same being the west corner of Lot 2 Clovis Barker Industrial Park, for an interior corner of the herein described tract of land;

THENCE South 46°12’46’’ East (South 46°13’01” East Record), with the southwest line of said Lot 2 Clovis Barker Industrial Park, a common northeast line of said 110 acre Jaster tract, and the meanders of a wire fence line, crossing an L.C.R.A. Electric Transmission Line & R.O.W., passing at a distance of 136.21 feet a 1/2 inch iron rod found at the south corner of said 2.39 acre R.O.W. Dedication, and continuing for a total distance of 1563.35 feet (1563.68’’ Record) to a 1/2 inch iron rod found at the south corner of said Lot 2 Clovis Barker Industrial Park, for a corner of the herein described tract of land, same being at the west corner of Lot 1, Clovis Barker Industrial Park as recorded in Volume 14, Page 231, Plat Records of Hays County, Texas;

THENCE South 46°08’07’’ East (South 44°51’34” East Record), with the southwest line of said Lot 1 Clovis Barker Industrial Park, the common northeast line of said 110 acre Jaster tract, and the meanders of a wire fence line, a distance of 212.14 feet (212.16’’ Record) to a 1/2 inch iron rod found at fence corner at the south corner of said Lot 1, Clovis Barker Industrial Park, for a southern east corner of the herein described tract of land, same being in the northwest line of Lot 1, Gilmore Industrial Park # 2, as recorded in Volume 8, Page 222, Plat Records of Hays County, Texas;

THENCE South 44°06’11’’ West (South 45°03’07” West Record), with the northwest line of said Lot 1, Gilmore Industrial Park # 2, the common southeast line of said 110 acre Jaster tract, and generally along the meanders of a wire fence line, passing at a distance of 553.32 feet (553.11” Record) the west corner of said Lot 1 Gilmore Industrial Park # 2, and a common interior corner of said 110 acre Jaster tract, passing at a distance of 813.23 feet a 1/2 inch iron rod with “ASH 5687” cap set for reference and continuing through said 110 acre Jaster tract for a total distance of 1113.23 feet to the south corner of the herein described tract of land, same being in the southwest line of said 110 acre Jaster tract, and also being in the northeast line of a called 136.3 acre tract of land (Tract 1) conveyed to Edmund Jaster Hays County Partnership in Volume 1276, Page 880, Official Public Records of Hays County, Texas;

THENCE North 45°57’05” West, with southwest line of said 110 acre Jaster tract and the common northeast line of said 136.3 acre Jaster tract and the meanders of a wire fence line, passing at a distance of 300.00 feet a 1/2 inch iron rod with “ASH 5687” cap set for reference, and continuing for a total distance of 528.20 feet to a 1/2 inch iron pipe found at fence intersection at the north corner of said 136.3 acre Jaster tract, for a corner of the herein described tract of land, same being at the east corner of Lot 1, Block A, Endurance Subdivision as recorded in Volume 18, Page 350, Plat Records of Hays County, Texas, and also being at the east corner of a variable width
R.O.W. Dedication as recorded by the Endurance Subdivision plat, and from which a 1/2 inch iron rod found at the south corner of said variable Width R.O.W. Dedication bears South 44°13'13" West, a distance of 29.93 feet.

THENCE with the northeast line of said Lot 1, Block A, Endurance Subdivision, the common southwest line of said 110 acre Jaster tract, and the meanders of a wire fence line the following six (6) courses and distances:

1) North 44°51'48" West (North 44°51'24" West Record), a distance of 294.43 feet (294.44' Record) to a 1/2 inch iron rod found for corner;

2) North 45°47'47" West (North 45°48'39" West Record), a distance of 317.86 feet (317.90' Record) to a 1/2 inch iron rod found for corner;

3) North 46°15'52" West (North 46°14'29" West Record), crossing the aforementioned L.C.R.A Electric Transmission Line & R.O.W., and continuing for a total distance of 653.30 feet (653.41' Record) to a 1/2 inch iron rod found for corner;

4) North 46°38'10" West (North 46°43'46" West Record), a distance of 168.22 feet (168.01' Record) to a 1/2 inch iron rod found for corner;

5) North 45°47'32" West (North 45°47'34" West Record), a distance of 452.70 feet (452.54' Record) to a 1/2 inch iron rod found for corner;

6) North 46°25'40" West (North 46°25'16" West Record), a distance of 255.60 feet (255.85' Record) to a 1/2 inch iron rod found for the west corner of the herein described tract of land, same being at the south corner of Lot 1 of aforementioned Uniprop Subdivision, and from which a 1/2 inch iron rod found in the northwest right of way line of Leah Avenue (Variable Width Public R.O.W.) bears North 45°51'18" West, a distance of 916.44 feet;

