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. 5:30PM Executive Session in accordance with Section § 551.072 of the Texas Government Code - Real Property: Discuss possible acquisition of certain real property interests from Crystal Clear SUD.

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

PRESENTATIONS

3. Receive a Staff presentation and hold discussion regarding back-in parking on Edward Gary, and the process for future locations, 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.

4. Consider approval, by motion, of the following meeting Minutes:
A) April 14, 2017 - Packet Meeting
B) April 18, 2017 - Regular Meeting

5. Consider approval of Ordinance 2017-19, on the second 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.

6. Consider approval of Ordinance 2017-20, on the second of two readings, amending Chapter 2, Article 5, Code of Ethics, of the San Marcos City Code; requiring updating of Financial Disclosure Forms; requiring Financial Disclosure Forms to be filed by members of temporary boards, commissions, subcommittees or similar groups; and providing an effective date.

7. Consider approval of Ordinance 2017-21, on the second 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.

8. Consider approval of Resolution 2017-79R, approving an Airport Advertising Agreement with Clear Channel Airports for advertisement created by the San Marcos Convention and Visitor Bureau to be displayed at the Austin Bergstrom International Airport; authorizing the City Manager to execute the airport advertising agreement; and declaring an effective date.

9. Consider approval of Resolution 2017-80R, approving the procurement of two Nimble Storage Array Systems for the City’s Information Technology Department from Freeit Data Solutions, Inc. in the total amount of $374,605.63 through the Texas Comptroller’s Department of Information Resources Program (contract dir-tso-2716) for data storage products and related services; authorizing the Interim City Manager or his designee to execute the appropriate purchasing documents on behalf of the City and declaring an effective date.

10. Consider approval of Resolution 2017-81R, approving the procurement of a Dell Blade Server Chassis from Dell, Inc. in the total amount of $66,574.01 through the Texas Comptroller’s Department of Information Resources Program (contract DIR-SDD-1951) for Dell 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.

11. Consider approval of Resolution 2017-82R, approving the award of a construction contract to Rockin Q Construction, LLC for the Reclaimed Water Expansion Project - Pipeline (IFB 217-165) in the amount of $5,076,273.00 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.
12. Consider approval, by motion, of Change in Service #4 in the not to exceed amount of $184,753.00 to Espey Consultants, dba RPS for the Comprehensive Watershed Master Plan.

13. Receipt of the Planning and Zoning Commission’s recommended 10 Year Capital Improvement Plan for FY2018-2027

PUBLIC HEARINGS - 7:00 PM

14. 7:00PM Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2017-27, creating four Downtown Employee Permit Parking Areas under section 82.190 of the San Marcos City Code allowing parking by permit only from 8:00 am to 5:00 pm, Monday through Friday, on certain portions of Moon Street, South Edward Gary Street, Comal Street, Centre Street, and Pat Garrison Street; amending the Traffic Register to reflect such parking areas; and providing for an effective date; and consider approval of Ordinance 2017-27, on the first of two readings.

NON-CONSENT AGENDA

15. Consider approval of Ordinance 2017-22, on the first of two readings, authorizing the installation of speed cushions in both directions in the 500 through 600 blocks of Candlelight Lane (from Del Sol Drive to Broadway Street); and including procedural provisions.

16. Consider approval of Ordinance 2017-23, on first and final reading as allowed by Section 1201.028 of the Texas Government Code, authorizing the issuance and sale of City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, series 2017a in the amount of $4,760,000; providing for the security for and payment of said bonds; prescribing the form of said bonds; awarding the sale thereof; approving the Private Placement Memorandum; enacting other provisions relating to the subject.

17. Consider approval of Ordinance 2017-24, on first and final reading as allowed by Section 1201.028 of the Texas Government Code, authorizing the issuance and sale of City of San Marcos, Texas, Waterworks And Waste Water System Revenue Bonds, Series 2017B in the amount of $1,000,000; providing for the security for and payment of said bonds; prescribing the form of said bonds; awarding the sale thereof; approving the Private Placement Memorandum; enacting other provisions relating to the subject.

18. Consider approval of Ordinance 2017-25, on the first of two readings, creating a two-hour parking restriction between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday in the general area of downtown San Marcos as authorized by Section 82.160 of the San Marcos City Code and amending the traffic register to reflect such parking restriction; and including procedural provisions.

19. Consider approval of Ordinance 2017-26, on the first of two readings, amending Chapter 82 of the City of San Marcos Code of Ordinances to create a new Section 82.190 establishing a Downtown Employee Parking Permit Program; and providing an effective date.
20. Consider approval of Resolution 2017-83R, approving a principal forgiveness agreement with the Texas Water Development Board that forgives an amount not to exceed $685,839 out of $5,445,839 in principal funds to the city from the Clean Water State Revolving Fund to finance the construction of certain Wastewater System Improvements; authorizing the city manager or mayor to execute said agreement on behalf of the city; and declaring an effective date.

21. Consider approval of Resolution 2017-84R, approving a principal forgiveness agreement with the Texas Water Development Board that forgives an amount not to exceed $961,821 out of $1,961,821 in principal funds to the city from the Clean Water State Revolving Fund to finance the planning, acquisition and design of certain wastewater system improvements; authorizing the Interim City Manager or mayor to execute said agreement on behalf of the City; and declaring an effective date.

22. Discuss and consider an appointment to fill vacancies on the Zoning Board of Adjustments, and provide direction to Staff.

23. Discuss and consider an appointment to fill a vacancy on Senior Citizen 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 THURSDAY, APRIL 27, 2017 AT 11:15AM**

JAMIE LEE CASE, CITY CLERK

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov
5:30PM Executive Session in accordance with Section § 551.072 of the Texas Government Code -
Real Property: Discuss possible acquisition of certain real property interests from Crystal Clear SUD.
Consider adoption or direction to Staff on matters discussed in Executive Session.
AGENDA CAPTION:
Receive a Staff presentation and hold discussion regarding back-in parking on Edward Gary, and the process for future locations, and provide direction to Staff.

Meeting date:  May 2, 2017

Department:  Engineering/CIP

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

CITY COUNCIL GOAL:
Goals #3   Continue Downtown redevelopment

COMPREHENSIVE PLAN ELEMENT(s):
LUG1O1 - Develop a parking plan in downtown, and other activity nodes, that supports the preferred scenario and implement incentives such as parking reductions for mixed use developments near transit or employment centers.

BACKGROUND:
“The Local” student housing development on the corner of Edward Gary and Hutchison is scheduled for completion this summer. The project includes expanded sidewalk, streetscape improvements and back-in parking on Edward Gary in front of the project. The approved plans allow for the striping of back-in or head-in parking and is shown on the attached plan.

At the May 17, 2016 City Council meeting, Item #4 included discussion prohibiting additional back-in parking in the Downtown District. Council gave direction that the option of future back-in parking would remain open in the Downtown District (see attached minutes).

John David Carson is requesting that the back-in parking be installed on Edward Gary based upon the following:
• Consistency with back-in parking on Hutchison
• The proposed spaces are new and will not impact an existing business/customer base
• The bike storage for the development is accessed off of Edward Gary and the back-in parking will provide an enhanced level of safety to the resident cyclists.
Staff does not see a conflict with allowing the back-in parking. However it is unclear from the Council direction what roll the Council wanted to take with new back-in parking.

The establishment of back-in parking is based upon designation by the City Manager with the placement of signs identifying the back-in parking (Section 82.162 of City Code - attached). The project is at a point where the City will give direction to the developer to stripe the spaces as head-in or if back-in parking will be designated.
I. Call To Order

With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Guerrero at 5:02 p.m. Tuesday, May 17, 2016 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Present: 7 - Mayor Daniel Guerrero, Mayor Pro-Tem John Thomaides, Council Member Jude Prather, Deputy Mayor Pro Tem Lisa Prewitt, Council Member Jane Hughson, Council Member Melissa Derrick and Council Member Scott Gregson

III. Invocation

Council Member Hughson led the assembly in the Pledges of Allegiance.

IV. Pledges Of Allegiance - United States And Texas

EXECUTIVE SESSION

1. 5:00PM Executive Session in accordance with Section § 551.074 of the Texas Government Code: Personnel Matters - to discuss Appointee Evaluations; and in accordance with Section §551.087 of the Texas Government Code: Economic Development - receive a briefing and deliberate regarding the potential offer of Economic Development Incentives to Project Texas; and to receive a briefing and deliberate regarding the potential offer of a revised Economic Development Incentive to Project Humpty Dumpty.

A motion was made by Council Member Gregson, seconded by Council Member Hughson, to enter Executive Session at 5:07 p.m. The motion carried by the following vote:

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

Against: 0

2. Consider adoption or direction to Staff on matters discussed in Executive Session.
The Council reconvened into open session at 5:35 p.m. The two economic development items were not discussed, but will be placed on the June 7, 2016 agenda as Executive Session topics.

PRESENTATIONS

3. Receive a presentation and hold discussion concerning a potential code amendment to define purpose built student housing as a use and identify the desired locations by requiring a Conditional Use Permit in certain zoning districts, and provide direction to Staff.

Abigail Gillfillian, Planning Manager, provided the Council with a presentation and update regarding the potential code amendments to define purpose built student housing as a use and identify the desired locations by requiring a conditional use permit. Staff will provide a map of the Texas State students and where they are commuting from. Staff will provide options regarding limiting rent by the bedroom in various intensity zones. Staff will provide information about the option of deed restrictions to limit housing to ownership versus rental property. Staff will move forward with the following interim LDC changes 1) Modifications to the Land Use Matrix 2) Add a definition of Purpose Built Student Housing: "One or more buildings, each containing two or more living units that are designed, marketed, or used for the primary purpose of housing college students". 3) Modify the CUP Process to require CUP for Purpose Built Student Housing to get a recommendation from Planning & Zoning Commission and approval by City Council. The following will come back with other code revisions: Amend the SmartCode to add Purpose Built Student Housing as a definition and making it a conditional use in the T4 and T5 zoning districts.

4. Hold discussion regarding returning all back-in parking to head-in parking, as well as, prohibiting additional back-in parking in the Downtown District, and provide direction to Staff.

Deputy Mayor Pro Tem Prewitt introduced the item and gave an overview of why it was requested by she and Council Member Hughson. Following discussion the council provided direction to bring back a discussion item regarding the creation of safe bike lanes in San Marcos. Staff will maintain the current parking configuration as is and the option of future back-in parking being created in the Downtown District will remain open.

6:00 PM

V. 30 Minute Citizen Comment Period

Brian Olson, asked the folks that are in support of saving Cape’s Dam to be
ORDINANCE NO. 2013-72

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING SECTION 82.162 OF THE SAN MARCOS CITY CODE TO AUTHORIZE THE CITY MANAGER TO DESIGNATE PARKING SPACES FOR BACK-IN PARKING AND AMENDING SECTION 82.159 OF THE SAN MARCOS CITY CODE TO MAKE PARKING HEAD-IN INTO A BACK-IN PARKING SPACE A LEVEL TWO PARKING VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Section 82.162 of the San Marcos City Code is hereby amended to read as follows (underlining indicates new text and strike-throughs indicate deleted text):

Sec. 82.162. Backing into spaces.

(a) The city manager may designate parking spaces on a public street for back-in parking by placing signs giving notice of such designation.

(b) It is unlawful for any person to back a vehicle, other than a motorcycle, into a parking space on a public street that is not designated by the city manager for back-in angle parking or head-in parking or to park head-in into a parking space on a public street designated by the city manager for back-in parking.

SECTION 2. Section 82.159(a)(2) of the San Marcos City Code is hereby amended to read as follows (underlining indicates added text):

Level two violations .......... 30.00

Backed into parking space not designated for back-in parking or parked head-in into a parking space designated for back-in parking

Oversize vehicle in angle parking

Parked for sale or repair

No parking zone

Blocking alley

Billing crosswalk

Blocking driveway of business or residence

Parked on sidewalk
Double parked
Parked in loading zone
Parked in lane of traffic
Parked in intersection
Large motor vehicle, travel trailer, personal watercraft or boat, either attached or unattached to a motor vehicle on street in a residential area

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

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

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

PASSED AND APPROVED on first reading on December 3, 2013.

PASSED, APPROVED AND ADOPTED on second reading on December 17, 2013.

Daniel Guerrero
Mayor

Attest: Jamie Lee Petrijohn
City Clerk

Approved: Michael J. Cosentino
City Attorney
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
A) April 14, 2017 - Packet Meeting
B) April 18, 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) April 14, 2017 - Packet Meeting
B) April 18, 2017 - Regular Meeting
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 12:04 p.m. Friday, April 14, 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 Ed Mihalkanin, Council Member Saul Gonzales and Council Member Scott Gregson

Excused: 1 - Council Member Melissa Derrick

1. Consider Staff briefing and Council Member discussion and questions regarding items on the agenda for the April 18, 2017 Regular City Council Meeting, to wit Items (1-28).

PRESENTATIONS

1. Staff presentation of the Annual Report for the Main Street Program.

2. Update from the Affordable Housing Sub Committee regarding short term rentals.

CONSENT AGENDA

3. 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

4. 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.

5. 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.

6. 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.

7. 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, to authorize 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.

8. 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.

9. 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.

10. 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.

11. 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
12. 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.

13. 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.

14. 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.

15. 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

16. Staff presentation and 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.

NON-CONSENT AGENDA

17. 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 on west side of the 400-700 CM Allen Parkway between Grove Street and IH 35 Access Road, 8am-11pm daily, February to November; amending the traffic register to reflect such designated permit area; and providing for an effective date.

18. 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.

19. 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.

20. 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.

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

22. 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.

23. 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.

24. 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.

25. Appointment to the following representatives on the Neighborhood Commission: ASG Representative and Sector 5.

27. Appointment to fill a vacancy on the San Marcos Youth Commission.

28. Appointments to the Citizen Utility Advisory Board.

The Council received Staff briefings and held discussion regarding items on the agenda for April 18, 2017 Regular City Council Meeting, to wit Items (1-28).

Item #16 - Staff will provide a redlined document to Council showing the additions to the policy.

Item #17 - Correct the caption by inserting "...parking by permit only"

Item #20 - Staff will provide Council information on how many tables we have in the river parks. Staff will provide the Council with information related to when the City of New Braunfels adopted their Parks Rules.

Item #21 - Staff will provide language regarding requirements of reportable conditions.

Item #23 - Staff will update the policy to say "the city" instead of "we."

Staff will be amending the agenda to add an update regarding the storm event on April 11, 2017.

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 1:19 p.m.
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 18, 2017 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Council Member Derrick arrived after roll call at 5:10 p.m.

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

Pastor Dennis Spire of Calvary Baptist Church provided this evening's invocation.

IV. Pledges Of Allegiance - United States And Texas

Council Member Mihalkanin 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 Council Member Gregson, seconded by Mayor Pro-Tem Hughson, to enter into Executive Session at 5:06 p.m. 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 adoption or direction to Staff on matters discussed in Executive Session.
Council reconvened into open session at 5:50 p.m. Council proceeded to Item #27 which is the action item related to Project Enfield.

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.

Charles Daniels, Interim City Manager, provided the Council with a presentation regarding the storm event that occurred on April 11, 2017. Discussion was held regarding the screening behind Olive Garden in the Sunset Acres Neighborhood. Staff will follow up on how the new HEB property on Wonder World Drive was impacted. Discussion was held regarding follow up with dissemination of the website and a phone number to allow those to report damage. Discussion was held regarding plans for bulky waste pick-ups and debris removal. Staff to look at dumpsters and their enclosures for those that may be nonconforming.

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

Samantha Armbruster, Main Street Program Manager, provided the Council with their Annual Report.

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

Mayor Thomaides provided the Council with a brief update letting the Council know that they will be waiting until the State Legislature completes their session due to the Short Term Rental Bills that have been filed. They plan to bring something back to the Council in the July time frame.

6:00 PM

V. 30 Minute Citizen Comment Period

Roland Saucedo, addressed the Council regarding the Residential Parking Program petition that was circulated by Johnny Garcia and explained how he and his cousin Esther Garcia went door to door in the neighborhood with another petition recanting the previously submitted on by Johnny Garcia. One hundred percent of the signers of the earlier petition recanted their support for the creation of the Residential Parking Program Area.

Paul Murray, spoke in support of the Parks Ordinance that will address the short-term solutions such as overcrowding in our river parks. There are some concerns of keeping people away. He explained the safety concerns and risks
associated with having a flood of people in the river park areas.

Sue Cohen, spoke in support of the Parks Ordinance, and explained how the amendments are necessary for public safety and public health. She stated that the Park Rangers would be able to issue a citation or issue a warning regarding the public display or consumption of alcohol. She encouraged the Council to pass the Ordinance and to look to the long term. She stated that we are doing the best with what we have, but the Council needs to look to the future.

Lisa Marie Coppoletta, stated that she had been warning people about the dumpsters that would block drainage areas. She wondered if the students get the emergency notifications, and that we need to educate the Students on the dangers of floodwater. She hopes that we have more outreach to the University regarding flooding and safety. She referenced some methods that she felt could be used to assist in getting the word out to the public about real time situations during the event. She suggested the Communications Director work with local radio stations to get information out as well.

Esther Garcia, spoke in opposition of Item #20, spoke about how she spoke to neighbors, and stated that they were not informed about paying to park in front of their homes. She stated that Johnny Garcia added the name ‘Esther Garcia’ to the bottom of the petition, and that she is not that Esther Garcia.

John Garcia, spoke about the issues that occur in his neighborhood regarding parking due to the baseball fields and river park users. He asked for the Council’s support of the Residential Parking Permit petitions that are before the Council on second reading and first reading.

Eva Rodriguez, spoke about how she does not have any problems with parking along CM Allen Parkway, and how she is against the Residential Parking Program.

CONSENT AGENDA

A motion was made by Council Member Gregson, seconded by Mayor Pro-Tem Hughson, to approve the Consent Agenda, with the exception of items #8, 9, 13, and 18, which were pulled and considered separately. 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
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 McGeehe 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.

   Staff will provide a better caption on petitions for the Residential Parking Permit Program to better explain the program and the request. Staff will help draft flyers with details for the process and costs for residents.

   A motion was made by Deputy Mayor Pro Tem Prewitt, seconded by Mayor Thomaides, to postpone Ordinance 2017-16 until June 6, 2017. 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

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.

   A motion was made by Deputy Mayor Pro Tem Prewitt, seconded by Council Member Derrick, to postpone Ordinance 2017-17 until June 6, 2017. 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
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.

A motion was made by Council Member Gregson, seconded by Council Member Mihalkanin, to approve Resolution 2017-68R. The motion carried by the following vote:

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

Against: 0

Absent: 1 - Mayor Pro-Tem Hughson

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.

A motion was made by Council Member Mihalkanin, seconded by Council Member Gregson, to approve Resolution 2017-73R. 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

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.

Heather Hurlbert, Director of Finance, provided the Council with an overview of the highlights of the budget policy to the Council. Discussion was held
regarding the recent drop in sales tax and the situation of Best Buy’s call center not having the technology in place to route the sales tax back to the City of San Marcos on items sold within the call center in the City. Mrs. Hurlbert updated the Council on a recent conference call and stated that they hope to have the technology in place within the July or August time frame. Discussion was held regarding the terms of the contract with Best Buy. Staff provided the recommendation to continue to work with Best Buy, and noted that the City will not provide any rebates to them until they resolve the sales tax collection issue. Mrs. Hurlbert discussed how Staff is in the process of analyzing how our revenues are trending and keeping a close eye on retail sales. The City is still seeing robust sales tax being generated by construction and whole sale materials. Mrs. Hurlbert stated that Staff will be looking at other revenue streams, but that we historically have savings. Staff will look at any general fund capital outlay projects that could possibly be postponed. Staff will bring back a plan to the Council to determine the best way forward. Discussion was held about health insurance premiums. Staff feels that what is proposed currently at 5% is sufficient for now. Discussion was held regarding replacement reserves. Staff stated that planning is getting better, but we are not where we need to be in that due to increased maintenance costs of facilities or items reaching the end of their service life. Staff to bring back a list of areas requiring maintenance.

Mayor Thomaides opened the Public Hearing at 8:07 p.m.

There being no comments, Mayor Thomaides closed the Public Hearing at 8:07 p.m.

Main Motion: A motion was made by Council Member Gregson, seconded by Deputy Mayor Pro Tem Prewitt, that Resolution 2017-74R be approved.

Motion to Amend: A motion was made by Council Member Gregson, seconded by Council Member Mihalkanin, to amend Resolution 2017-74R by inserting the following under Section 5. Other initiatives, "Endeavor to determine and budget for sufficient funding levels for routine maintenance and capital replacement for equipment and city facilities." 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

Main Motion: to approve Resolution 20107-74R, as amended. 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

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.

A motion was made by Mayor Thomaides, seconded by Deputy Mayor Pro Tem Prewitt, to deny Ordinance 2017-18 due to the receipt of a petition signed by the residents of the proposed permit area requesting the Council to not approve this Ordinance, and based on Staff's recommendation for denial due to the proximity to the Ramon Lucio Baseball fields. 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

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.

A motion was made by Mayor Pro-Tem Hughson, seconded by Deputy Mayor Pro Tem Prewitt, to approve Ordinance 2017-19 on first reading. 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. 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.
Main Motion: A motion was made by Council Member Gregson, seconded by Council Member Derrick, that Ordinance 2017-20, be approved on first reading. The motion carried by the following vote:

Motion to Amend: A motion was made by Mayor Pro-Tem Hughson, seconded by Council Member Mihalkanin, to amend Ordinance 2017-20 by striking 15 days and replacing it with 30 days under Section 2.462 (d). 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

Staff will also expand the caption to allow for a discussion regarding disclosing other business interests for second reading.

Main Motion: that Ordinance 2017-20 be approved on first reading, as amended. 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

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.

Main Motion: A motion was made by Council Member Gregson, seconded by Deputy Mayor Pro Tem Prewitt, that Ordinance 2017-21 be approved.

Discussion was held regarding the number of picnic tables that will be available in the river parks and the use of pop-up tents. Discussion regarding the possibility of increasing the fee for littering. Discussion regarding requiring park visitors to bring their own trash bags and trash bags that are made available by Staff. Discussion was held regarding styrofoam alternatives being available at convenience stores, and whether or not styrofoam should be banned from stores close to river parks. Staff will visit with local companies about the topic. Discussion regarding the addition of refreshment or food trailers in the parks that use recyclable materials instead of styrofoam. Staff will clarify the language regarding portable tables to indicate that the event
Motion to Amend: A motion was made by Mayor Pro-Tem Hughson, seconded by Council Member Gregson, that Section 58.042 of Ordinance 2017-21 be amended to accept the recommended changes provided by Staff. 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

Main Motion: A motion that Ordinance 2017-23 be approved, as amended. 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

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.

A motion was made by Council Member Mihalkanin, seconded by Council Member Gregson, to approve Resolution 2017-75R. 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

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.

A motion was made by Council Member Gregson, seconded by Mayor Pro-Tem Hughson, to approve Resolution 2017-76R. 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
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.

A motion was made by Mayor Pro-Tem Hughson, seconded by Council Member Gregson, to approve Resolution 2017-77R with the redline changes submitted by Staff. 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

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.

Adriana Cruz, President of the Greater San Marcos Partnership, provided an introduction of Urban Mining Company and explained that they are the only rare earth magnet manufacturing in the United States and that they have selected San Marcos for their headquarters. Urban Mining Company will add more than 100 advanced manufacturing and technology jobs over a ten year period. Scott Dunn, CEO of Urban Mining Company was introduced and he thanked the Mayor, Council and Mr. Cosentino for their work on the project.

Main Motion: A motion was made by Council Member Mihalkanin, seconded by Council Member Gregson, that Resolution 2017-78R be approved.

Motion to Amend: A motion was made by Council Member Mihalkanin, seconded by Mayor Pro-Tem Hughson, that the caption of Resolution 2017-78R be amended to state, "...to include refunds of 75 percent of personal property taxes and 25 percent of real property taxes over 10 years..." 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

Main Motion: A motion was made to approve Resolution 2017-78R be
approved, as amended. 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

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.

The following applicants were nominated for consideration to serve on the Neighborhood Commission:

Roland Saucedo - Nominated by Council Member Gregson
Estella Enriquez - Nominated by Council Member Prewitt
Elijah Miller, Associated Student Government (ASG) Representative - Nominated by Mayor Thomaides

Following a roll call vote Roland Saucedo and Elijah Miller were appointed to the Neighborhood Commission.

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

A motion was made by Council Member Gregson, seconded by Deputy Mayor Pro Tem Prewitt, that Momar Mattocks be appointed to the San Marcos Economic Development Board as the CEO of a Manufacturing firm representative. 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

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

A motion was made by Council Member Gregson, seconded by Deputy Mayor Pro Tem Prewitt, that Aaron MacEmerich be appointed to serve on the Youth Commission as the Private/Charter School representative. 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
31. Discuss and consider appointments to the Citizen Utility Advisory Board, and provide
direction to Staff.

A motion was made by Council Member Gregson, seconded by Deputy Mayor
Pro Tem Prewitt, to reappoint Gabriel Garcia and Bill Adams and appoint
Keely Sonlitner and Sharon Lawrence to the Citizens Utility Advisory Board.
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

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 9:26 p.m.

Jamie Lee Case, City Clerk             John Thomaides, Mayor
AGENDA CAPTION:
Consider approval of Ordinance 2017-19, on the second 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. Section 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 second of two readings, amending Chapter 2, Article 5, Code of Ethics, of the San Marcos City Code; requiring updating of Financial Disclosure Forms; 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 18, 2017 - 1st Reading
May 2, 2017 - 2nd Reading

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 UPDATING OF FINANCIAL DISCLOSURE FORMS; 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 occur.
(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 a 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 30 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 period.

(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.
John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney
AGENDA CAPTION:
Consider approval of Ordinance 2017-21, on the second 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 - 1<sup>st</sup> Reading  
May 2, 2017 - 2<sup>nd</sup> 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-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, 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 the department authorizes an event organizer to temporarily erect or install such tables as part of an approved event permit.

(3) Tents, tarps, shelters, or umbrellas, other than hand-held umbrellas, except as provided in subsection (c) or when the department authorizes an event organizer to temporarily erect or install such items as part of 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:
File #: Res. 2017-79R, Version: 1

AGENDA CAPTION:
Consider approval of Resolution 2017-79R, approving an Airport Advertising Agreement with Clear Channel Airports for advertisement created by the San Marcos Convention and Visitor Bureau to be displayed at the Austin Bergstrom International Airport; authorizing the City Manager to execute the airport advertising agreement; and declaring an effective date.

Meeting date: May 2, 2017

Department: Convention and Visitor Bureau

Funds Required: $63,540
Account Number: 12024224 53110
Funds Available: $227,000
Account Name: Advertising

CITY COUNCIL GOAL: Economic Development

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

BACKGROUND:

The Convention and Visitor Bureau is recommending this three-year advertising contract with Clear Channel Airports to provide advertising within Austin Bergstrom International Airport to begin on June 1, 2017. The monthly cost is $1,765.00. The agreement provides the monthly fee will increase 2% each contract year. The advertising package includes a ten-second ad on seven baggage claim monitors and a medium ad at the digital information center. Convention and Visitor Bureau staff will provide creative content for the ads as part of the promotional strategy to generate visitors and increase economic activity.
RESOLUTION NO. 2017- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AIRPORT ADVERTISING AGREEMENT WITH CLEAR CHANNEL AIRPORTS FOR ADVERTISEMENT CREATED BY THE SAN MARCOS CONVENTION AND VISITOR BUREAU TO BE DISPLAYED AT THE AUSTIN BERGSTROM INTERNATIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AIRPORT ADVERTISING AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Airport Advertising Agreement between the San Marcos Convention and Visitor Bureau and Clear Channel Airports is hereby approved.

PART 2. The City Manager is authorized to sign the Airport Advertising Agreement on behalf of the City.

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

ADOPTED on May 2, 2017.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Clear Channel Airports
7450 Tilghman Street, Suite 104
Allentown, PA USA 18106
Telephone: 001-610-395-8002
Toll Free: 1-800-422-1245
Fax: 001-610-395-4450
www.clearchannelairports.com

Airport Advertising Agreement

Airport
Austin-Bergstrom International

Case Code/Location Code
PK7LCD-1-2
DVICM-1-2

Advertiser
San Marcos CVB

Agency (if any)


Location Description
Package of 7 LCD screens, Baggage Claim, 10 second ad Digital Information Center, Medium Ad

Initial Term
3 years

Commencement Date
6/1/17

Net Monthly Fee
US $ 1765

Sales/Excise tax added where applicable

Monthly fee is subject to a 2% increase each Agreement year, commencing at the start of the 2nd Agreement year.

Security Deposit:
Three-timess the monthly fee. Must be received within 20 days.
US $ 5295 less $3,375 on file

The undersigned Advertiser (including, jointly and severally, any advertising agent or property management agent signatory hereto) and Clear Channel Airports ("CCA"), intending to be legally bound, hereby agree to all the written terms and conditions specified on both sides of this Agreement for the airport advertising location(s) detailed above. The Signatory for Advertiser further certifies that he/she is fully authorized to execute this Agreement on behalf of Advertiser.

Advertiser

Signature

Name

Title

Email
charlottew@sanmarcostexas.com

Advertiser Billing Address

Name
Charlotte Wattigny

Title
Executive Director

Business
San Marcos CVB

Address
617 IH 35 South

City/State/Province
San Marcos, TX

Zip/Postal Code
7866

Phone
512-393-5932

Fax No.

Email
charlottew@sanmarcostexas.com

CCA

Sold By
Kelly Pritchard

Signature
kellypritchard@clearchannel.com

Name

Title

Company
Clear Channel Airports

Date

[For - CCA Use Only]

Monthly Fee includes

- CCA to check off which apply:
  - Monthly Display Rate
  - Monthly Phone Charge
  - Monthly Brochure Install Charge
  - Monthly Tech, Design/ Install Charge

QC1413 80 50
CONDITIONS OF AGREEMENT. The terms, conditions and mutual promises of this "Agreement" by and among In-Ter-Space Services, Inc., licensed as Clear Channel Airports ("CCA") and the advertiser (and, where signatory hereto, the advertising agency or property manager) signing this Agreement (referred to herein jointly and severally as "Advertiser") are shown on the front side of this Agreement and as follows:

1. USE OF DISPLAY – CCA hereby grants to Advertiser the limited use of the advertising display case(s) or area(s) at the Location(s) specified on the front side of this Agreement, subject to the terms and conditions hereof. CCA makes no representation as to any other advertising location not the subject hereof. CCA is authorized to open displays and to clean and maintain the display(s) and the Advertisement(s).

2. TFRM – This Agreement shall be fully valid upon signing regardless of the payment status of Advertiser. The Initial Term of this Agreement and Commonomoment Date of the Initial Term are stated on the front side of this Agreement. This Agreement shall automatically renew for consecutive calendar quarters beyond the Initial Term ("Renewal Terms"). This Agreement may only be terminated (by any party) with 90 days prior written notice effective the last day of the Initial Term or, thereafter, effective the last day of any calendar quarter (ie: 3-31, 6-30, 9-30, 12-31), except as otherwise provided below. All Renewal Terms under this Agreement shall have notice be subject to changes to the Monthly Fee by CCA.

3. MONTHLY FEES – The Security Deposit will be refunded upon the termination of the Agreement, or applied to the remaining payment obligation. Advertiser shall pay the applicable Monthly Fee during the Initial Term and any renewals thereof. All fees shown are in US Dollars unless expressly stated otherwise. The applicable Monthly Fee (pro-rated for any partial month) and Security Deposit shall be paid prior to the Commencement Date and thereafter the applicable monthly fee shall be paid on a monthly, quarterly or annual basis, due the first day of each calendar month, quarter, or year, as stated on the front page of the Agreement, regardless of whether Advertiser timely provides to CCA the graphics or other display case/area contents for which Advertiser is responsible ("Advertisement(s)"). Advertiser may be charged additional amounts for the cost of change-out of Advertisement(s) where such change-out is requested by the Airport or where change-out requires specialized equipment. Tax surcharges may apply where use or occupancy of the advertising location by CCA or any fees due therefrom are subject to state/provincial/local taxation.

4. ADVERTISEMENTS – Advertiser shall, at its own cost, prepare and deliver to CCA's requested location the Advertisement(s), per CCA's specifications, for the appropriate display unit(s) or area(s). CCA will install the Advertisement(s) within 4 days of receipt or by the applicable Commencement Date, whichever is later. Advertiser's copy shall be written in a non-copyrighted form and shall be consistent with the goals of a commercial advertising program seeking a maximum business participation. All Advertisements are subject to discretionary approval by CCA and the airport authorities and may be subject to removal upon the order of the airport authorities without re-compensation. Advertiser shall promptly replace its Advertisement(s) (print graphics only) every 2-3 Advertiser agreement years at the time they are determined by CCA to have become faded. During any time that Advertiser is for any reason unable to provide Advertisement(s), or the payment of Monthly Fees, CCA may insert filler graphics into the display Location(s). CCA may utilize, without obligation, promotional photographs of displays, including Advertisement(s). CCA will return Advertisement(s) to Advertiser at Advertiser's expense with 60 days written notice in advance of termination and provided all amounts due are paid.

5. RESPONSIBILITIES – Advertiser shall be the owner of, and be responsible for, it's Advertisement(s); provided that CCA shall be responsible and liable for any damages caused to any Advertisement(s) while being physically handled, installed or removed by CCA personnel or agents. Advertiser shall be responsible and liable for the content of its Advertisement(s), and for any damages to the display case(s)/area(s) caused by its negligence. Advertiser shall comply with all applicable laws, statutes, and regulations in its advertising hereunder. Advertiser shall indemnify, hold harmless and defend CCA and the relevant airport governing body, its officers, employees, directors, contractors and agents, against all suits, claims, actions, causes of action, losses, liabilities, damages, costs and expenses (including attorneys' fees) on account of injury (including death) or damage to persons or property relating to the content of Advertisement(s). Advertisement(s) includes a motorized vehicle, furnishing, video/computer monitor, table, platform, display case, exhibit material or other item of equipment or merchandise provided by Advertiser, arising in connection with this Agreement. Approval by CCA or the airport governing body of the Advertisement(s) shall not affect, diminish or mitigate Advertiser's obligations under this section.

6. REMEDIES – (A) Should CCA fail over a period of 3 consecutive days to provide any of the airport advertising display Locations set forth in this Agreement or should installation of any Advertisement(s) be delayed due to the sole fault of CCA, regardless of the display media, Advertiser shall be entitled to a pro rata credit for the affected period beginning after the 3rd consecutive day. If there is more than one Location specified in this Agreement or if this Agreement refers to multiple displays, then any pro rata credit shall be proportional to the listed unit sale price of the affected Location(s) or display(s), as indicated on CCA's applicable rate card. If installation of the Advertisement(s) fails to provide all advertising display Locations set forth in this Agreement for a period of 7 consecutive days, Advertiser may terminate this Agreement upon reasonable advanced written notice and 14 days opportunity to cure, or where the circumstances of such failure reasonably require more time to cure, to make arrangements to cure. Such cure may include the relocation of the Advertisement(s) and Advertiser's privileges hereunder to a suitable location(s) of comparable passenger exposure. If this Agreement includes any obligation by CCA to provide any specific additional services (including brochures distribution and telephone service), then any failure by CCA to provide such additional service shall result in a pro-rata credit in the amount of such Monthly Phone Charge or Monthly Brochure Charge as shown as the applicable monthly rate. The above shall be the exclusive remedies available to Advertiser and the limit of liability for failure by CCA to comply with any provision of this Agreement. CCA shall not be subject to any special, incidental, consequential or prospective damages. (B) If the applicable airport authorities or any law, regulation, order or loss of contract right shall prevent the use by CCA of the relevant Location(s) for Advertiser's Advertisement(s), if this Agreement is rejected by the applicable airport authorities, if the underlying business terms between CCA and the airport governing body are altered, or if the airport becomes subject to major construction or redevelopment, then CCA shall have the right to modify this Agreement up to and including the right of termination without further obligation by either party. (C) No credits shall be due Advertiser for graphics provided that do not adhere to CCA specifications or graphics received by CCA after the commencement date. Upon any breach of this Agreement by Advertiser that continues after 3 days notice and opportunity to cure ("Default"), CCA may exercise any or all remedies available at law or equity, each remedy being cumulative. No exercise of any remedy shall be considered an election to forego any other remedy. Upon Default, CCA may accelerate any remaining Monthly Fee payments due or to become due as a liquidated damage, retain any deposit as a further liquidated damage, and assess late charges of 1 and 1/2 % per month (or the maximum permitted by law), assess any collection costs including reasonable attorneys' fees (agreed to be a minimum of 1/3 the balance due) and/or retain possession of the Advertisement(s). In addition to and without limiting the above, this Agreement may be terminated by CCA at any time and without notice for failure of Advertiser to timely pay any Security Deposit or Monthly Fee.

7. MISCELLANEOUS – Agency (where applicable) warrants and represents that it is authorized to, and does hereby, bind and obligate itself as well as the advertiser client to the terms and conditions of this Agreement. This Agreement contains all terms and conditions and the entire understanding of the parties with respect to the subject matter hereof, and no oral representations shall be made. This Agreement shall not be modified except in writing by both parties. Should any term or condition contained in this Agreement be invalidated by law, the remainder of the Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement and the rights granted hereunder may be transferred or assigned by Advertiser only with the prior written consent of CCA. This Agreement shall be binding on all successors and assigns. The rights granted to Advertiser by this Agreement are personal to Advertiser and advertising Locations and rights provided to Advertiser shall not be divided, sublicensed or resold by Advertiser without the express written consent of CCA. This Agreement is subordinate to any contract between CCA and the applicable airport authorities. Where multiple and/or conform original copies of this Agreement are executed by the parties, each copy shall be valid and enforceable. This Agreement is made in Pennsylvania, USA, and shall be construed by and interpreted under the laws of Pennsylvania. The parties agree that exclusive jurisdiction and venue for any legal actions arising under this Agreement shall be before the state or federal courts located in Lehigh County, Pennsylvania.
ADDENDUM TO AIRPORT ADVERTISING AGREEMENT BETWEEN CLEAR CHANNEL AIRPORTS AND THE CITY OF SAN MARCOS, TEXAS

This addendum (the “Addendum”) hereby amends, modifies and supplements that certain Airport Advertising Agreement (the “Agreement”) by and between Clear Channel Airports (“Advertiser”) and the City of San Marcos, Texas (“Organization”). In the event of any conflict between this addendum and its terms and the Agreement and its terms, this Addendum shall govern whether or not attached to the Agreement.

1. By entering into the Agreement, Organization is not waiving any immunity or limitation on liability granted to it under the laws or Constitution of the State of Texas.

2. Expenditures by Organization in excess of $50,000 shall require the approval of Organization’s governing body (city council). All obligations under the Agreement requiring the expenditure of public funds, including any requirement to pay damages to, reimburse or indemnify Advertiser shall be enforceable only to the extent permitted by law and shall be subject to the annual appropriation of lawfully available funds for such purposes.

3. Venue for any dispute between the Organization and Advertiser shall by in Hays County, Texas.

4. Organization is subject to the Texas Public Information Act (the “Act”) under which it may be required to release certain information in its possession related to the Agreement, including any documents, emails or other information from Advertiser.

AGREED TO AND ACCEPTED to be effective as of the effective date of the Agreement.