THENCE North 44°26'52" East, with the southeast line of said Uniprop Subdivision, passing at a distance of 415.10 feet, a 1/2 inch iron rod found being 1.79 feet right of line, at the east corner of Lot 1 and the common south corner of Lot 2 of said Uniprop Subdivision, passing at a distance of 1035.86 feet, a 1/2 inch iron rod found being 4.73 feet right of line, at the east corner of Lot 2, and the common south corner of Lot 1 of said Uniprop Subdivision, and continuing for a total distance of 2001.80 feet (2001.80' Record) to the POINT OF BEGINNING and CONTAINING 85.93 ACRES OF LAND.

BEARING BASIS HEREIN DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE) & NAD83.

THE SUBDIVISION OF THIS PROPERTY IS NOT INTENDED TO SUBJUGATE THE RULES AND REGULATIONS OF ANY DEVELOPMENT ORDINANCE; AND ALL REQUIRED STATE, COUNTY, AND CITY PERMITS SHOULD BE OBTAINED BEFORE OCCUPYING THE PREMISES.

I, Richard H. Taylor, do certify that this description and associated exhibit were prepared this date from a boundary survey performed under my direction during December 2016, and is true and correct to the best of my knowledge and belief.

[Signature]

Richard H. Taylor
Registered Professional Land Surveyor
No. 3986 State of Texas
Attachment: Drawing of 85.93 Acres
Job: 16-6310_85.93 Acres
EXHIBIT “C”

Legal Description of the Project Site
[See attached]
### EXHIBIT “D”

Minimum Jobs Requirement

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<th>Year</th>
<th>Number of Jobs</th>
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</tr>
<tr>
<td>2</td>
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</tr>
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<td>3</td>
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<tr>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>
EXHIBIT “E”

FORM OF COMPLIANCE CERTIFICATE

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
ANNUAL COMPLIANCE CERTIFICATE

From: [Name of Company] To: City of San Marcos
              Attn: City Manager
               630 East Hopkins Street
               San Marcos, TX 78666

Report Date:
Reporting Period: _____________ to ______________

Real Property and Improvements:

<table>
<thead>
<tr>
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<th>Reporting Period Value of All Land and Improvements</th>
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</thead>
<tbody>
<tr>
<td>Taxes Paid</td>
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Personal Property:

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<tr>
<th></th>
<th>Reporting Period Value of All Personal Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes Paid</td>
<td></td>
</tr>
</tbody>
</table>

| Sum of Taxes Paid on Land and Improvements Value and Personal Property Value | Personal and Real Property Taxes |
| Grant Payment (.75 x Personal Property Taxes) + (.25 x Real Property Taxes) |                                   |

- Total Jobs at beginning of reporting period: ____________
- Total Jobs at end of reporting period: ____________
- Please list any claims or lawsuits regarding unlawful employment practices: [attach separate sheet]

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

Upon request of the City Manager and in accordance with the terms and conditions of the 380 Agreement, the Company shall supplement this form with such information as is reasonably necessary for the City to review or verify the information reported by the Company, including such things as jobs reports submitted to state and federal agencies,
tax forms and personnel records, subject to the protection of personal information of individual employees protected by applicable laws.

The Company acknowledges and agrees that it is a recipient of public funds. As such, the City has a special right of access to information related to the Company’s performance subject to and under the Chapter 380 Agreement. Certain information of the Company may be subject to disclosure under the Texas Public Information Act.

I, ______________________________ [Insert name and title], certify that the foregoing information is true and correct and that the Company has complied with all terms and conditions of the Chapter 380 Agreement.

_______________________________
[Name and Title]

_______________________________
Date

Email: __________________________

Phone: __________________________
EXHIBIT “F”

Conceptual Master Plan
[See attached]
EXHIBIT “G”

Permitted Land Uses

Permitted Uses Allowable on Parcels 2 through 7
(as such uses are defined and/or described in San Marcos Code of Ordinances)