ADVERTISER

By: _____________________________
Name: _____________________________
Title: _____________________________
Date: _____________________________

ORGANIZATION:

By: _____________________________
Name: _____________________________
Title: _____________________________
Date: _____________________________
AGENDA CAPTION:
Consider approval of Resolution 2017-80R, approving the procurement of two Nimble Storage Array Systems for the City’s Information Technology Department from Freeit Data Solutions, Inc. in the total amount of $374,605.63 through the Texas Comptroller of Public Account’s Department of Information Resources Program (contract dir-tso-2716) for data storage products and related services; 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: May 2, 2017

Department: Information Technology - Mike Sturm, Director (By Cheryl Pantermuehl, Purchasing Manager)

Funds Required: $374,605.63
Account Number: C39
Funds Available: $500,000
Account Name: Disaster Recovery

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

COMPREHENSIVE PLAN ELEMENT(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-2716 for Data Storage Products and Related Services to FreeIT Data Solutions, Inc., located in Austin, Texas.

The City initiated the Technology Disaster Recovery (“DR”) data center project in 2010. Information Technology (“IT”) equipped the DR data center with repurposed technology from our production environment and installed secondary power to the facility. Implementing a DR data center allowed IT to replicate selective data from the Municipal Building and the Police Department data centers. With the advancement in
technology, additional City requirements, and the repurposed technology reaching the vendor’s end-of-life support on maintenance, the City is in need of a refresh to the server infrastructure.

The City will be purchasing two Nimble storage array systems and will be used to enhance our data replication ability between our primary data center and disaster recovery site.

The total cost of the procurement is approximately $374,605.63.

The two arrays will allow for higher-speed data transfer between sites through the City’s dark fiber network and allow for data encryption for Criminal Justice Information Services (“CJIS”) sensitive data. The arrays will offer predictive analytics to help determine system issues such as hard drive failures before equipment actually fails. This will help with ensuring that our data center infrastructure is proactively protected versus reactive when failures have already occurred thereby leaving us in a vulnerable state. The newer technology in the arrays will allow for quicker transitions from server workloads at the primary data center to the DR site during an emergency. Having two similar arrays at both locations will help in any future relocations of the primary data center as the DR site will be capable of taking on the full workload of the production environment at any time. The system will be purchased with Mission Critical 4-Hour 7x24 On-Site for five (5) years.
RESOLUTION NO. 2017-____________R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PROCUREMENT OF TWO NIMBLE STORAGE ARRAY SYSTEMS FOR THE CITY’S INFORMATION TECHNOLOGY DEPARTMENT FROM FREEIT DATA SOLUTIONS, INC. IN THE TOTAL AMOUNT OF $374,605.63 THROUGH THE TEXAS COMPTROLLER OF PUBLIC ACCOUNT’S DEPARTMENT OF INFORMATION RESOURCES PROGRAM (CONTRACT DIR-TSO-2716) FOR DATA STORAGE PRODUCTS AND RELATED SERVICES; 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 two Nimble Storage Array Systems for the City’s Information Technology Department from FreeIT Data Solutions, Inc. in the total amount of $374,605.63 through the Texas Comptroller of Public Account’s ("TCPA") Department of Information Resources ("DIR") Program (Contract DIR-TSO-2716) for Data Storage Products and Related Services 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
**Nimble Storage Arrays - 5yr Support**

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<th>Description</th>
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**INCLUDED SOFTWARE CAPABILITIES:**
- Thin Provisioning, Zero Copy Cloning, Inline Compression
- Efficient Snapshots, Efficient Replication with Compression
- VMWare Integration – Plugins, VAAI, Snap/Restore integration
- NPM: Nimble Protection Manager
- Microsoft Integration – HyperV, SQL, Exch, SP, VSS, Snap/Restore integration

**Support**
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**Services**
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<td>Freeit Smart Start Installation</td>
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<td>$4,400.00</td>
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**List Total:** $884,247.40  
**DIR Discounted Total:** $817,528.84  
**Shipping and Tax not applicable:** $0.00  
**Additional Discount:** ($442,923.21)  
**Grand Total:** $374,605.63

Customer Signature of Acceptance

By issuance of a PO, I acknowledge that I have the authority on behalf of my company to make purchasing decisions to order the items in this quote and to begin project initiation. This quote is subject to and will be governed by the terms and conditions and RMA policy located at www.freeitdata.com and will govern our relationship and any PO issued in relation to this quote. Any and all competing or conflicting terms and conditions are hereby unconditionally rejected.
AGENDA CAPTION:
Consider approval of Resolution 2017-81R, approving the procurement of a Dell Blade Server Chassis from Dell, Inc. in the total amount of $66,574.01 through the Texas Comptroller of Public Account's Department of Information Resources Program (contract DIR- SDD-1951) for Dell 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: May 02, 2017

Department: Information Technology - Mike Sturm, Director (By Cheryl Pantermuehl, Purchasing Manager)

Funds Required: $66,574.01
Account Number: C39
Funds Available: $500,000
Account Name: Disaster Recovery

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-SDD-1951 for Dell Branded Hardware Manufacturer Hardware, Software and Related Products to Dell, Inc., located in Round Rock, Texas.

The City initiated the Technology Disaster Recovery (“DR”) data center project in 2010. Information Technology (“IT”) equipped the DR data center with repurposed technology from our production environment and installed secondary power to the facility. Implementing a DR data center allowed IT to replicate selective
data from the Municipal Building and the Police Department data centers. With the advancement in technology, additional City requirements, and the repurposed technology reaching the vendors end-of-life support on maintenance, the City is in need of a refresh to the server infrastructure.

The City will be purchasing a Dell Blade Server Chassis that will allow for redundant infrastructure services at the disaster recovery site.

The cost of the new blade server chase is $66,574.01, which includes the five year service plan.

The Dell blade Chassis will be equipped with four-blade servers. The Chassis will mirror the current Dell blade Chassis the City has in our production environment. By purchasing a similar system, IT will have the capability to seamlessly migrate and fail-over the production server environment to the disaster site, decreasing overall recovery time. Having a like system will also help with automating the disaster fail-over plans thereby eliminating tedious manual tasks that are currently required to manage the process. The system will be purchased with ProSupport Plus: Mission Critical 4-Hour 7x24 On-Site for five years.
RESOLUTION NO. 2017-__________R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE PROCUREMENT OF A DELL BLADE SERVER CHASSIS AND RELATED SUPPORT FOR FIVE YEARS FOR THE CITY’S INFORMATION TECHNOLOGY DEPARTMENT FROM DELL, INC. IN THE TOTAL AMOUNT OF $66,574.01 THROUGH THE TEXAS COMPTROLLER OF PUBLIC ACCOUNT’S DEPARTMENT OF INFORMATION RESOURCES PROGRAM (CONTRACT DIR-SDD-1951) FOR DELL BRANDED MANUFACTURER HARDWARE, SOFTWARE AND RELATED SERVICES; 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 a Dell Blade Server Chassis and related support for five (5) years for the City’s Information Technology Department from Dell, Inc. in the total amount of $66,574.01 through the Texas Comptroller of Public Account’s (“TCPA”) Department of Information Resources (“DIR”) Program (Contract DIR-SDD-1951) for Dell Branded Manufacturer Hardware, Software and Related Services 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
A quote for your consideration!

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

**Quote number:** 3000012095157.1  
**Quote date:** Mar. 21, 2017  
**Quote expiration:** Apr. 20, 2017  
**Solution ID:** 7915992

**Company name:**  
CITY OF SAN MARCOS

**Customer number:** 53576  
**Phone:** (512) 393-8112

**Sales rep information:**  
Michael Hamilton  
Michael_Hamilton@Dell.com  
(800) 456-3355  
Ext: 5138843

**Bill to:**  
CITY OF SAN MARCOS  
630 E HOPKINS ST  
SAN MARCOS  
TX 78666-6314  
US  
(512) 393-8112

**Pricing Summary**

<table>
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<tr>
<th>Item</th>
<th>Qty</th>
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<td>$5,650.41</td>
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<tr>
<td>Dell PowerEdge FN I/O Module</td>
<td>2</td>
<td>$1,058.80</td>
<td>$2,117.60</td>
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<tr>
<td>PowerEdge FC630</td>
<td>4</td>
<td>$14,701.50</td>
<td>$58,806.00</td>
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**Total:** $66,574.01
DBC as low as $1,998.00/ month^  

| Subtotal: | $66,574.01 |
| Shipping: | $0.00 |
| Environmental Fees: | $0.00 |
| Non-Taxable Amount: | $66,574.01 |
| Taxable Amount: | $0.00 |
| Estimated Tax: | $0.00 |
| Total: | $66,574.01 |

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### Lease Products*

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<th>Fair Market Value (FMV)</th>
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Consult your DFS rep. Special lease pricing may be available.
Dear Customer,

Please review the quote for product and information accuracy. If you find errors or desire certain changes please contact me as soon as possible.

Regards,
Michael Hamilton

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

![SKU Description](Qty).Unit Price.Subtotal

<table>
<thead>
<tr>
<th>SKU</th>
<th>Description</th>
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<td>321-BBFM</td>
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<td>PowerEdge FN I/O Module User Documentation</td>
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<td>403-BBEQ</td>
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<td>634-0287</td>
<td>CMC Enterprise for FX2</td>
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<td>540-BBQM</td>
<td>Redundant Ethernet Switch Configuration</td>
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<td>951-2015</td>
<td>Thank you for choosing Dell ProSupport Plus. For tech support, visit <a href="http://www.dell.com/contactdell">http://www.dell.com/contactdell</a></td>
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<td>Dell Proactive Systems Management - Declined -</td>
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Contract Code: 42AFU

Customer Agreement No: DIR-SDD-1951

© 2014 Dell Inc. U.S. only. Dell Inc. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682.
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<td>421-5736</td>
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**Contract Code: 42AFU**

**Customer Agreement No: DIR-SDD-1951**

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<td><strong>PowerEdge FC630</strong></td>
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**Customer Agreement No: DIR-SDD-1951**

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<td>QLogic 2562 Dual Channel 8Gb Optical Fibre Channel HBA PCIe, Low Profile</td>
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Subtotal: $66,574.01
Shipping: $0.00
Environmental Fees: $0.00
Estimated Tax: $0.00
Total: $66,574.01
Important Notes

Terms of Sale

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

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

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

Pricing, Taxes, and Additional Information

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

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

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

For certain products shipped to end-users in California, a State Environmental Fee will be applied to your invoice. Dell encourages customers to dispose of electronic equipment properly.

^Dell Business Credit (DBC):

OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of $15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.
*Dell Financial Services Lease:*

1. This proposal is property of Dell Financial Services and contains confidential information. This proposal shall not be duplicated or disclosed in whole or part. Minimum transaction size $500.
2. All terms are subject to credit approval, execution and return of mutually acceptable lease documentation.
3. Lease rates are based upon the final amount, configuration and specification of the supplied equipment. Interim rent may apply and be due in the first payment cycle.
4. The Lease Quote is exclusive of shipping costs, maintenance fees, filing fees, licensing fees, property or use taxes, insurance premiums and similar items, which shall be for Lessee's account.
5. This proposal is valid through the expiration date shown above, or, if none is specified, for 30 calendar days from date of presentation.
AGENDA CAPTION:
Consider approval of Resolution 2017-82R, approving the award of a construction contract to Rockin Q Construction, LLC for the Reclaimed Water Expansion Project - Pipeline (IFB 217-165) in the amount of $5,076,273.00 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.

Meeting date: May 2, 2017

Department: Engineering/CIP - Laurie Moyer, Director of Engineering (by Cheryl Pantermuehl, Purchasing Manager)

Funds Required $5,076,273
Account Number: C482
Funds Available: $5,100,000
Account Name: Reclaimed Water System Expansion - Construction

CITY COUNCIL GOAL:
Goal #5 Maintain and Improve City’s Infrastructure

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

BACKGROUND:

Four (4) bids were received on March 29, 2017 for the Reclaimed Water Expansion-Pipeline Project (IFB 217-165). The Design Engineer, Stephen Jenkins P.E., of RPS has reviewed the bids and recommends awarding the contract to the low bidder, Rockin’ Q Construction, LLC located in Fredericksburg, Texas in the amount of $5,076,273.00.

This project is for the construction of a (16) inch pipeline and (12) inch potable water main from De Zavala Drive along FM 621 (Staples Road) and continues along Durango Street to Luciano Flores Street and across IH-35.

The estimated construction time is five hundred and sixty (560) calendar days to final completion.
RESOLUTION NO. 2017-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONSTRUCTION CONTRACT TO ROCKIN Q CONSTRUCTION, LLC FOR THE RECLAIMED WATER EXPANSION PROJECT - PIPELINE (IFB 217-165) IN THE AMOUNT OF $5,076,273.00 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.

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

PART 1. The award of a construction contract to Rockin Q Construction, LLC for the Reclaimed Water Expansion Project - Pipeline (IFB 217-165) in the amount of $5,076,273.00 is approved contingent upon the Contractor’s timely submission of sufficient bonds and insurance in accordance with the City’s construction contract documents for the Project.

PART 2. The Interim City Manager, or his designee, is authorized to execute the contract 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
April 3, 2017

Mr. Rey Garcia, P.E.
City of San Marcos
630 E. Hopkins
San Marcos, TX 78666

RE: Water Reuse Expansion – Pipeline
Recommendation of Award

Dear Mr. Garcia:

Bid Results

Attached is the detailed Bid Tabulation for the bids received March 29, 2017 for the referenced project.

The lowest bid received was from Rockin’ Q Construction LLC. Based on the estimated quantities in the Bid Proposal and the unit prices bid by Rockin’ Q Construction, the total amount of the bid for contract award is $5,076,273.00. The detailed Bid Tabulation differs from the tabulation of bids recorded at the time of the bid opening as a result of correcting errors in contractor’s bids. The detailed Bid Tabulation was prepared using the estimated quantity in each bid by the unit price submitted by each bidder to normalize mathematical discrepancies in the bids.

Contractor Qualifications

Rockin’ Q Construction provided a list of experience and references for this project, including prior City of San Marcos projects. RPS called various references and verified experience and the references’ opinion of the work performed by the contractor. The references confirmed Rockin’ Q Construction’s experience and qualifications.

Recommendation

Based on the information received to date, we recommend award of a contract for the referenced project to Rockin’ Q Construction for the Bid amount of $5,076,273.00.

Please contact me if you have any questions about this recommendation.

Stephen M. Jenkins, P.E.
Sr. Project Manager

Attachment: Bid Tabulation

P:\Active\15025.00_San_Marcos_Reuse\Bidding\Award Recommendation.docx
# City of San Marcos
## Water Reuse System Expansion - Pipeline
### Bid Opening: March 29, 2017

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**TOTAL GENERAL ITEMS**

$957,390.50 | $889,661.70 | $835,417.00 | $1,844,764.28
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RECLAIMED WATER
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**WATER UTILITY**

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<td>Trench Excavation Safety Protective Systems, (All Depths)</td>
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**TOTAL WATER UTILITY**

$983,529.20 $938,663.53

**WASTEWATER UTILITY**

$909,616.00 $838,663.53
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<th>ESTIMATED QUANTITY</th>
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<tr>
<td>89</td>
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<td>LF</td>
<td>Pipe, 6-Inch Dia., SDR 26 PVC (All Depths), Including Excavation &amp; Backfill</td>
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<td>LF</td>
<td>Pipe, 24-Inch Dia., SDR 26 PVC (All Depths), Including Excavation And Backfill</td>
<td>$ 119.00</td>
<td>$ 66,759.00</td>
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<td>Connecting New 6' Service To Existing Private Service</td>
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<td>Concrete Trench Cap</td>
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<td>94</td>
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<td>Bypass Pumping</td>
<td>$ 2,500.00</td>
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**ELECTRICAL DISTRIBUTION AND COMMUNICATIONS**

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<tr>
<td>95</td>
<td>315</td>
<td>LF</td>
<td>Electric And Communication Encasement Incl. 3-6’’ Sch. 40 PVC Conduits For Electric and 6-4’’ Sch. 40 PVC Conduits For Communication</td>
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<td>$ 138,600.00</td>
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<td>$ 138,600</td>
<td>$ 141,907.50</td>
<td>$ 299,250.00</td>
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**TOTAL AMOUNT OF BASE BID FOR CONTRACT AWARD**

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<tr>
<td>Deduct Alternate No. 1</td>
<td>245</td>
<td>LF</td>
<td>Boring for 24-inch diameter Pipe (Reclaimed Water LINE 'A': STA 14+41 - STA 15+15 and LINE 'A': STA 16+18 – 17+89)</td>
<td>$ (200.00)</td>
<td>$ (49,000.00)</td>
<td>$ (100.00)</td>
<td>$ (24,500.00)</td>
<td>$ (275.00)</td>
<td>(67,375.00)</td>
<td>$ (345.00)</td>
<td>$ (84,525.00)</td>
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<tr>
<td>Deduct Alternate No. 2</td>
<td>253</td>
<td>LF</td>
<td>Boring for 12-inch diameter water line (LINE 'F': STA 16+06 - LINE 'F': STA 14+29 and STA 15+11)</td>
<td>$ (185.00)</td>
<td>$ (46,805.00)</td>
<td>$ (100.00)</td>
<td>$ (25,300.00)</td>
<td>$ (250.00)</td>
<td>$ (63,250.00)</td>
<td>$ (166.75)</td>
<td>$ (42,187.75)</td>
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<tr>
<td>Add Alternate No. 3</td>
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<td>LS</td>
<td>Broadway Street Culvert Replacement (LINE 'A', STA 14+41 - STA 15+25) – Installation of 168 LF of 30-inch diameter reinforced concrete pipe (RCP) as a 84 LF two-barrel culvert to replace the existing 24-inch diameter culvert. Repair approximately 146 SY of HMAC street paving and 22 LF of concrete curb and gutter.</td>
<td>$ 31,000.00</td>
<td>$ 31,000.00</td>
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<td>$ (38,000.00)</td>
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**TOTAL AMOUNT OF BASE BID FOR CONTRACT AWARD**

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<tr>
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**Deduct Alternate No. 1**

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<td>$ (200.00)</td>
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**Deduct Alternate No. 2**

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**Add Alternate No. 3**

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<tr>
<td>Add Alternate No. 4</td>
<td>1</td>
<td>LS</td>
<td>Add Alternate No. 4: San Marcos CISD Driveway Culvert Replacement (LINE ‘A’ STA 16+20 - STA 17+63). Installation of approximately 286 LF of 30-inch diameter corrugated metal pipe (CGMP) as a two-barrel culvert to replace the existing 24-inch diameter culvert. Repair approximately 249 SY of reinforced concrete driveway construction and 36 LF of concrete curb and gutter.</td>
<td>$ 46,000.00</td>
<td>$ 46,000.00</td>
<td>$ (65,000.00)</td>
<td>$ (65,000.00)</td>
<td>$ 70,126.00</td>
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Report to Council

IFB # 217-165
Reclaimed Water Expansion-Pipeline

Recommended Contractor:
Rockin’ Q Construction LLC

Total Cost Recommended for Award:
$5,076,273

Purpose:
The scope of work for this Project construction of a 16-inch diameter reclaimed water pipeline and a 12-inch diameter potable water main from De Zavala Dr. along FM 621 (Staples Rd.). Construction of the reclaimed water system continues along Durango St. to Luciano Flores St. and across IH35. The crossing of IH35 include the 16-inch diameter reclaimed water pipeline; 24-inch diameter gravity wastewater main; 24-inch diameter potable water main; and a 24-inch diameter casing for electrical and communications lines. The 16-inch reclaimed water pipeline continues along S. McKie St. and Mariposa St. to connect to an existing 16-inch reclaimed water pipeline located in CM Allen Parkway. Bores for the 16-inch reclaimed water pipeline will be made at two crossings of the BNSF Railroad on CM Allen Parkway. An existing 12-inch reclaimed water pipeline located in N LBJ Dr. north of University Dr. will be extended to the Texas State University reclaimed water system at the university’s South Chill Plant. The Project includes installation of a water meter and vault with SCADA equipment at the point of delivery to the university. The Project also includes bores for the 18-inch reclaimed water pipeline and 6-inch wastewater pipeline to serve the proposed reclaimed water elevated storage across De Zavala St.

Basis for Award:
Total Low Bid

Evaluation:
An invitation for bid was issued in accordance with purchasing procedures. Four (4) bids were received. The low bid was evaluated to assure they were responsive and responsible.

Recommendation:
Staff recommends awarding the contract to Rockin” Q Construction as the lowest, most responsive, responsible bidder.

Purchasing Division:
Cheryl Pantermuehl, Purchasing Manager
**Department Executive Director:**
Laurie Moyer, Capital Improvements.

<table>
<thead>
<tr>
<th>BIDDER NAME</th>
<th>Total Bid Cost</th>
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<tr>
<td>Rockin’ Q Construction</td>
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<tr>
<td>Santa Clara Construction, LTD</td>
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<td>Austin, TX</td>
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<tr>
<td>Central Road &amp; Utility, LTC</td>
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<td>Skyblue Utilities, Inc.</td>
<td>$5,468,579.94</td>
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<tr>
<td>Kingsland, TX</td>
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Consider approval, by motion, of Change in Service #4 in the not to exceed amount of $184,753.00 to Espey Consultants, dba RPS for the Comprehensive Watershed Master Plan.

Meeting date: May 2, 2017

Department: Engineering, CIP

Funds Required: $184,753.00
Account Number: C58
Funds Available: $322,000
Account Name: Drainage Master Plan

CITY COUNCIL GOAL:
Goal #5) Maintain and Improve City’s Infrastructure.

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]
ERPG204, Model Sustainable Practices in Infrastructure.

BACKGROUND:
FEMA has been in the process of updating hydrologic and hydraulic (H&H) models over the last two years and as a follow up, the current drainage master plan will have to be brought up to date. Change in Service #4 will update the design and cost estimates for various infrastructure based on final FEMA H&H data. Other tasks also included in this scope of work:

1) Final review of all 57 localized drainage problem “hot spots” and add 10 more as identified by Staff.
2) Integrate Blanco Gardens drainage projects as identified by current CDBG feasibility study.
3) Perform 1D/2D modeling on Purgatory Creek and provide options for flood reduction.
4) Finalize a Citywide fee-in-lieu of providing on-site detention facilities.
5) Finalize a Stormwater Management Fee within the San Marcos Urban Infill Boundary (UIB) that calculates a fee-in-lieu of providing on-site water quality facilities.

This will conclude the work necessary to provide final deliverables including an updated drainage 10-year CIP. Scheduled completion is October, 1 2017.
AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

PROJECT: Comprehensive Watershed Master Plan
ENGINEER: Espey Consultants, Inc. dba RPS
AUTHORIZATION NO.: 4
ORIGINAL CONTRACT DATE: August 20, 2013
DATE OF CHANGE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

See attached detailed scope of services and cost breakdown dated March 17, 2017.

<table>
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<th>Description</th>
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<tr>
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<td>Revised contract amount</td>
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Requested by:

By: [Signature]                                  Date: 4/26/2017
Printed Name/Title: BRENT CUSTARD / SENIOR VICE PRESIDENT

Approved by:

City of San Marcos:                               Date: __________________
By: ____________________

Printed Name/Title: ____________________
November 22, 2016 (Revised March 17, 2017)

Re: San Marcos Comprehensive Watershed Master Plan
Proposal for Additional Engineering Services
RPS Project No. 0564.613.000 (13063.00)

Dear Mr. Garcia:

Espey Consultants, Inc. d/b/a RPS, is pleased to present this proposal for additional services associated with the completion of San Marcos’ Comprehensive Watershed Master Plan. The original agreement is dated August 20, 2013 and there have been two subsequent authorizations dated August 2014 and December 2015. The following sections of this proposal include background information, scope of services, work breakdown, a list of final deliverables, schedule and budget.

**Background**

Key project deliverables identified in the original scope of services include:

- Development of a 20-year Capital Improvement Program for flood protection projects (creek and localized), creek/river stabilization projects, coordination with HCP/WQPP, prioritization of projects identified, identification of water quality opportunities and guidance with respect to operation and maintenance;
- Identification of potential partners and funding sources;
- Floodplain mapping consistent with the ongoing GBRA/USACE Interim Feasibility Study for FEMA (adoption expected in 2015);
- Summary of regulatory options for flood, erosion, and water quality protection; and
- Summary and recommended coordination of ongoing water resource efforts and opportunities.

Since the execution of the original contract, the City has:

- Completed their comprehensive planning process (Vision San Marcos: A River Runs Through Us);
- Partnered with the USACE/GBRA to conduct new flood studies of the major streams including the Blanco River;
- Partnered with FEMA for a physical map revision;
- Developed a Stormwater Technical Manual;
- Initiated a complete revision to the City’s Land Development Code;
- Developed a Water Quality Protection Plan (WQPP) as required under the Edwards Aquifer Recovery Implementation Program (EARIP);
- Conducted various other studies to specifically address water quality, drainage and flood control at key locations throughout the City; and
• Initiated a Feasibility Study (by others) for flood control improvements specific to the Blanco River overflow area east of I35.

The City has also experienced three major flood events since 2013 that have brought significant attention to their unique flood control needs, resulting in more studies and successful award of disaster recovery funds that will expedite actions to develop and implement both small and large scale solutions. The last several years have been a very intense and unique period for San Marcos (and very timely) as they not only continue to solve existing problems but also prepare for significant population demands that have been predicted in the future. The stormwater management needs of the City as well as the path forward are becoming clearer for City officials. The finalization and the results from some of these key activities will be captured and documented in this Comprehensive Watershed Master Plan.

Scope of These Additional Services

The scope of these additional services includes:

• Addition of ‘hot spots’ identified by staff;
• Review of and revisions to the FloMAD database with respect to engineering fees, etc.;
• Correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan and current Blanco River Feasibility Study;
• Update of models, maps, solutions, etc. for the creek studies conducted in partnership with the GBRA/USACE;
• Provide support to the City in the development of a citywide “fee in lieu of detention”;
• Development of a Stormwater Management Fund (Fee in lieu of water quality) in the Urban Infill Boundary (UIB); and
• Make recommendations for design criteria for water quality within UIB and San Marcos River Corridor.

Work Breakdown

The following list includes a complete breakdown of the work required to complete this project based on input and discussions with the City over the past few months. Some of these items are considered to be part of the original scope while others are considered to be additional services. All tasks are listed here and in the budget breakdown table (Attachment C) to ensure a clear understanding with respect to the remaining action items and deliverables. Work considered to be part of the original scope is identified in the budget breakdown table with no time or fee. The additional fee proposed is only for those items considered to be additional services.

1.0 Hot Spots – Hot spots are areas that are considered to be very local in nature and/or reflect a report by a single residence. They may be documented for future reference, combined in another study/project and/or included with a specific solution that may be completed by City staff/crews.

1.1 RPS will review each project and designate each as either a hot spot or a local drainage project (i.e. hot spots are informational and/or part of a larger study/project).
1.2 RPS will add new hot spots identified by staff and obtain more info if available to populate the database. The City will provide any available forms/write-ups.

1.3 RPS will determine the required action for each hot spot. For example,
- Site is associated/covered by other project(s);
- City crews (and City engineers) could make recommendation and improvements as part of maintenance;
- Site should be monitored; and/or
- Site requires additional study.

2.0 Local Drainage Projects - Local drainage projects typically include storm drains, ditches or swales, street drainage and/or other improvements that address issues on a local level as opposed to creek / watershed improvements that are intended to address floodplain risks.

2.1 RPS will review projects and cost to determine if design could be provided by City engineers or by outside consultants. RPS will adjust estimate for engineering accordingly.

2.2 RPS will review and incorporate the '94 Master Plan project limits into the data base and update the cost for inflation as required (9 projects have been identified within the FLoMAD: #32, #33, #34, #35, #36, #37, #38, #39 and #40).

2.3 RPS will correlate the comprehensive plan projects identified as part of this work with the current CIP list, determine what to do, what's left out, and how to rank ((FLoMAD #/CIP Project ID#) #10/#36, #31/#419, #23/#597, #35/#183, etc.). This includes the addition of CIP projects located along the Blanco River from just upstream of IH35 to the confluence with the San Marcos River: CIP Project ID #539, #551, #582, #623, etc.

2.4 RPS will delete projects from database priority matrix that are accounted for in the City's recent CIP; identified CIP projects will remain in FLoMAD. The City will provide list of which FLoMAD projects are already covered and should not be part of the 20 year CIP. This includes projects that are part of the current project by Freese and Nichols (FLoMAD #8, #9 and #26).

2.5 Review repairs identified on GBRA streams (e.g. Willow Springs, Purgatory, etc.) and determine which repairs should be made or deferred due to ongoing study by GBRA (e.g. FLoMAD #1, #22, etc).

2.6 Integrate stormwater protection and enhancement measures identified from the Blanco River Feasibility study conducted by others into the master plan project list. This will include adding information regarding the respective site, proposed improvements, alternatives, and cost data to the list of projects in the FLoMAD database. It is currently assumed that three (3) projects will be added to the project list. All information to be added will be provided by the City.
3.0 Creeks and Stream Studies – In general, Creek and stream studies include floodplain delineations and typically require a watershed wide approach to develop solutions that reduce floodplain risk as well as manage downstream impacts.

3.1 GBRA/USACE streams (e.g., Purgatory, Willow Springs, Blanco, etc.) were paid for through GBRA/COE study and are not part of this project. RPS will include cost from the City's '07 Flood Protection Plan (updated for inflation) to serve as a financial placeholder until subsequent phases of GBRA/USACE study are completed. No additional design or revisions to the construction cost estimates will be conducted for these streams.

3.2 RPS (through a subcontract with Halff Associates) will provide final models (2- through 500-year / existing and future), flood hazard maps, solutions and documentation for all GBRA COSM streams including Schulle Canyon Creek, etc.

3.3 RPS will use cost info from Halff study dated May 29, 2015 for Cottonwood Creek, '07 FPP (Willow Springs, Purgatory, etc.) and/or develop bridge and culvert cost from current models (such as Schulle Canyon Creek, etc.) – see Attachment A.

3.4 RPS will prepare proposed conditions models (10, 25, 50, 100, and 500-year design events) for a maximum of two channel improvement alternatives to mitigate flooding to Purgatory Creek and impacts to Willow Springs Creek downstream of the lateral flow over. A third alternative will include a high level analysis to improve capacity and operational changes to NRSC structures #4 and #5, as well as associated impacts to the channel improvement alternatives noted above. The limits of the proposed study are from upstream of Hunter Road to downstream of the lateral flow movement into the Willow Springs floodway. Impacts to the downstream sections of Purgatory and Willow Springs Creek to the confluence at the San Marcos River will be reviewed as well.

Alternatives to channel improvements will reflect channel widening scenarios (similar to existing improvements within Willow Springs Creek) with considerations for environmental and water quality enhancements through riparian buffers and integration of greenbelt/trail improvements. The goal will be to contain the 100-year (1% annual chance) design storm within the channel improvement zone. RPS will also review property ownership records, values, and existing easement data provided by the City to identify potential easement needs and/or property buy out options.

Analysis will primarily be conducted with 1D HEC-RAS models of the proposed improvements. However, if proposed channel improvements do not contain the 1% annual chance design storm within the channel, 2D HEC-RAS analysis will be used to fully evaluate design alternatives. Analysis and recommendations of the proposed design alternatives will be based on meeting City of San Marcos design criteria, FEMA Map revision requirements, and environmental permitting requirements.

3.4.1 RPS will prepare a draft Floodplain Analysis Report for review by the Client. The report will discuss the hydrologic and hydraulic modeling of existing and developed conditions prepared for this study. The report will discuss the proposed developed channel alternatives and the estimated costs and permitting requirements for each. The final
report will include the recommended proposed alternative and be included as a stand-alone appendix to the Comprehensive Drainage Master Plan.

4.0 Stream Erosion and Water Quality Opportunities – In addition to volume, stream erosion and water quality are very important elements of urban hydrology especially given the environmentally sensitive resources in San Marcos. Identifying these issues and correlating the City's needs with the recommendations of the Water Quality Protection Plan (WQPP) are essential for sustainable solutions.

4.1 RPS will integrate identified stream erosion sites within the FLoMAD database.

4.2 RPS will correlate water quality opportunities identified in WQPP within local drainage projects (e.g., FLoMAD #6, #7, #15, #18a, #21, #24, #25, #36, #39, #42 and #45). Estimated construction cost will include a 25% markup when water quality opportunities are thought to be available based on site identified in WQPP.

5.0 Fee in lieu of detention (Citywide) – It is the desire of the City to offer an impact fee in lieu of detention for new development that lies adjacent to a waterway that can demonstrate no adverse impact (NAI) with respect to peak flow rates. This exercise will include evaluation of traditional methods of NAI (e.g., no increase in computed peak flow rates) as well as consideration of stream protection as proposed in the City’s Land Development Code (LDC) update.

5.1 RPS will provide technical support to the City on an as needed basis based on the hours provided in Attachment C. Anticipated services include:

5.1.1 Review methods and sample calculations prepared by others for computing a fee in lieu of detention; and

5.1.2 Provide sample detention pond volume calculations for 1/2 acre, 1 acre, 5 acre and 10 acre site at an assumed impervious cover.

6.0 Stormwater Management Fund (Fee in lieu of water quality, Urban Infill Boundary (UIB)) – As a result of the Comprehensive Planning Process and the ongoing revision to the land development code (LDC), the City has included retrofit water quality improvements in the capital improvement plan (CIP, project ID 358). The first generation study of this included the "Downtown Smart Code Water Quality Plan" dated July 2015 and the WQPP dated November 2015. The City's new LDC will include a stormwater management fund for areas within a designated ‘urban infill boundary’ (UIB) requiring development to provide on-site water quality controls or pay a fee in lieu of water quality. RPS will finalize the UIB boundary and compute a cost per acre for the controls identified in Attachment B.

6.1 RPS will compute the total area and breakdown for ROW, private, and City/parkland based on the City's preferred scenario and SM River Corridor Boundary.

6.2 RPS will obtain cost and source information for water quality controls identified by the City (see Attachment B) and obtain concurrence/acceptance from the City for the controls listed. RPS will estimate cost per total area and also show breakdown by ROW, private and City/park land. The
calculation will also show an option to include controls identified that lie "outside" of UIB (e.g., 10143-Purg Creek Greenspace, 10573-Wastewater Treatment Plant, Thompson Island, etc.).

6.3 RPS will develop two (2) cost examples for 'on-site' water quality controls for example properties within the UIB. RPS will assume a treatment level consistent with the level proposed in the City's LDC update and use recommendations developed by City Staff to provide cost examples.

7.0 Project Management and Coordination – Project management and coordination includes communication with the technical team, City staff, and public officials. Project meetings, presentations and finalizing the report will give the team the opportunity to capture staff comments as well as other input from other studies, if appropriate.

7.1 RPS will host five (5) project update meetings with City staff including preparation of meeting notes. This will include one meeting with City staff to discuss the report and preliminary model results, as well as to select the final proposed alternative for Purgatory Creek Improvements to be included in the masterplan's list of projects.

7.2 RPS will attend one (1) project coordination workshop hosted by the City. The purpose of the workshop is for RPS to obtain proposed project information developed under the Blanco River Feasibility Study conducted by others for inclusion into the masterplan project list and database.

7.3 RPS will make one (1) presentation of the master plan results as requested by City staff to describe the overall project and/or review impact fee calculations.

7.4 RPS will finalize the report based on the input from City staff and include the final results floodplain studies by Halff Associates.

Deliverables
Draft report – 5 printed copies and electronic copy of document
Final report – 5 printed copies and electronic copy of document
## Schedule and Budget

The schedule below assumes City Council authorization is required prior to NTP. Therefore, the project deliverable schedule is based on weeks from NTP. A draft report will be provided five weeks from NTP. Following the City comment review period, the final report will be provided five weeks later.

<table>
<thead>
<tr>
<th>Project Schedule</th>
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<tbody>
<tr>
<td>Week ending</td>
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<tr>
<td>Project Updates</td>
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<td>Meetings</td>
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<td>Revised Draft Report</td>
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<tr>
<td>City Review: CDMP Project List/Report</td>
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<td>Finalize CDMP Project List</td>
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<tr>
<td>Purgatory/Willow Spring Draft Report</td>
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<tr>
<td>City Review: Purgatory/Willow Spring</td>
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<tr>
<td>Finalize Report</td>
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The total budget estimate is $184,750 and includes $62,513 for subconsultants. Labor cost details by task are provided in Attachment C.

In addition to the proposed additional services identified above, RPS would like to recommend Thomas Mountz as Project Manager moving forward. His extensive knowledge of drainage engineering coupled with his expansive prior work in and for the City of San Marcos makes him a great fit to continue the deliverance of this project to the City.
Thank you for the opportunity to work with the City of San Marcos. Please call us should you have any questions and/or comments.

Sincerely,

[Signature]

William H. Espey, Jr., PhD, P.E.
Sr. Vice President

CC: Tom Mountz, P.E.
    Jason Devaney, CPESC

Attachments:
   A. Studied Streams and Action Plan list
   B. Water Quality Improvements and the UIB
   C. Labor Cost Worksheet and Subconsultant Proposals (revised)

P:\active\13063.00F_SM_Compr_WTSHD_MPI\Contract\170317_Add Services R2\170317_DMP Add Services_Proposal_R2.docx
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<th>COSM DMP</th>
<th>GBRA PH2</th>
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<td>use Half study and cost</td>
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<tr>
<td>Cottonwood Creek (Upper)</td>
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</tr>
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<td>use Half study and cost</td>
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<tr>
<td>Stream CC-1S</td>
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<td></td>
<td>use Half study and cost</td>
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<td>Stream CC2D</td>
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<tr>
<td>Willow Springs Upper Tributary</td>
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<td>culvert/bridge upgrades</td>
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n/a - no action required
## Water Quality Protection Plan Projects

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<tr>
<th>Project</th>
<th>Source</th>
<th>WQPP</th>
<th>WPP</th>
<th>UIB</th>
<th>CIP</th>
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</thead>
<tbody>
<tr>
<td>10061</td>
<td>The Big Ditch</td>
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<td></td>
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<tr>
<td>10331</td>
<td>Dunbar Park</td>
<td></td>
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<tr>
<td>10573</td>
<td>Wastewater Treatment Plant</td>
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<td>10041</td>
<td>Veterans Memorial Park 1</td>
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<td>10292</td>
<td>Hopkins Channel Pond 1</td>
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<td>10291</td>
<td>Hopkins Channel Pond 2</td>
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<td>10143</td>
<td>Purgatory Creek Greenspace</td>
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<td></td>
<td></td>
<td>existing pond in need of maintenance amendment to WQPP, refer to memo from L. Sherman to R. Garcia dated 9/3/15</td>
</tr>
<tr>
<td>NNN</td>
<td>Hutchinson</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>QQQ</td>
<td>SM Plaza Retrofit (SM Plaza MTD)</td>
<td></td>
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<tr>
<td>10057</td>
<td>City Park, under construction, treats TxSt runoff</td>
<td></td>
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<td>PM - R. Garcia</td>
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### Downtown SmartCode Projects

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<tr>
<th>Project</th>
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<th>WPP</th>
<th>UIB</th>
<th>CIP</th>
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<tr>
<td>2</td>
<td>San Antonio St at LBJ Dr, inlet retrofit - Filtera System</td>
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<tr>
<td>4</td>
<td>Hutchinson, LBJ, Guadalupe, Hopkins Bick, Green Alley</td>
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</tr>
<tr>
<td>33</td>
<td>City Library Parking Lot, rain garden</td>
<td></td>
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<tr>
<td>34</td>
<td>City Activity Center Parking Lot, rain garden</td>
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<tr>
<td>52</td>
<td>LBJ at IH35 Truck Stop Parking Lot, rain garden</td>
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<tr>
<td>54</td>
<td>Guadalupe St &amp; IH35, convert concrete channel to green</td>
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<tr>
<td>64</td>
<td>Guadalupe and LBJ Commercial, rain garden</td>
<td></td>
<td></td>
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<tr>
<td>101</td>
<td>City Hallat Hopkins St, rain garden</td>
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### Other Projects

- CM Allen Parkway Reconstruction

- ? run cost for UIB with and w/out these projects

### Other Improvements NOT Included in UIB Calculation

<table>
<thead>
<tr>
<th>Type</th>
<th>Source</th>
<th>WQPP</th>
<th>WPP</th>
<th>UIB</th>
<th>CIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>TTT</td>
<td>Meadows Center Parking lot</td>
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<td>PPP</td>
<td>Thompson’s Island</td>
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<tr>
<td>SSS</td>
<td>Victory Gardens (3 - 5 rain gardens)</td>
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<td></td>
<td>X</td>
<td>PM - R. Garcia</td>
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</tbody>
</table>

**Note:**
- SmartC indicates where the project source is known.
- TXST indicates where the project is under construction and not yet completed.
- WQPP indicates where the project is proposed.
- WPP indicates where the project is planned.
- UIB indicates where the project is included in the Urban Infill Boundary (UIB) Capital Improvement Plan (CIP).
- CIP indicates where the project is included in the Capital Improvement Plan (CIP) but not necessarily the UIB.