1. Office (Health Services)
2. Offices (Medical Office)
3. Offices (Professional)
4. Call Service Center
5. Communication Equipment (Installation and/or Repair – no outdoor sales or storage)
6. Medical Supplies and Equipment
7. Cabinet Shop (manufacturing)
8. Retail Store (misc.) w drive thru
9. Retail Store (misc.) w/o drive thru (under 100,000 sq./ft. building)
10. Security Systems Installation Company
11. Upholstery Shop (non-auto)
12. Woodworking Shop (ornamental)
13. Electrical Substation
14. Governmental Building or Use (municipal, state or federal)
15. Philanthropic Organization
16. Auction Sales (non-vehicle)
17. Bio-Medical Facilities
18. Caterer
19. Extermination Service
20. Furniture Manufacture
21. Maintenance/Janitorial Service
22. Metal Fabrication Shop
23. Moving Storage Company
24. Warehouse/Office and Storage
25. Welding Shop
26. Manufacturing
27. Airport Support and Related Services
28. Distribution Center
29. Electronic Assembly/High Tech Manufacturing
30. Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair
31. Food Processing (no outside public consumption)
32. Laboratory Equipment Manufacturing
33. Machine Shop
34. Manufacturing Processes not Listed
35. Micro Brewery (onsite mfg. and sales)
36. Plastic Products Molding/Reshaping
37. Research Lab (non-hazardous)
38. Sign Manufacturing
39. Stone/Clay/Glass Manufacturing
40. Data Center*
*Although not defined or described in the San Marcos Code of Ordinances, a “data center” shall mean a facility of networked computer systems and associated components, such as telecommunications and storage systems, that businesses or other organizations use to organize, process, store and disseminate large amounts of data.

Service and Retail Permitted Uses on Portions of Parcels 2 through 7**
(as such uses are defined and/or described in San Marcos Code of Ordinances)

1. Bank or Savings and Loan (w/o drive-thru)
2. Convenience Store w/o Gas Sales
3. Convenience Store w Gas Sales
4. Restaurant/Prepared Food Sales
5. Restaurant/Prepared Food Sales with beer/wine off-premises consumption
6. Retail Store (100,000 sq./ft. or more building)
7. Retail Store (over 100,000 sq./ft. or more building) outside sales
8. Retail Store (under 100,000 sq./ft. or more building) outside sales
9. Retail Store (under 100,000 sq./ft. or more building) no outside sales

**Any use of Parcels 2 through 7 with the 9 listed service and retail uses shall be restricted so that the cumulative total of all such service and retail uses shall not exceed 10.5 acres of Parcels 2 through 7.
EXHIBIT “H”

Project Site Building Design
AGENDA CAPTION:
Discuss and consider an appointment to the following roles on the Neighborhood Commission: Associated Student Government Representative and Sector 5 Representative, and provide direction to Staff.

Meeting date: April 18, 2017

Department: City Clerk

Funds Required: N/A
Account Number: N/A
Funds Available: N/A
Account Name: N/A

CITY COUNCIL GOAL: N/A

COMPREHENSIVE PLAN ELEMENT(s): Neighborhoods & Housing

BACKGROUND:
The Associated Student Government (ASG) has selected Elijah Miller as their representative to serve on the Neighborhood Commission.

There is currently a vacancy on Sector #5 with the recent resignation of Bob Jett. This term is set to expire February 28, 2018. Applications were provided to you in a separate email.
AGENDA CAPTION:
Discuss and consider an appointment to fill a vacancy on the Economic Development San Marcos Board, and provide direction to Staff.
Meeting date: April 18, 2017

Department: City Clerk
Funds Required: 
Account Number: 
Funds Available: 
Account Name: 

CITY COUNCIL GOAL: 

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
The CEO/Sr. Mgmt. position currently vacated by Ben Cloutier now has an applicant to fill this role. Momar Mattocks, President of CFAN, has submitted an application. I will include for your reference.

This term is set to expire February 28, 2019
AGENDA CAPTION:
Discuss and consider an appointment to fill a vacancy on the San Marcos Youth Commission, and provide direction to Staff.

Meeting date: April 18, 2017

Department: City Clerk

Funds Required:
Account Number:
Funds Available:
Account Name:

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
On February 15, 2017, appointments were made to the City Boards and Commissions. At this time Council appointed Cade Krackau to fill the private/charter school role. However, after this appointment was brought to my attention that Mr. Krackau has graduated.

We are asking that council appoint a new member to fill this role. We currently have two applicants seeking this position. Application are attached for your reference.
AGENDA CAPTION:
Discuss and consider appointments to the Citizen Utility Advisory Board, and provide direction to Staff.

Meeting date: April 18, 2017

Department: City Clerk

Funds Required:
Account Number:
Funds Available:
Account Name:

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]

BACKGROUND:
Staff is seeking appointment to the Citizen Utility Advisory Board. The Council endeavors to appoint the following roles:

Citizen At Large: Currently filled by Rodney VanOuderkerke (term expires 02/28/2018)

(2) Public Utility System Engineer - Seeking reappointment is Gabriel Garcia and William Adams Jr. (both will be full two-year terms expiring 02/28/2019)

(2) Finance or Accounting Experience - Two vacancies to fill (one term to expire 02/28/2018 and one term to expire 02/28/2019)

Applications have been provided separately