---

PM - G. Scharz, bio retention pond in SE corner of Hutchinson and CM Allen, funded

east of IH35, City (per CM) to use the same strategy being used on the upper part of the river with access points and fenced off riparian buffers. Grant includes 3 access points.

PM - R. Garcia
## LABOR COST DETAIL

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Principal Eng</th>
<th>Sr. Project Mgr</th>
<th>Project Mgr</th>
<th>Engineer Staff</th>
<th>Administrative</th>
<th>Time (hrs)</th>
<th>RPS ($)</th>
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<td>2.1 review cost w/ staff to determine if outside consulting is required</td>
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<td>3</td>
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<td>935</td>
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<td>2.3 evaluate flowmath w/ CIP and adjust priorities</td>
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<td>8</td>
<td>3</td>
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<td>3 Creek and Stream Studies</td>
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<td>3.4 Purgatory Willow Springs Creek Assessment</td>
<td>See Purgatory Willow Springs Labor Cost Detail</td>
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<td>6 Stormwater Management Fund (fee in lieu of water quality, UIB)</td>
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approximate billing rate: $ 215.00 $ 195.00 $ 165.00 $ 110.00 $ 70.00
subtotals by labor classification: $ 5,375 $ 8,190 $ 25,410 $ 11,990 $ 560

## COST SUMMARY

- Labor: $ 121,990
- Expenses: $ 250
- Subconsultants:
  - Halff Associates, Inc. $ 25,200 +10% $ 27,720
  - LAN, Inc. $ 31,630 +10% $ 34,793

**Total:** $ 184,753
# BUDGET ESTIMATE WORKSHEET

**Task 3.4 Purgatory/Willow Springs Creek**

**ATTACHMENT C-2**

November 21, 2016
(revised March 17, 2017)

## LABOR COST DETAIL

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## COST SUMMARY

| Labor: | $70,215 |
| Expenses: | $250 |
| Reprographics: | +10% |
| Subconsultants: | 
| Halfi Associates, Inc. | $ - |
| LAN, Inc. | $ - |

| | $70,465 |
November 11, 2016

Attn: Jason Devaney
RPS Group
4801 Southwest Parkway, Parkway 2, Suite 150
Austin, Texas  78735

Subject:  City of San Marcos
Additional Services Scope and Fee Proposal for Drainage Master Plan

Mr. Devaney:

Halff Associates, Inc. appreciates the opportunity to provide you with this scope and fee proposal for the City of San Marcos Drainage Master Plan Additional Services. The following documents represent our understanding of the scope of services being requested and our proposed fee. This submittal includes the following:

- **Scope of Services (Attachment A)** – This is a scope of services agreed upon through discussions with the City and RPS Group.
- **Rate Schedule and Budget (Attachment B)** – The budget is based on hourly rates utilized previously on this project.

Please let me know if you have any questions or concerns or would like to discuss.

Sincerely,

HALFF ASSOCIATES, INC.

[Signature]

Cindy Engelhardt, PE, CFM
Attachment A: Proposed Scope for COSM DMP Additional Services

Hydrology Update

- Verify previous future condition hydrology parameters and apply any required revisions to methodology.
- Apply parameters to Upper San Marcos, Bypass, and Upper San Marcos hydrology models to produce future flows for San Marcos DMP.
- As was done for the original modeling, future conditions will not be calculated for the Blanco River flows as those flows are not likely to be significantly affected by future development in the City of San Marcos.
- After initial future hydrology results are completed, methodology and results will be reviewed with RPS/COSM.
- After methodology/initial results are approved, produce final future conditions flows.

Hydraulics Update

- Update current FEMA PMR hydraulic models as well as current model for Schulle Canyon Creek with future condition flows.
- San Marcos Trib 3, which was included in the original DMP H&H study will not be included in this current update.
- PMR hydraulic models for Sessom, Willow Springs Lower Tributaries, Cottonwood, Stream CC-2 and Stream CC2D have been truncated to match the PMR mapping extents requested by COSM. Un-truncated versions of these models will be used for both existing and future conditions updates.
- Validate re extended Cottonwood watershed models against results of the currently ongoing 2D model study Cotton watershed overflows.
- Finalize all updated hydraulic models with appropriate future and existing conditions flows. Only previously generated official existing conditions FEMA profiles generated for PMR reaches will be provided.

Mapping

- Map existing 100yr where PMR did not update mapping for Sessom, Willow Springs Lower Tributaries, Cottonwood, Stream CC-2 and Stream CC2D.
- Map future 100yr for all streams

PM

- Compile a data submittal and letter summarizing the submittal at the completion of the modeling and mapping updates

List of Deliverables

- Hydrology models updated with future flow runs
- Hydraulic models (re-extended FEMA models as well as COSM creeks not included in the PMR) updated with future flows
• Supporting spreadsheets (e.g. time of concentration, etc.)
• Updated summary of discharge table with future flows and summary of computed water surface elevations generated from HEC-RAS.
• Floodplain shapefiles for existing and future 100-yr
• Data submittal with letter summarizing previous studies and references. Letter will also note any changes in methodology.
Attachment B:
Fee and Rate Schedule

Rate Schedule:

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Fee Breakdown:

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Total $25,200.00
March 17, 2017

Tom Mountz, P.E.
Senior Project Manager
RPS
4801 Southwest Parkway, Parkway 2, Suite 150
Austin, Texas 78735

Dear Mr. Mountz:

LAN is pleased to present this proposal to provide professional engineering services associated with the San Marcos’ Comprehensive Watershed Master Plan being prepared by RPS. The following sections of this proposal include scope of services, work breakdown, a list of final deliverables, schedule and budget.

Scope of Services

LAN will provide technical input to RPS for the following scope of services:

- Addition of ‘hot spots’ identified by staff;
- Review and revisions to the FLoMAD database with respect to engineering fees, etc.;
- Correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan and current Blanco River Feasibility Study;
- Update of models, maps, solutions, etc. for the creek studies conducted in partnership with the GBRA/USACE;
- Provide support to the City in the development of a “fee in lieu of detention”;
- Development of design criteria for extended detention/stream protection volume; and
- Development of a Stormwater Management Fund (Fee in lieu of water quality) in the Urban Infill Boundary (UIB).

Work Breakdown

The following list includes a breakdown of the work required for RPS to complete this project based on input and discussions with the City over the past few months. LAN will provide technical input and support to RPS on these tasks for the successful completion of the project.

1.0 Hot Spots – Hot spots are areas that are considered to be very local in nature and/or reflect a report by a single residence. They may be documented for future reference, combined in another study/project and/or included with a specific solution that may be completed by City staff/crews. Based on our knowledge and experience with the City and input from City staff, LAN will provide recommendations on the required action for each hot spot. For example,

- Site is associated/covered by other project(s);
- City crews (and City engineers) could make recommendation and improvements as part of maintenance;
2.0 Local Drainage Projects - Local drainage projects typically include storm drains, ditches or swales, street drainage and/or other improvements that address issues on a local level as opposed to creek / watershed improvements that are intended to address floodplain risks. LAN will provide recommendations on revisions to the FLoMAD database with respect to assumptions such as the use of outside engineering resources (and the associated cost) versus the use of in-house City resources (and no additional cost), etc., and correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan. LAN will also provide recommendations on the integration of projects (estimated at 3) resulting from the on-going feasibility study (being prepared by others) and QA/QC review.

3.0 Creeks and Stream Studies – In general, Creek and stream studies include floodplain delineations and typically require a watershed wide approach to develop solutions that reduce floodplain risk as well as manage downstream impacts. LAN will provide technical input and provide QA/QC review. LAN will also support RPS in the additional analysis and development of channel improvements solutions along Purgatory Creek as outlined in the prime scope. LAN will provide technical input and review during the process and recommendations on how the additional work will be incorporated into the comprehensive master drainage plan.

4.0 Stream Erosion and Water Quality Opportunities – In addition to volume, stream erosion and water quality are very important elements of urban hydrology especially given the environmentally sensitive resources in San Marcos. Identifying these issues and correlating the City’s needs with the recommendations of the Water Quality Protection Plan (WQPP) are essential for sustainable solutions. LAN will provide recommendations and QA/QC review for the correlation of water quality opportunities identified in WQPP within local drainage projects (e.g. FLoMAD #6, #13, #15, #18a, #21, #24, #25, #36, #39, #42 and #45).

5.0 Fee in lieu of detention (Citywide) – It is the desire of the City to offer an impact fee in lieu of detention for new development that lies adjacent to a waterway that can demonstrate no adverse impact (NAI) with respect to peak flow rates. LAN will provide technical support to RPS on an as needed basis based on the hours provided. Anticipated services include:

5.1 Review of methods and sample calculations prepared by others for computing a fee in lieu of detention; and

5.2 Review of sample detention pond volume calculations for 1/2 acre, 1 acre, 5 acre and 10 acre site at an assumed impervious cover prepared by RPS.

6.0 Stormwater Management Fund (Fee in lieu of water quality, Urban Infill Boundary (UIB) – As a result of the Comprehensive Planning Process and the ongoing revision to the land development code (LDC), the City has included retrofit water quality improvements in the capital improvement plan (CIP, project ID 358). The first generation study of this included the “Downtown Smart Code Water Quality Plan” dated July 2015 and the WQPP dated November 2015. The City’s new LDC will
include a stormwater management fund for areas within a designated ‘urban infill boundary’ (UIB) requiring development to provide on-site water quality controls or pay a fee in lieu of water quality. LAN will provide technical input and QA/QC review on up to two (2) cost examples for ‘on-site’ water quality controls for example properties within the UIB.

7.0 Project Management and Coordination – Project management and coordination includes communication with the technical team and others as requested by RPS.

- LAN will attend five (5) project update meetings with City staff hosted by RPS. This will include one meeting with City staff to discuss the report and preliminary model results, as well as to select the final proposed alternative for Purgatory Creek Improvements to be included in the masterplan’s list of projects.
- LAN (in association with RPS) will attend one (1) project coordination workshop hosted by the City to obtain proposed project information developed under the Blanco River Feasibility Study conducted by others for inclusion into the masterplan project list and database.
- LAN will participate in the preparation and one (1) presentation of the master plan results as requested by City staff to describe the overall project and/or review impact fee calculations.
- LAN will provide support to RPS in responses to the City regarding deliverables.

DELIVERABLES

DRAFT REPORT - LAN will provide input to the report outline and written text as necessary to complete the draft report that will be submitted to the City. LAN will provide a red line of the final draft document compiled by RPS with comments prior to submittal to the City.

FINAL REPORT - LAN will also support RPS in any responses to the City regarding the final deliverable.

BUDGET

The total budget estimate for these services is $31,630 as estimated by the following breakdown. LAN will provide services on a time and materials basis not to exceed this amount with prior authorization.

A LABOR

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B EXPENSES (e.g. mileage, reprographics, etc.) | $ 350
C SUBCONSULTANTS | $ -

TOTAL: $ 31,630
This budget is estimated based on a schedule duration of approximately 16 weeks. If additional services are added to the contract (e.g. 2D modeling of Purgatory, etc.) and/or the schedule is delayed, additional budget will be required.

SCHEDULE

RPS will provide LAN with the final schedule upon receipt of the notice to proceed from the City and expand the schedule as necessary to identify anticipated meetings and specific deliverables. RPS and LAN will also work together to identify 'internal' deadlines and milestones so that the RPS, LAN and Halff team can meet the schedule required under the contract with the City.

Thank you for the opportunity to be part of the RPS team. Let me know if you have any questions. This work will be authorized as a work order under RPS' and LAN's master service agreement dated November 22, 2016, by counter-signing in the space provided below.

Sincerely,

[Signature]

Brian K. Reis, PE, CFM
Infrastructure Manager - Central Texas

Authorized signature

Date
November 22, 2016 (Revised March 17, 2017)

Rey Garcia, P.E.
City of San Marcos
630 E. Hopkins Street
San Marcos, Texas 78666

Re: San Marcos Comprehensive Watershed Master Plan
Proposal for Additional Engineering Services
RPS Project No. 0564.613.000 (13063.00)

Dear Mr. Garcia:

Espey Consultants, Inc. dba RPS, is pleased to present this proposal for additional services associated with the completion of San Marcos’ Comprehensive Watershed Master Plan. The original agreement is dated August 20, 2013 and there have been two subsequent authorizations dated August 2014 and December 2015. The following sections of this proposal include background information, scope of services, work breakdown, a list of final deliverables, schedule and budget.

Background

Key project deliverables identified in the original scope of services include:

- Development of a 20-year Capital Improvement Program for flood protection projects (creek and localized), creek / river stabilization projects, coordination with HCP/WQPP, prioritization of projects identified, identification of water quality opportunities and guidance with respect to operation and maintenance;
- Identification of potential partners and funding sources;
- Floodplain mapping consistent with the ongoing GBRA/USACE Interim Feasibility Study for FEMA (adoption expected in 2015);
- Summary of regulatory options for flood, erosion, and water quality protection; and
- Summary and recommended coordination of ongoing water resource efforts and opportunities.

Since the execution of the original contract, the City has:

- Completed their comprehensive planning process (Vision San Marcos: A River Runs Through Us);
- Partnered with the USACE/GBRA to conduct new flood studies of the major streams including the Blanco River;
- Partnered with FEMA for a physical map revision;
- Developed a Stormwater Technical Manual;
- Initiated a complete revision to the City’s Land Development Code;
- Developed a Water Quality Protection Plan (WQPP) as required under the Edwards Aquifer Recovery Implementation Program (EARIP);
- Conducted various other studies to specifically address water quality, drainage and flood control at key locations throughout the City; and
Initiated a Feasibility Study (by others) for flood control improvements specific to the Blanco River overflow area east of I35.

The City has also experienced three major flood events since 2013 that have brought significant attention to their unique flood control needs, resulting in more studies and successful award of disaster recovery funds that will expedite actions to develop and implement both small and large scale solutions. The last several years have been a very intense and unique period for San Marcos (and very timely) as they not only continue to solve existing problems but also prepare for significant population demands that have been predicted in the future. The stormwater management needs of the City as well as the path forward are becoming clearer for City officials. The finalization and the results from some of these key activities will be captured and documented in this Comprehensive Watershed Master Plan.

Scope of These Additional Services

The scope of these additional services includes:

- Addition of ‘hot spots’ identified by staff;
- Review of and revisions to the FLoMAD database with respect to engineering fees, etc.;
- Correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan and current Blanco River Feasibility Study;
- Update of models, maps, solutions, etc. for the creek studies conducted in partnership with the GBRA/USACE;
- Provide support to the City in the development of a citywide “fee in lieu of detention”;
- Development of a Stormwater Management Fund (Fee in lieu of water quality) in the Urban Infill Boundary (UIB); and
- Make recommendations for design criteria for water quality within UIB and San Marcos River Corridor.

Work Breakdown

The following list includes a complete breakdown of the work required to complete this project based on input and discussions with the City over the past few months. Some of these items are considered to be part of the original scope while others are considered to be additional services. All tasks are listed here and in the budget breakdown table (Attachment C) to ensure a clear understanding with respect to the remaining action items and deliverables. Work considered to be part of the original scope is identified in the budget breakdown table with no time or fee. The additional fee proposed is only for those items considered to be additional services.

1.0 Hot Spots – Hot spots are areas that are considered to be very local in nature and/or reflect a report by a single residence. They may be documented for future reference, combined in another study/project and/or included with a specific solution that may be completed by City staff/crews.

1.1 RPS will review each project and designate each as either a hot spot or a local drainage project (i.e. hot spots are informational and/or part of a larger study/project).
1.2 RPS will add new hot spots identified by staff and obtain more info if available to populate the database. The City will provide any available forms/write-ups.

1.3 RPS will determine the required action for each hot spot. For example,
- Site is associated/covered by other project(s);
- City crews (and City engineers) could make recommendation and improvements as part of maintenance;
- Site should be monitored; and/or
- Site requires additional study.

2.0 Local Drainage Projects - Local drainage projects typically include storm drains, ditches or swales, street drainage and/or other improvements that address issues on a local level as opposed to creek / watershed improvements that are intended to address floodplain risks.

2.1 RPS will review projects and cost to determine if design could be provided by City engineers or by outside consultants. RPS will adjust estimate for engineering accordingly.

2.2 RPS will review and incorporate the ’94 Master Plan project limits into the data base and update the cost for inflation as required (9 projects have been identified within the FLoMAD: #32, #33, #34, #35, #36, #37, #38, #39 and #40).

2.3 RPS will correlate the comprehensive plan projects identified as part of this work with the current CIP list, determine what to do, what’s left out, and how to rank ((FLoMAD #/CIP Project ID#) #10/#36, #31/#419, #23/#597, #35/#183, etc.). This includes the addition of CIP projects located along the Blanco River from just upstream of IH35 to the confluence with the San Marcos River: CIP Project ID #539, #551, #582, #623, etc.

2.4 RPS will delete projects from database priority matrix that are accounted for in the City’s recent CIP; identified CIP projects will remain in FLoMAD. The City will provide list of which FLoMAD projects are already covered and should not be part of the 20 year CIP. This includes projects that are part of the current project by Freese and Nichols (FLoMAD #8, #9 and #26).

2.5 Review repairs identified on GBRA streams (e.g. Willow Springs, Purgatory, etc.) and determine which repairs should be made or deferred due to ongoing study by GBRA (e.g. FLoMAD #1, #22, etc).

2.6 Integrate stormwater protection and enhancement measures identified from the Blanco River Feasibility study conducted by others into the master plan project list. This will include adding information regarding the respective site, proposed improvements, alternatives, and cost data to the list of projects in the FLoMAD database. It is currently assumed that three (3) projects will be added to the project list. All information to be added will be provided by the City.
3.0 Creeks and Stream Studies – In general, Creek and stream studies include floodplain delineations and typically require a watershed wide approach to develop solutions that reduce floodplain risk as well as manage downstream impacts.

3.1 GBRA/USACE streams (e.g. Purgatory, Willow Springs, Blanco, etc.) were paid for through GBRA/COE study and are not part of this project. RPS will include cost from the City’s ’07 Flood Protection Plan (updated for inflation) to serve as a financial placeholder until subsequent phases of GBRA/USACE study are completed. No additional design or revisions to the construction cost estimates will be conducted for these streams.

3.2 RPS (through a subcontract with Halff Associates) will provide final models (2- through 500-year / existing and future), flood hazard maps, solutions and documentation for all GBRA COSM streams including Schulle Canyon Creek, etc.

3.3 RPS will use cost info from Halff study dated May 29, 2015 for Cottonwood Creek, ‘07 FPP (Willow Springs, Purgatory, etc.) and/or develop bridge and culvert cost from current models (such as Schulle Canyon Creek, etc.) – see Attachment A

3.4 RPS will prepare proposed conditions models (10, 25, 50, 100, and 500-year design events) for a maximum of two channel improvement alternatives to mitigate flooding to Purgatory Creek and impacts to Willow Springs Creek downstream of the lateral flow over. A third alternative will include a high level analysis to improve capacity and operational changes to NRSC structures #4 and #5, as well as associated impacts to the channel improvement alternatives noted above. The limits of the proposed study are from upstream of Hunter Road to downstream of the lateral flow movement into the Willow Springs floodway. Impacts to the downstream sections of Purgatory and Willow Springs Creek to the confluence at the San Marcos River will be reviewed as well.

Alternatives to channel improvements will reflect channel widening scenarios (similar to existing improvements within Willow Springs Creek) with consideration for environmental and water quality enhancements through riparian buffers and integration of greenbelt/trail improvements. The goal will be to contain the 100-year (1% annual chance) design storm within the channel improvement zone. RPS will also review property ownership records, values, and existing easement data provided by the City to identify potential easement needs and/or property buy out options.

Analysis will primarily be conducted with 1D HEC-RAS models of the proposed improvements. However, if proposed channel improvements do not contain the 1% annual chance design storm within the channel, 2D HEC-RAS analysis will be used to fully evaluate design alternatives. Analysis and recommendations of the proposed design alternatives will be based on meeting City of San Marcos design criteria, FEMA Map revision requirements, and environmental permitting requirements.

3.4.1 RPS will prepare a draft Floodplain Analysis Report for review by the Client. The report will discuss the hydrologic and hydraulic modeling of existing and developed conditions prepared for this study. The report will discuss the proposed developed channel alternatives and the estimated costs and permitting requirements for each. The final
report will include the recommended proposed alternative and be included as a stand-alone appendix to the Comprehensive Drainage Master Plan.

4.0 Stream Erosion and Water Quality Opportunities – In addition to volume, stream erosion and water quality are very important elements of urban hydrology especially given the environmentally sensitive resources in San Marcos. Identifying these issues and correlating the City’s needs with the recommendations of the Water Quality Protection Plan (WQPP) are essential for sustainable solutions.

4.1 RPS will integrate identified stream erosion sites within the FLoMAD database.

4.2 RPS will correlate water quality opportunities identified in WQPP within local drainage projects (e.g., FLoMAD #6, #13, #15, #18a, #21, #24, #25, #36, #39, #42 and #45). Estimated construction cost will include a 25% markup when water quality opportunities are thought to be available based on site identified in WQPP.

5.0 Fee in lieu of detention (Citywide) – It is the desire of the City to offer an impact fee in lieu of detention for new development that lies adjacent to a waterway that can demonstrate no adverse impact (NAI) with respect to peak flow rates. This exercise will include evaluation of traditional methods of NAI (e.g. no increase in computed peak flow rates) as well as consideration of stream protection as proposed in the City’s Land Development Code (LDC) update.

5.1 RPS will provide technical support to the City on an as needed basis based on the hours provided in Attachment C. Anticipated services include:

   5.1.1 Review methods and sample calculations prepared by others for computing a fee in lieu of detention; and

   5.1.2 Provide sample detention pond volume calculations for 1/2 acre, 1 acre, 5 acre and 10 acre site at an assumed impervious cover.

6.0 Stormwater Management Fund (Fee in lieu of water quality, Urban Infill Boundary (UIB)) – As a result of the Comprehensive Planning Process and the ongoing revision to the land development code (LDC), the City has included retrofit water quality improvements in the capital improvement plan (CIP, project ID 358). The first generation study of this included the “Downtown Smart Code Water Quality Plan” dated July 2015 and the WQPP dated November 2015. The City’s new LDC will include a stormwater management fund for areas within a designated ‘urban infill boundary’ (UIB) requiring development to provide on-site water quality controls or pay a fee in lieu of water quality. RPS will finalize the UIB boundary and compute a cost per acre for the controls identified in Attachment B.

6.1 RPS will compute the total area and breakdown for ROW, private, and City/parkland based on the City’s preferred scenario and SM River Corridor Boundary.

6.2 RPS will obtain cost and source information for water quality controls identified by the City (see Attachment B) and obtain concurrence/acceptance from the City for the controls listed. RPS will estimate cost per total area and also show breakdown by ROW, private and City/park land. The
calculation will also show an option to include controls identified that lie “outside” of UIB (e.g. 10143-Purg Creek Greenspace, 10573-Wastewater Treatment Plant, Thompson Island, etc.).

6.3 RPS will develop two (2) cost examples for ‘on-site’ water quality controls for example properties within the UIB. RPS will assume a treatment level consistent with the level proposed in the City’s LDC update and use recommendations developed by City Staff to provide cost examples.

7.0 Project Management and Coordination – Project management and coordination includes communication with the technical team, City staff, and public officials. Project meetings, presentations and finalizing the report will give the team the opportunity to capture staff comments as well as other input from other studies, if appropriate.

7.1 RPS will host five (5) project update meetings with City staff including preparation of meeting notes. This will include one meeting with City staff to discuss the report and preliminary model results, as well as to select the final proposed alternative for Purgatory Creek Improvements to be included in the masterplan’s list of projects.

7.2 RPS will attend one (1) project coordination workshop hosted by the City. The purpose of the workshop is for RPS to obtain proposed project information developed under the Blanco River Feasibility Study conducted by others for inclusion into the masterplan project list and database.

7.3 RPS will make one (1) presentation of the master plan results as requested by City staff to describe the overall project and/or review impact fee calculations.

7.4 RPS will finalize the report based on the input from City staff and include the final results floodplain studies by Halff Associates.

Deliverables
Draft report – 5 printed copies and electronic copy of document
Final report – 5 printed copies and electronic copy of document
Schedule and Budget

The schedule below assumes City Council authorization is required prior to NTP. Therefore, the project deliverable schedule is based on weeks from NTP. A draft report will be provided five weeks from NTP. Following the City comment review period, the final report will be provided five weeks later.

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The total budget estimate is $184,750 and includes $62,513 for subconsultants. Labor cost details by task are provided in Attachment C.

In addition to the proposed additional services identified above, RPS would like to recommend Thomas Mountz as Project Manager moving forward. His extensive knowledge of drainage engineering coupled with his expansive prior work in and for the City of San Marcos makes him a great fit to continue the deliverance of this project to the City.
Thank you for the opportunity to work with the City of San Marcos. Please call us should you have any questions and/or comments.

Sincerely,

William H. Espey, Jr., PhD, P.E.
Sr. Vice President

CC: Tom Mountz, P.E.
    Jason Devaney, CPESC

Attachments:
   A. Studied Streams and Action Plan list
   B. Water Quality Improvements and the UIB
   C. Labor Cost Worksheet and Subconsultant Proposals (revised)

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<td>Cottonwood Creek (Upper)</td>
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<td>SmartC</td>
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<td>10331 Dunbar Park</td>
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<td>10143 Purgatory Creek Greenspace</td>
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<td>4 Hutchinson, LBJ, Guadalupe, Hopkins B1k, Green Alley</td>
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<td>54 Guadalupe St &amp; IH35, convert concrete channel to green</td>
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<td>101 City Hallat Hopkins St, rain garden</td>
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<td>SSS Victory Gardens (3 - 5 rain gardens)</td>
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- **ATTACHMENT B**
- **November 22, 2016**
**LABOR COST DETAIL**

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<th>Task Description</th>
<th>Principal Eng $195-$225</th>
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<th>Project Mgr $115-$165</th>
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<th>Administrative $50-$70</th>
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<td>2</td>
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<td></td>
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<td></td>
<td>2</td>
<td>330</td>
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<td>1.2 add new hot spots identified by staff (10 total)</td>
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<td>1.3 determine required action</td>
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**COST SUMMARY**

| Labor: | $ 121,990 |
| Expenses: | $ 250 |
| Subconsultants: | $ 184,753 |

**ATTACHMENT C-1**
November 21, 2016 (revised March 17, 2017)
### LABOR COST DETAIL

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Purgatory-WillowSprings
November 11, 2016

Attn: Jason Devaney
RPS Group
4801 Southwest Parkway, Parkway 2, Suite 150
Austin, Texas  78735

Subject:  City of San Marcos
Additional Services Scope and Fee Proposal for Drainage Master Plan

Mr. Devaney:

Halff Associates, Inc. appreciates the opportunity to provide you with this scope and fee proposal for the City of San Marcos Drainage Master Plan Additional Services. The following documents represent our understanding of the scope of services being requested and our proposed fee. This submittal includes the following:

- **Scope of Services (Attachment A)** – This is a scope of services agreed upon through discussions with the City and RPS Group.
- **Rate Schedule and Budget (Attachment B)** – The budget is based on hourly rates utilized previously on this project.

Please let me know if you have any questions or concerns or would like to discuss.

Sincerely,

HALFF ASSOCIATES, INC.

Cindy Engelhardt, PE, CFM
Attachment A: Proposed Scope for COSM DMP Additional Services

Hydrology Update

- Verify previous future condition hydrology parameters and apply any required revisions to methodology.
- Apply parameters to Upper San Marcos, Bypass, and Upper San Marcos hydrology models to produce future flows for San Marcos DMP.
- As was done for the original modeling, future conditions will not calculated for the Blanco River flows as those flows are not likely to be significantly affected by future development in the City of San Marcos.
- After initial future hydrology results are completed, methodology and results will be reviewed with RPS/COSM.
- After methodology/initial results are approved, produce final future conditions flows.

Hydraulics Update

- Update current FEMA PMR hydraulic models as well as current model for Schulle Canyon Creek with future condition flows.
- San Marcos Trib 3, which was included in the original DMP H&H study will not be included in this current update.
- PMR hydraulic models for Sessom, Willow Springs Lower Tributaries, Cottonwood, Stream CC-2 and Stream CC2D have been truncated to match the PMR mapping extents requested by COSM. Un-truncated versions of these models will be used for both existing and future conditions updates.
- Validate re extended Cottonwood watershed models against results of the currently ongoing 2D model study Cotton watershed overflows.
- Finalize all updated hydraulic models with appropriate future and existing conditions flows. Only previously generated official existing conditions FEMA profiles generated for PMR reaches will be provided.

Mapping

- Map existing 100yr where PMR did not update mapping for Sessom, Willow Springs Lower Tributaries, Cottonwood, Stream CC-2 and Stream CC2D.
- Map future 100yr for all streams

PM

- Compile a data submittal and letter summarizing the submittal at the completion of the modeling and mapping updates

List of Deliverables

- Hydrology models updated with future flow runs
- Hydraulic models (re-extended FEMA models as well as COSM creeks not included in the PMR) updated with future flows
• Supporting spreadsheets (e.g. time of concentration, etc.)
• Updated summary of discharge table with future flows and summary of computed water surface elevations generated from HEC-RAS.
• Floodplain shapefiles for existing and future 100-yr
• Data submittal with letter summarizing previous studies and references. Letter will also note any changes in methodology.
Attachment B: Fee and Rate Schedule

Rate Schedule:

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Total $25,200.00
March 17, 2017

Tom Mountz, P.E.
Senior Project Manager
RPS
4801 Southwest Parkway, Parkway 2, Suite 150
Austin, Texas  78735

Dear Mr. Mountz:

LAN is pleased to present this proposal to provide professional engineering services associated with the San Marcos’ Comprehensive Watershed Master Plan being prepared by RPS. The following sections of this proposal include scope of services, work breakdown, a list of final deliverables, schedule and budget.

Scope of Services

LAN will provide technical input to RPS for the following scope of services:

- Addition of ‘hot spots’ identified by staff;
- Review and revisions to the FloMAD database with respect to engineering fees, etc.;
- Correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan and current Blanco River Feasibility Study;
- Update of models, maps, solutions, etc. for the creek studies conducted in partnership with the GBRA/USACE;
- Provide support to the City in the development of a “fee in lieu of detention”;
- Development of design criteria for extended detention/stream protection volume; and
- Development of a Stormwater Management Fund (Fee in lieu of water quality) in the Urban Infill Boundary (UIB).

Work Breakdown

The following list includes a breakdown of the work required for RPS to complete this project based on input and discussions with the City over the past few months. LAN will provide technical input and support to RPS on these tasks for the successful completion of the project.

1.0 Hot Spots – Hot spots are areas that are considered to be very local in nature and/or reflect a report by a single residence. They may be documented for future reference, combined in another study/project and/or included with a specific solution that may be completed by City staff/crews. Based on our knowledge and experience with the City and input from City staff, LAN will provide recommendations on the required action for each hot spot. For example,

- Site is associated/covered by other project(s);
- City crews (and City engineers) could make recommendation and improvements as part of maintenance;
2.0 **Local Drainage Projects** - Local drainage projects typically include storm drains, ditches or swales, street drainage and/or other improvements that address issues on a local level as opposed to creek / watershed improvements that are intended to address floodplain risks. LAN will provide recommendations on revisions to the FLoMAD database with respect to assumptions such as the use of outside engineering resources (and the associated cost) versus the use of in-house City resources (and no additional cost), etc., and correlation to and adjustment of the drainage projects identified in the City’s recently adopted Capital Improvement Plan. LAN will also provide recommendations on the integration of projects (estimated at 3) resulting from the on-going feasibility study (being prepared by others) and QA/QC review.

3.0 **Creeks and Stream Studies** – In general, Creek and stream studies include floodplain delineations and typically require a watershed wide approach to develop solutions that reduce floodplain risk as well as manage downstream impacts. LAN will provide technical input and provide QA/QC review. LAN will also support RPS in the additional analysis and development of channel improvements solutions along Purgatory Creek as outlined in the prime scope. LAN will provide technical input and review during the process and recommendations on how the additional work will be incorporated into the comprehensive master drainage plan.

4.0 **Stream Erosion and Water Quality Opportunities** – In addition to volume, stream erosion and water quality are very important elements of urban hydrology especially given the environmentally sensitive resources in San Marcos. Identifying these issues and correlating the City’s needs with the recommendations of the Water Quality Protection Plan (WQPP) are essential for sustainable solutions. LAN will provide recommendations and QA/QC review for the correlation of water quality opportunities identified in WQPP within local drainage projects (e.g. FLoMAD #6, #13, #15, #18a, #21, #24, #25, #36, #39, #42 and #45).

5.0 **Fee in lieu of detention** (Citywide) – It is the desire of the City to offer an impact fee in lieu of detention for new development that lies adjacent to a waterway that can demonstrate no adverse impact (NAI) with respect to peak flow rates. LAN will provide technical support to RPS on an as needed basis based on the hours provided. Anticipated services include:

5.1 Review of methods and sample calculations prepared by others for computing a fee in lieu of detention; and

5.2 Review of sample detention pond volume calculations for 1/2 acre, 1 acre, 5 acre and 10 acre site at an assumed impervious cover prepared by RPS.

6.0 **Stormwater Management Fund** (Fee in lieu of water quality, Urban Infill Boundary (UIB) – As a result of the Comprehensive Planning Process and the ongoing revision to the land development code (LDC), the City has included retrofit water quality improvements in the capital improvement plan (CIP, project ID 358). The first generation study of this included the “Downtown Smart Code Water Quality Plan” dated July 2015 and the WQPP dated November 2015. The City’s new LDC will
include a stormwater management fund for areas within a designated 'urban infill boundary' (UIB) requiring development to provide on-site water quality controls or pay a fee in lieu of water quality. LAN will provide technical input and QA/QC review on up to two (2) cost examples for 'on-site' water quality controls for example properties within the UIB.

7.0 Project Management and Coordination – Project management and coordination includes communication with the technical team and others as requested by RPS.

- LAN will attend five (5) project update meetings with City staff hosted by RPS. This will include one meeting with City staff to discuss the report and preliminary model results, as well as to select the final proposed alternative for Purgatory Creek Improvements to be included in the masterplan’s list of projects.
- LAN (in association with RPS) will attend one (1) project coordination workshop hosted by the City to obtain proposed project information developed under the Blanco River Feasibility Study conducted by others for inclusion into the masterplan project list and database.
- LAN will participate in the preparation and one (1) presentation of the master plan results as requested by City staff to describe the overall project and/or review impact fee calculations.
- LAN will provide support to RPS in responses to the City regarding deliverables.

DELIVERABLES

DRAFT REPORT - LAN will provide input to the report outline and written text as necessary to complete the draft report that will be submitted to the City. LAN will provide a red line of the final draft document compiled by RPS with comments prior to submittal to the City.

FINAL REPORT - LAN will also support RPS in any responses to the City regarding the final deliverable.

BUDGET

The total budget estimate for these services is $31,630 as estimated by the following breakdown. LAN will provide services on a time and materials basis not to exceed this amount with prior authorization.

<table>
<thead>
<tr>
<th>Task</th>
<th>Labor Hours Estimated by Labor Category</th>
<th>Time (hours)</th>
<th>Budget ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Hot Spots</td>
<td>Tech. Adv. 8</td>
<td>8</td>
<td>$1,840</td>
</tr>
<tr>
<td>2 Local Drainage Projects</td>
<td>PM 8</td>
<td>8 $1,840</td>
<td></td>
</tr>
<tr>
<td>3 Creek and Stream Studies</td>
<td>Engineer 16</td>
<td>16 $3,680</td>
<td></td>
</tr>
<tr>
<td>4 Stream Erosion and WQ Opportunities</td>
<td>CAD/Tech 8</td>
<td>8 $1,840</td>
<td></td>
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<tr>
<td>5 Fee in Lieu of Detention</td>
<td>Admin 24</td>
<td>24 $5,520</td>
<td></td>
</tr>
<tr>
<td>6 Storm. Man. Fund (fee in lieu of WQ)</td>
<td>24</td>
<td>24 $5,520</td>
<td></td>
</tr>
<tr>
<td>7 Project Management</td>
<td>Admin 48</td>
<td>48 $11,040</td>
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<tr>
<td>approximate billing rate</td>
<td>Tech. Adv. $230 PM $170 Engineer $140 CAD/Tech $110 Admin $80</td>
<td>136 $31,280</td>
<td></td>
</tr>
</tbody>
</table>

B EXPENSES (e.g. mileage, reprographics, etc.) $350

C SUBCONSULTANTS $-

TOTAL: $31,630
This budget is estimated based on a schedule duration of approximately 16 weeks. If additional services are added to the contract (e.g. 2D modeling of Purgatory, etc.) and/or the schedule is delayed, additional budget will be required.

**SCHEDULE**

RPS will provide LAN with the final schedule upon receipt of the notice to proceed from the City and expand the schedule as necessary to identify anticipated meetings and specific deliverables. RPS and LAN will also work together to identify ‘internal’ deadlines and milestones so that the RPS, LAN and Halff team can meet the schedule required under the contract with the City.

Thank you for the opportunity to be part of the RPS team. Let me know if you have any questions. This work will be authorized as a work order under RPS’ and LAN’s master service agreement dated November 22, 2016, by counter-signing in the space provided below.

Sincerely,

[Signature]

Brian K. Reis, PE, CFM
Infrastructure Manager - Central Texas

---

Authorized signature

[Signature]

Date
Receipt of the Planning and Zoning Commission's recommended 10 Year Capital Improvement Plan for FY2018-2027

Meeting date: May 2, 2017

Department: Eng/CIP

Funds Required: N/A

Account Number:

Funds Available:

Account Name:

CITY COUNCIL GOAL:
Goal #5: Maintain and improve City's infrastructure

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

LUG105 - Align infrastructure plans to achieve preferred scenario.

BACKGROUND:
This item is the City Council receipt of the 2018-2027 Recommended Capital Improvement Program from the Planning and Zoning Commission.

The 10-year CIP was presented to the Commission on March 28th. Presentations and public hearings were held on April 11th and 25th. At the April 25th meeting the Commission unanimously voted to recommend the CIP as presented by staff with the following amendments:

- Move Project #415 - Reconstruction of Downtown Alleys from 2020 to 2018
- Move Project #358 - Downtown Smartcode Water Quality Plan Improvements from 2019 to 2018
- Replace Project #656 - Spray Pads East side/West Side beginning in 2019 with Project #221 - Swimming Pool Complex East Side which is currently identified outside of the 10-yr planning period. The recommendation is that a City swim complex for competitions is not currently available and is beneficial and necessary for youth activities and the community overall.

A more detailed review of the CIP will be held with the City Council at a future budget workshop.
AGENDA CAPTION:
7:00PM Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2017-27, creating four Downtown Employee Permit Parking Areas under section 82.190 of the San Marcos City Code allowing parking by permit only From 8:00 am to 5:00 pm, Monday through Friday, on certain portions of Moon Street, South Edward Gary Street, Comal Street, Centre Street, and Pat Garrison Street; amending the Traffic Register to reflect such parking areas; and providing for an effective date; **and consider approval of Ordinance 2017-27, on the first of two readings.**

Meeting date: May 2, 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:

COMPREHENSIVE PLAN ELEMENT(s):

BACKGROUND:
A separate Ordinance on this agenda establishes an “Employee parking program for downtown businesses,” under which peripheral on-street spaces with low parking demand, may be designated by the City Council as areas for “Employee Parking by Permit Only,” and downtown business owners may apply to purchase parking permits for themselves or their employees.

This Ordinance establishes four initial, “Employee Parking by Permit Only” areas at the periphery of downtown. The attached exhibits define the four permit areas and number of parking spaces in each area to be designated for “Employee Parking by Permit Only.”

Area A: Moon Street - 19 parking spaces
Area B: South Edward Gary Street and Comal Street - 52 parking spaces
Area C: Centre Street - 28 parking spaces
Area D: Pat Garrison Street - 12 parking spaces  
Total: 111 parking spaces designated “Employee Parking by Permit Only”

The proposed permit program differs from the existing Residential parking permit program in that all permits are to be linked to individual vehicle license plates, rather than a physical permit or window decal that is displayed on the vehicle. This reflects changes to the City’s current method of parking enforcement (implementation of Mobile License Plate Recognition) currently underway. Immediate implementation of the proposed “Employee parking program for downtown businesses” using the “pay-and-display” enforcement method currently in use for the residential program, would create a strain on available parking enforcement staff resources.

Pending approval of the ordinance establishing the “Employee parking program for downtown businesses” staff recommends approval of this ordinance on First reading and further recommends postponement of Second reading until such time as enhanced parking enforcement using Mobile License Plate Recognition has been implemented.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CREATING FOUR DOWNTOWN EMPLOYEE PERMIT PARKING AREAS UNDER SECTION 82.190 OF THE SAN MARCOS CITY CODE ALLOWING PARKING BY PERMIT ONLY FROM 8:00 AM TO 5:00 PM, MONDAY THROUGH FRIDAY, ON CERTAIN PORTIONS OF MOON STREET, SOUTH EDWARD GARY STREET, COMAL STREET, CENTRE STREET, AND PAT GARRISON STREET; AMENDING THE TRAFFIC REGISTER TO REFLECT SUCH PARKING AREAS; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS:

1. Section 82.190 of the San Marcos City Code authorizes the creation of Downtown Employee Only Parking by Permit Areas.

2. A public hearing as required by Section 82.190(c) of the San Marcos City Code was held on May 2, 2017.

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

SECTION 1. The recitals stated above are hereby found to be true and correct legislative and factual findings of the City Council of the City of San Marcos, and are hereby approved and incorporated into the body of this ordinance.

SECTION 2. The City Council hereby approves the creation of four Downtown Employee Permit Parking Areas as depicted in Exhibit “A” to include portions of Moon Street, South Edward Gary Street, Comal Street, Centre Street, and Pat Garrison Street.

SECTION 3. No parking shall be allowed in the Downtown Employee Permit Parking Areas established in Section1 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, without a valid permit issued pursuant to Section 82.190 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 May 2, 2017.

PASSED, APPROVED AND ADOPTED on May 16, 2017.
John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney
EXHIBIT A
Maps of Employee Permit Parking Areas
(next four pages)
Area A: Moon St.

- Existing Parking Spaces: 9
- New Parking Spaces: 10
- Total Parking Spaces: 19
Existing Parking Spaces: 13
New Parking Spaces: 39
Total Parking Spaces: 52
Area C: Centre St.

Existing Parking Spaces: 27
New Parking Spaces: 1

Total Parking Spaces: 28
Area D: Pat Garrison St.

Total Parking Spaces: 12

- Existing Parking Spaces: 0
- New Parking Spaces: 12
AGENDA CAPTION:
Consider approval of Ordinance 2017-22, on the first of two readings, authorizing the installation of speed cushions in both directions in the 500 through 600 blocks of Candlelight Lane (from Del Sol Drive to Broadway Street); and including procedural provisions.

Meeting date: May 2, 2017 - 1st Reading
May 16, 2017 - 2nd Reading

Department: Public Services - Transportation Division

Funds Required: $3,000
Account Number: 10006147.53091
Funds Available: $11,760
Account Name: Traffic Pavement Marking

CITY COUNCIL GOAL: Beautify and Enhance the Quality of Place

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

BACKGROUND:

Pursuant to Section 82.066 of the City Code, all regulatory signs where the authority to install is not specifically delegated to the traffic engineer requires approval from City Council.

Candlelight Lane is a two-way residential street with on street parking from Del Sol Drive to Broadway Street. Local residents submitted a petition for installing speed cushions on Candlelight Lane from Del Sol Drive to Broadway Street. The petition included 16 addresses supporting the installation and 4 addresses without a response.

The current speed limit on Candlelight is 25 mph. In the past 3 years, no accidents have been reported on Candlelight Lane. Based on a traffic study conducted in April 2016, the eighty-five percentile traffic speed on Candlelight Lane is 28.3 mph on weekdays and 27.6 mph on weekend. The 85th-percentile speeds on Candlelight are less than the Transportation Division warranted speed of \( \geq 5 \) mph over the speed limit.
The approximate cost for installation is $3,000.
ORDINANCE NO. ____________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING THE INSTALLATION OF SPEED CUSHIONS IN BOTH DIRECTIONS IN THE 500 THROUGH 600 BLOCKS OF CANDLELIGHT LANE (FROM DEL SOL DRIVE TO PATRICIA DRIVE); AND INCLUDING PROCEDURAL PROVISIONS.

RECITALS:

1. Candlelight Lane is a two-way residential street. A traffic study indicates that the 85th percentile speed in the 500 to 600 blocks of Candlelight Lane is 28.3 miles per hour on weekdays and 27.6 miles per hour on weekends, both of which are in excess of the posted speed limit of 25 miles per hour.

2. Such traffic conditions are not safe for residents and residents have petitioned the City to install speed cushions on said blocks of Candlelight Lane.

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

SECTION 1. The Recitals are hereby found to be true and correct and are adopted as the findings of the City Council.

SECTION 2. Pursuant to Section 82.066 of the San Marcos Code, on the basis of such findings, the City Council hereby authorizes the installation of speed cushions in the 500 to 600 blocks of Candlelight Lane (from Del Sol Drive to Patricia Drive).

SECTION 3. The installation of signs providing notice of the presence of the speed cushions is also hereby authorized.

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 effective upon its adoption on second reading.

PASSED AND APPROVED on first reading on May 2, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 16, 2017.
John Thomaides
Mayor

Attest:         Approved:

Jamie Lee Case       Michael Cosentino
City Clerk          City Attorney
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

TRAFFIC CALMING SURVEY

The City of San Marcos has received a request to install speed humps or rumble strips 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:) Candieight Ln (e.g. N. LBJ Drive)
Block No.(s) (for Restriction:) __________________________ (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: speed humps (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 Speed Humps (check one)</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hope Rodriguez</td>
<td>Retired</td>
<td>513 Candieight Ln</td>
<td>(512) 578-1593</td>
<td>No</td>
<td>Signature</td>
</tr>
<tr>
<td>Delia S. Lucio</td>
<td>Retired</td>
<td>514 Candieight Lane</td>
<td>(512) 738-6613</td>
<td>Yes</td>
<td>Signature</td>
</tr>
<tr>
<td>Estella Enriquez</td>
<td>Retired</td>
<td>514 Candieight Lane</td>
<td>(512) 353-0349</td>
<td>Yes</td>
<td>Signature</td>
</tr>
<tr>
<td>Ana Moreno</td>
<td>Retired</td>
<td>517 Candieight Lane</td>
<td>(512) 858-8303</td>
<td>Yes</td>
<td>Signature</td>
</tr>
<tr>
<td>Bernice Gonzalez</td>
<td>Retired</td>
<td>514 Candieight Lane</td>
<td>(512) 463-958</td>
<td>Yes</td>
<td>Signature</td>
</tr>
<tr>
<td>Andy Pettite</td>
<td>Retired</td>
<td>513 Candieight Lane</td>
<td>(512) 353-578</td>
<td>No</td>
<td>Signature</td>
</tr>
<tr>
<td>Jose A. Lucio</td>
<td>Retired</td>
<td>516 Candieight</td>
<td>(512) 738-6613</td>
<td>No</td>
<td>Signature</td>
</tr>
</tbody>
</table>

Community Contact: __________________________ Address: __________________________
Phone: __________________________

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

The City of San Marcos has received a request to install speed humps or rumble strips 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): Candlelight Ln
(e.g. N. LBJ Drive)
Block No.(s) (for Restriction): (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: speed humps
(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 Speed Humps (check one)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ricky Sanchez</td>
<td>Resident</td>
<td>521 Candlelight Lane</td>
<td>512-353-8416</td>
<td>YES</td>
</tr>
<tr>
<td>Gabriela Arredondo</td>
<td>Resident/Retired</td>
<td>512 Candlelight Lane</td>
<td>512-353-0416</td>
<td>YES</td>
</tr>
<tr>
<td>Delinda Horando</td>
<td>Resident</td>
<td>512 Candlelight Lane</td>
<td>512-353-0416</td>
<td>YES</td>
</tr>
<tr>
<td>Hope Weidman</td>
<td>Resident</td>
<td>513 Candlelight Lane</td>
<td>512-353-1375</td>
<td>YES</td>
</tr>
<tr>
<td>Ram Gonzalez</td>
<td>Resident</td>
<td>498 Candlelight Lane</td>
<td>512-353-6085</td>
<td>YES</td>
</tr>
<tr>
<td>Margie Hernandez</td>
<td>Resident</td>
<td>507 Candlelight Lane</td>
<td>512-353-3241</td>
<td>YES</td>
</tr>
<tr>
<td>Luis Hernandez</td>
<td>Resident</td>
<td>506 Candlelight Lane</td>
<td>512-353-0481</td>
<td>YES</td>
</tr>
</tbody>
</table>

Community Contact:
Address:
Phone:

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

The City of San Marcos has received a request to install speed humps or rumble strips 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): Candlelight Ln
Block No.(s) (for Restriction): (e.g. 500 block, 100 – 300 block, etc.)
Suggested Traffic Calming Measure: speed humps (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</th>
<th>NO</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Rodriguez</td>
<td>Resident</td>
<td>501 Candlelight Lane</td>
<td>512-346-3425</td>
<td>YES</td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>Graciela Rosas</td>
<td>Resident</td>
<td>503 Candlelight Lane</td>
<td>512-396-5330</td>
<td></td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Signature]</td>
<td>Resident</td>
<td>508 Candlelight Lane</td>
<td>512-557-2611</td>
<td>YES</td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Signature]</td>
<td>Resident</td>
<td>515 Candlelight Lane</td>
<td>512-393-1153</td>
<td>NO</td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Signature]</td>
<td>Resident</td>
<td>519 Candlelight Lane</td>
<td>512-397-6789</td>
<td>YES</td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Signature]</td>
<td>Resident</td>
<td>521 Candlelight Lane</td>
<td>512-397-0417</td>
<td>YES</td>
<td></td>
<td>[Signature]</td>
</tr>
<tr>
<td>Richard Garcia</td>
<td>Resident</td>
<td>602 Candlelight Lane</td>
<td>512-393-4838</td>
<td>YES</td>
<td></td>
<td>[Signature]</td>
</tr>
</tbody>
</table>

Community Contact: [Name]
Address: [Address]
Phone: [Phone]

Please Return to: Cristoval Gonzalez, Engineering Tech III
City of San Marcos, Public Services – Transportation
512-393-6135
Property supports the petition
Property has no response to the petition
File #: Ord. 2017-23, Version: 1

AGENDA CAPTION:
Consider approval of Ordinance 2017-23, on first and final reading as allowed by Section 1201.028 of the Texas Government Code, authorizing the issuance and sale of City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, series 2017a in the amount of $4,760,000; providing for the security for and payment of said bonds; prescribing the form of said bonds; awarding the sale thereof; approving the Private Placement Memorandum; enacting other provisions relating to the subject.

Meeting date: May 2, 2017

Department: Finance & Eng/CIP

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

CITY COUNCIL GOAL: Goal #5: Maintain and improve City’s infrastructure.

COMPREHENSIVE PLAN ELEMENT(s):
ERPG2O4 - Model Sustainable practices in infrastructure, operations, and facilities in City projects.
ERPG3O5 - Develop reclaimed water infrastructure plan for activity nodes.

BACKGROUND:
In September 2016 the City Council approved a resolution for the filing of an application with the Texas Water Development Board (TWDB) seeking financial assistance for the Water Reuse Expansion Project. In January the TWDB approved financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund through the purchase of $4,4760,000 of City of San Marcos water and wastewater revenue bonds and $625,839 in principal forgiveness.

This action approves the issuance of $4,760,000 in bonds to the TWDB.
ORDINANCE NO. 2017-__

ORDINANCE
AUTHORIZING THE ISSUANCE OF

$4,760,000
CITY OF SAN MARCOS, TEXAS
WATERWORKS AND WASTE WATER SYSTEM REVENUE BONDS
SERIES 2017A

Adopted on May 2, 2017
ORDINANCE NO. 2017-____
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AUTHORIZING THE ISSUANCE AND SALE OF CITY OF SAN MARCOS, TEXAS, WATERWORKS AND WASTE WATER SYSTEM REVENUE BONDS, SERIES 2017A; PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID BONDS; PRESCRIBING THE FORM OF SAID BONDS; AWARDING THE SALE THEREOF; APPROVING THE PRIVATE PLACEMENT MEMORANDUM; ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, Tex. Gov't Code Ann. ch. 1502 provides that the governing body of a municipality may issue public securities for the purposes hereinafter provided, and the City Council (the "City Council") of the City of San Marcos, Texas (the "City") finds and determines that it is necessary, useful and appropriate for the City's public purposes to authorize and provide for the issuance and sale of revenue bonds of the City for such purposes, as hereinafter provided; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Ordinance has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Ordinance, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. ch. 551; Now, Therefore

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

ARTICLE I
DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance the following terms shall have the meanings specified below:

"Additional Parity Obligations" means those obligations the City reserves the right to issue on a parity with the Bonds, herein authorized in accordance with the terms and conditions prescribed in Section 9.01 hereof.

"Bond" means any of the Bonds.

"Bonds" means the City's bonds entitled "City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2017A" authorized to be issued by Section 3.01 of this Ordinance.

"Closing Date" means the date of the initial delivery of and payment for the Bonds.
"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions relating thereto.

"Defeasance Securities" means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the City adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations under applicable Texas law that may be used to defease obligations such as the Bonds.

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named herein, its office in Houston, Texas, and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"Escrow Agent" means Regions Bank.

"Escrow Agreement" means the agreement authorized by Article V of this Ordinance.

"Escrow Fund" means the fund referred to in Article VIII of this Ordinance and established by the Escrow Agreement to hold cash and securities for the payment of principal of and interest on the Refunded Bonds.

"Event of Default" means any Event of Default as defined in Section 11.01 of this Ordinance.

"Federal Securities" as used herein means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

"Fiscal Year" means twelve months' period beginning October 1 of each year and ending September 30 of the succeeding year.

"Initial Bond" means the Bond described in Section 3.04(d) and 6.02(d).
"Interest and Sinking Fund" means the interest and sinking fund provided by Section 8.01(b) of this Ordinance.

"Interest Payment Date" means the date or dates upon which interest on the Bonds is scheduled to be paid until the maturity of the Bonds, such dates being __________ and __________ of each year commencing ____________, 20__. 

"MSRB" means the Municipal Securities Rulemaking Board.

"Net Revenues" means the gross revenues of the System less the expense of operation and maintenance, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, provided, however, that only such repairs and extensions as in the judgment of the City Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any special obligations payable from and secured by a lien on the net revenues of the System shall be deducted in determining "Net Revenues".

"Ordinance" means this Ordinance.

"Original Issue Date" means the date of the Bonds designated in Section 3.02(a) of this Ordinance.

"Owner" means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

"Parity Revenue Obligations" means the Previously Issued Parity Obligations, the Bonds and Additional Parity Obligations.

"Paying Agent/Registrar" means Regions Bank, any successor thereto or an entity which is appointed as and assumes the duties of paying agent/registrar as provided in this Ordinance.

"Previously Issued Parity Obligations" means the outstanding bonds of the following issues:

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2006;

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Taxable Series 2006A;

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2007; and


"Purchaser" means the Texas Water Development Board (the "TWDB") initially purchasing the Bonds from the City.

"Record Date" means the last business day of the month next preceding an Interest Payment Date.

"Register" means the Register specified in Section 3.06(a) of this Ordinance.

"Reserve Fund" means the reserve fund provided by Section 8.01(c) of this Ordinance.

"Revenue Fund" means the revenue fund provided by Section 8.01(a) of this Ordinance.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"Special Payment Date" means the Special Payment Date prescribed by Section 3.03(b) of this Ordinance.

"System" means the City's combined waterworks and sewer (waste water) system, including all present and future extensions, enlargements, additions, replacements and improvements thereto.

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Bonds as the same become due and payable or money set aside for the payment of Bonds duly called for redemption prior to maturity, and remaining unclaimed for 90 days after the applicable payment or redemption date.

Section 1.02. Other Definitions.

The terms "City Council" and "City" shall have the respective meanings assigned in the preamble to this Ordinance.

Section 1.03. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.
Section 1.04. **Table of Contents, Titles and Headings.**

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.05. **Interpretation.**

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

**ARTICLE II**

**SECURITY FOR THE BONDS**

Section 2.01. **Pledge of Revenues for Payment of the Bonds.**

The Net Revenues (with the exception of those in excess of the amounts required to establish and maintain the Funds as hereinafter provided) are hereby irrevocably pledged for the payment of the principal of and interest on the Parity Revenue Obligations, including the establishment and maintenance of the Reserve Fund hereinafter provided.

Section 2.02. **Special Obligations.**

The Bonds are special obligations of the City payable from the Net Revenues, and the Holders thereof not entitled to demand payment thereof out of any money raised by taxation.

Section 2.03. **Perfection of Security Interest.**

Chapter 1208, Government Code applies to the issuance of the Bonds and the pledge of the revenues granted by the City under Section 2.01 of this Ordinance, and such pledge, therefore, is valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the revenues granted by the City under Section 2.01 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business and Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable
provisions of Chapter 9, Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01. Authorization.

The City's bonds to be designated "City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2017A," are hereby authorized to be issued and delivered in accordance with the laws of the State of Texas in the aggregate principal amount of $4,760,000 for the purpose of (i) acquiring, constructing and installing additions, improvements and extensions to the City's waterworks and waste water system and (ii) paying costs of issuance for the Bonds.

Section 3.02. Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall have the Original Issue Date of __________, 2017, shall be in fully registered form, without coupons, in the denomination of $5,000 or any integral multiple thereof, and shall be numbered separately from one upward or such other designation acceptable to the City and the Paying Agent/Registrar.

(b) The Bonds shall mature on __________ in the years and in the principal amounts and interest rates set forth below, interest on each Bond accruing from the Original Issue Date or the most recent Interest Payment Date to which interest has been paid or provided for at the per annum rates of interest, payable semiannually on __________ and __________ of each year until the principal amount shall have been paid or provision for such payment shall have been made, commencing ___________, 20__, as follows:

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Section 3.03. **Medium, Method and Place of Payment.**

(a) The principal of, premium, if any, and interest on the Bonds shall be paid in lawful money of the United States of America as provided in this Section.

(b) Interest on the Bonds shall be payable to the Owners whose names appear in the Register at the close of business on the Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date", which shall be at least 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

(c) Interest on the Bonds shall be paid by check (dated as of the Interest Payment Date) and sent by the Paying Agent/Registrar to the person entitled to such payment by United States mail, first class postage prepaid, to the address of such person as it appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expenses of such other customary banking arrangements. The foregoing notwithstanding, so long as TWDB is the registered owner of 100% in aggregate principal amount of the bonds then outstanding, payment of principal and interest on the Bonds shall be made thereto by wire transfer, at no expense to the TWDB.

(d) The principal of each Bond shall be paid to the person in whose name such Bond is registered on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office.

(e) If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.
(f) Subject to Title 6, Texas Property Code, as amended, Unclaimed Payments remaining unclaimed for three years after the applicable payment or redemption date shall be paid by the Paying Agent/Registrar to the City, to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat, abandoned property, or similar law.

Section 3.04. Execution and Initial Registration.

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Clerk of the City, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided in this Ordinance, duly authenticated by manual execution of the Paying Agent/Registrar. It shall not be required that the same authorized representative of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered on the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided in this Ordinance, manually executed by the Comptroller of Public Accounts of the State of Texas or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Closing Date, one Initial Bond representing the entire principal amount of the Bonds, payable in stated installments to the TWDB or its designee, executed by manual or facsimile signature of the Mayor and City Clerk of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC on behalf of the TWDB, one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all of the Bonds for such maturity, registered in the name of Cede & Co., as
nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC’s FAST System, as evidenced by agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof and premium, if any, thereon, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that interest is to be paid to the person in whose name the Bond is registered on the Record Date), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the person deemed to be the Owner of any Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) Registration of any Bond may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the Bonds, or any portion thereof in any integral multiple of $5,000, to the assignee or assigns thereof, and the right of such assignee or assignees thereof to have the Bond or any portion thereof registered in the name of such assignee or assignees. No transfer of any Bond shall be effective until entered in the Register. Upon assignment and transfer of any Bond or portion thereof, a new Bond or Bonds will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned Bond. To the extent possible the Paying Agent/Registrar will issue such new Bond or Bonds in not more than three business days after receipt of the Bond to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Bond may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office, together with a written request therefor duly executed by the registered owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the
Paying Agent/Registrar, for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. If a portion of any Bond is redeemed prior to its scheduled maturity as provided herein, a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in the denomination or denominations of any integral multiple of $5,000 at the request of the registered owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon surrender thereof for cancellation. To the extent possible, a new Bond or Bonds shall be delivered by the Paying Agent/Registrar to the registered owner of the Bond or Bonds in not more than three business days after receipt of the Bond to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Bond issued in exchange for any Bond or portion thereof assigned, transferred or converted shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall convert and exchange the Bonds as provided herein, and each substitute Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such substitute Bond is delivered.

(e) The City will pay the Paying Agent/Registrar’s reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of Bonds, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a Bond. In addition, the City hereby covenants with the Owners of the Bonds that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on the Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of Bonds as provided herein.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a Bond.
Section 3.07. Cancellation and Authentication.

(a) All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such Bonds.

(b) Each substitute Bond issued pursuant to the provisions of Sections 3.06 and 3.09 of this Ordinance, in conversion of and exchange for or replacement of any Bond or Bonds issued under this Ordinance, shall have printed thereon a Paying Agent/Registrar's Authentication Certificate, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, manually sign and date such Certificate, and no such Bond shall be deemed to be issued or outstanding unless such Certificate is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein, and said Bonds shall be of customary type and composition and be printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Tex. Gov't Ann. ch. 1201, as amended, and particularly subchapter D thereof, the duty of conversion and exchange or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Paying Agent/Registrar's Authentication Certificate, the converted and exchanged or replaced Bonds shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial Bond which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) Bonds issued in conversion and exchange or replacement of any other Bond or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) shall be payable as to principal and interest, all as provided, and in the manner required or indicated, in the Form of Bonds set forth in this Ordinance.
Section 3.08. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar, at the Designated Payment/Transfer Office, of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected herewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond.
(e) Each replacement Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.09. Book-Entry-Only System.

(a) The definitive Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered Owner at the close of business on the Record Date, the term "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.
(c) The previous execution and delivery of the Blanket Letter of Representation with respect to obligations of the City is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Bonds.

Section 3.10. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the City determines to discontinue the book-entry-only system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bonds, and only after providing notice of such action to the TWDB so long as it is holder of any Bonds, the City shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository, and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Security Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.11. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE IV
REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional and Mandatory Redemption.

The Bonds maturing on and after August 15, 2028, before their respective scheduled maturity in whole or from time to time in part in integral multiples of $5,000, on August 15, 2027, or on any date thereafter, in inverse order of maturity and at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the redemption date. If
less than all of the Bonds are to be redeemed, the City shall determine the amounts thereof to be
redeemed and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof
within such maturity or maturities and in such amounts, for redemption.

ARTICLE V

PAYING AGENT/REGISTRAR AGREEMENT AND ESCROW AGREEMENT

Section 5.01. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints Regions Bank, as its registrar and transfer agent to keep
such books or records and make such transfers and registrations under such reasonable
regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying
Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the
duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the
address of such Owner of each Bond to which payments with respect to the Bonds shall be
mailed, as provided herein. The City or its designee shall have the right to inspect the Register
during regular business hours of the Paying Agent/Registrar, but otherwise the Paying
Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by
law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying
agent for paying the principal of and interest on the Bonds. The Paying Agent/Registrar shall
keep proper records of all payments made by the City and the Paying Agent/Registrar with
respect to the Bonds, and of all conversions, exchanges and replacements of such Bonds, as
provided in this Ordinance.

(c) The Paying Agent/Registrar Agreement by and between the City and the Paying
Agent/Registrar is hereby approved and the Director of Finance is hereby authorized to
complete, amend, modify, execute, and deliver such Paying Agent/Registrar Agreement, as
necessary.

(d) The Escrow Agreement by and between the City and Regions Bank, as Escrow
Agent (the "Escrow Agreement") is hereby approved, and the Director of Finance is hereby
authorized to complete, amend, modify and execute the Escrow Agreement, as necessary. The
Bonds have been purchased by the TWDB pursuant to its Resolution No. 17-010, adopted on
January 26, 2017 (the "TWDB Resolution"), which provides that the Bonds are being purchased
pursuant to the pre-design commitment option from the Clean Water State Revolving Fund and
that in accordance therewith the Executive Administrator of the TWDB will purchase the Bonds
on an installment basis with the proceeds of each such installment delivery to be deposited into
the Bond Proceeds Account. Such installments shall be delivered in accordance with the terms
of the Escrow Agreement. So long as a portion of the Bonds are held by the TWDB, the Bond
Proceeds Account shall be held at a designated state depository institution or other properly
chartered and authorized institution in accordance with the Public Funds Investment Act,
Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257, or other applicable law that may be enacted during the life of the Bonds.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be (i) a commercial bank, trust company, or other entity duly qualified and legally authorized under applicable law, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a single entity.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated a certified copy of a resolution of the City (i) giving notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class postage prepaid, at the address in the Register, stating the effective date of the change and the name of the replacement Paying Agent/Registrar and the mailing address of its Designated Payment/Transfer Office.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby.
Section 5.07. **Delivery of Records to Successor.**

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

**ARTICLE VI**

**FORM OF THE BONDS**

Section 6.01. **Form Generally.**

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The Bonds shall be printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

Section 6.02. **Form of Bonds.**

The form of Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) [Form of Bond]

REGISTERED

No. _____

$_______
CITY OF SAN MARCOS, TEXAS  
WATERWORKS AND WASTE WATER SYSTEM REVENUE BOND  
SERIES 2017A

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>Original Issue Date</th>
<th>CUSIP Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>__________, 2017</td>
<td></td>
</tr>
</tbody>
</table>

The City of San Marcos (the "City") in the County of Hays, State of Texas, for value received, hereby promises to pay to

_______________________________________________

or registered assigns, on the Maturity Date specified above, the sum of

______________________________________________ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Original Issue Date specified above or the most recent interest payment date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on __________ and __________ of each year, commencing __________, 20___. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the City and the securities depository.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the office in Houston, Texas (the "Designated Payment/Transfer Office"), of the Paying Agent/Registrar executing the registration certificate appearing hereon, or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the person to whom interest is to be paid. The foregoing notwithstanding, so long as the TWDB is the registered owner of 100% in aggregate principal amount of the Bonds then outstanding, payment of principal and interest on the Bonds shall be made thereto by wire transfer, at no expense to the TWDB. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the last business day of the month next preceding such interest payment date;

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provided, however, that in the event of nonpayment of interest on a scheduled interest payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day preceding the date of mailing such notice.

During any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of $4,760,000 (herein referred to as the "Bonds"), issued pursuant to a certain Ordinance of the City Council of the City (the "Ordinance") for the purpose of (i) acquiring, constructing and installing additions, improvements and extensions to the City's waterworks and waste water system and (ii) paying costs of issuance for the Bonds.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Bond Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

This Bond and all the Bonds of the series of which it is a part constitute special obligations of the City of San Marcos, Texas, and, together with certain Previously Issued Parity
Obligations defined and described in the Ordinance, are payable as to both principal and interest from and equally secured by a first and prior lien on and pledge of the Net Revenues of the City's combined Waterworks and Waste Water System. Reference is hereby made to the Ordinance for a more complete statement of the covenants and provisions securing the payment of this Bond and the series of which it is one.

Whenever the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

The City expressly reserves the right to issue further and additional special revenue obligations equally secured by a lien on and pledge of the net revenues of the City's combined Waterworks and Waste Water System on a parity with the bonds of this issue; provided, however, that any and all such additional parity obligations may be issued only in accordance with and subject to the covenants, conditions, limitations and restrictions relating thereto which are set out and contained in the Ordinance, to which reference is hereby made for more complete and full particulars.

The holders of the Bonds are not entitled to demand payment thereof out of any money raised by taxation.

The Bonds are not subject to optional redemption prior to maturity.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.
IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, this Bond has been duly executed on behalf of the City, under its official seal, in accordance with law.

____________________________________  ____________________________________
City Clerk  Mayor
City of San Marcos, Texas  City of San Marcos, Texas
[CITY SEAL]

(b)  [Form of Certificate of Paying Agent/Registrar]

CERTIFICATE OF PAYING AGENT/REGISTRAR

This is one of the Bonds referred to in the within mentioned Ordinance. The series of Bonds of which this Bond is a part was originally issued as one Initial Bond which was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

REGIONS BANK, Houston, Texas,
as Paying Agent/Registrar

Dated: _____________________

By:____________________________________
Authorized Signatory

(c)  [Form of Assignment]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto (print or typewrite name, address and zip code of transferee):

______________________________________________________________ (Social
Security or other identifying number:__________________________) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints
to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated:______________

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed by members of the New York Stock Exchange or a commercial bank or trust company.

Signature Guaranteed By:

________________________________________
Authorized Signatory

(d) Initial Bond Insertions.

(i) The Initial Bond shall be in the form set forth in paragraph (a) of this Section, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As Shown Below" and "CUSIP NO. _________" deleted;

B. in the first paragraph:

the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on ____________ in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<table>
<thead>
<tr>
<th>Years</th>
<th>Principal Instillments</th>
<th>Interest Rates</th>
</tr>
</thead>
</table>

(Information to be inserted from Section 3.02(b) hereof.)
C. In the second paragraph of the Initial Bond, "initial" shall be inserted before "Paying Agent/Registrar" in the first sentence, "executing the registration certificate appearing hereon," shall be deleted and an additional sentence shall be added to the paragraph as follows: "The initial Paying Agent/Registrar is Regions Bank.";

D. the Initial Bond shall be numbered R-1.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond in lieu of the Certificate of Paying Agent/Registrar:

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF PUBLIC ACCOUNTS
THE STATE OF TEXAS
I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this ____________________.

____________________________________
[SEAL]   Comptroller of Public Accounts
of the State of Texas

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.
Section 6.04. Municipal Bond Insurance.

In the event that municipal bond guaranty insurance shall be obtained with respect to the Bonds, the Bonds, including the Initial Bond, may bear an appropriate legend, as provided by such insurer.

ARTICLE VII

SALE OF THE BONDS; CONTROL AND DELIVERY OF THE BONDS

Section 7.01. Sale of Bonds.

(a) To achieve the lowest borrowing costs for the projects set forth in Section 3.01 of this Ordinance, the Bonds shall be sold to the TWDB. The TWDB will receive at or prior to closing, an origination fee of 1.85% of the aggregate initial amount of Bonds sold, calculated pursuant to 31 Texas Administrative Code Chapter 375.

(b) All officers of the City are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds.

Section 7.02. Control and Delivery of Bonds.

(a) The Mayor of the City is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor of the City, against receipt by the City of all amounts due to the City under the terms of sale.

ARTICLE VIII

FUNDS AND ACCOUNTS, INITIAL DEPOSITS AND APPLICATION OF MONEY

Section 8.01. Fund Designations.

The City hereby covenants and agrees that all revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end the City hereby confirms its previous creation and establishment of the following special Funds pursuant to the ordinances authorizing the issuance of the Previously Issued Parity Obligations, to-wit:
(a) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Fund (the "Revenue Fund"). This Fund shall be kept in the City's official depository bank.

(b) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Interest and Sinking Fund (the "Interest and Sinking Fund"). This Fund shall be kept at an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and interest on the Parity Revenue Obligations when and as the same shall become due and payable.

(c) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Reserve Fund (the "Reserve Fund"). This Fund shall be kept at an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and/or interest on the Parity Revenue Obligations falling due at any time when there is not sufficient money available in the Interest and Sinking Fund.

(d) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Escrow Fund (the "Escrow Fund"). This Fund shall be kept at an official depository bank of the City.

The special Funds herein provided shall continue to be maintained at all times while any of the Parity Revenue Obligations remain outstanding.

Section 8.02. Initial Deposits; Construction Fund.

On the Closing Date, the City shall cause the proceeds from the sale of the Bonds to be deposited as follows:

(i) first, all accrued interest on the Bonds from the Original Issue Date until the Closing Date and premium, if any, shall be deposited to the credit of the Interest and Sinking Fund;

(ii) second, the remaining balance, less any amounts paid at Closing as costs of issuance, shall be deposited to the credit of a construction fund or funds.

Section 8.03. Revenue Fund.

All revenues of every nature received through the operation of the System shall be deposited from day to day as collected into the Revenue Fund, to be kept separate and apart from all other City funds and accounts. Moneys deposited in the Revenue Fund shall be pledged and appropriated to the following uses and in the order of precedence shown:

(a) To the payment of all reasonable and proper expenses of operating and maintaining the System as set forth in the definition of "Net Revenues" contained in Section 1.01
hereof.

(b) To the payment, without priority, of all amounts required to be deposited in the Interest and Sinking Fund herein established for the payment of the Parity Revenue Obligations.

(c) To the payment of all amounts required to be deposited in the Reserve Fund pursuant to this Ordinance or any ordinance relating to the issuance of Parity Revenue Obligations.

(d) To any other proper City purpose now or hereafter permitted by law.

Section 8.04. Interest and Sinking Fund.

(a) The City hereby covenants and agrees to make monthly deposits to the Interest and Sinking Fund from moneys in the Revenue Fund to pay the principal of and interest on the Bonds as follows:

   (i) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Sinking Fund and available for such purpose, to pay the interest scheduled to accrue and become due and payable with respect to the Bonds on the next succeeding Interest Payment Date;

   (ii) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, on hand in the Interest and Sinking Fund and available for such purpose, to pay the principal scheduled to mature and come due on the Bonds on the next succeeding Interest Payment Date on which principal of the Bonds is to be payable.

(b) The monthly deposits to the Interest and Sinking Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Interest and Sinking Fund and Reserve Fund is equal to the amount required to pay all outstanding obligations (principal and/or interest) for which said Fund was created and established to pay or (ii) the Bonds are no longer outstanding, i.e., fully paid as to principal and interest or all of the Bonds have been refunded.

(c) Any proceeds of the Bonds not required to complete the improvements and extensions to the System or required to be deposited otherwise by this Ordinance, shall be deposited to the Interest and Sinking Fund. Proceeds of the Bonds so deposited, accrued interest and any other amount or amounts received from the Purchaser of the Bonds and required by this Ordinance to be deposited to the Interest and Sinking Fund, may be taken into consideration and reduce the amount of the monthly deposits hereinabove provided which would otherwise be required to be deposited in the Interest and Sinking Fund from the Net Revenues of the System.
Section 8.05. Reserve Fund.

(a) The City hereby covenants and agrees with the holders of the Bonds that it will provide for the accumulation of, and when accumulated, will thereafter continuously maintain in the Reserve Fund an amount equal to not less than the average annual principal and interest requirements of the Parity Revenue Obligations (calculated on a fiscal year basis as of the date the last series of Parity Revenue Obligations were authorized). Immediately following the delivery of the Bonds, the appropriate City officials shall calculate and determine the average annual principal and interest requirements for the Parity Revenue Obligations then outstanding. After deducting the amount then on deposit in the Reserve Fund from such calculation, the amount of the difference, if any, shall be deposited in the Reserve Fund in sixty (60) substantially equal monthly payments on or before the 10th day of each month; the initial monthly deposit to be made on or before the 10th day of the month next following the month the Bonds are delivered. After the total amount required to be on deposit in the Reserve Fund has been accumulated, monthly payments to said Fund may be terminated; provided, however, should the amount on deposit therein be reduced below the sum required to be maintained in said Fund after the same has been accumulated, payments to said Fund in an amount equal to the deficiency shall be resumed and continued to be made on or before the 10th day of each month until the total amount then required to be on deposit in the Reserve Fund has been fully restored. In the event money in the Reserve Fund is used for an authorized purpose while monthly payments are being made to said Fund, the amount required to restore the sum then required to be on deposit therein shall be added to the payments then being made in the following month or months until the total amount then required to be on deposit in said Fund has been fully restored.

(b) Notwithstanding the requirements of subsection (a) above, and only as and to the extent permitted by law and, so long as TWDB is the registered owner of 100% in aggregate principal amount of the Bonds then outstanding, upon giving written notice to and approval by the Executive Administrator of TWDB, the City may provide a surety policy or policies issued in amounts equal to all or part (as may be specified in the ordinance authorizing any series of Parity Revenue Obligations) of the average annual principal and interest requirements of the Parity Revenue Obligations, in lieu of depositing cash into the Reserve Fund; provided, however, that no such surety policy may be so substituted unless (i) the substitution of the surety policy will not cause any ratings then assigned to the Bonds by either Moody's Investors Service or Standard & Poor's Ratings Group to be lowered and (ii) the City Council finds that the substitution of the surety policy for all or part of the average annual principal and interest requirements of the Parity Revenue Obligations is cost effective. Subject to the terms of the surety policy, the City shall apply the proceeds of the Revenue Fund prorata to (i) the reestablishment of any cash balance required to be maintained in the Reserve Fund and (ii) the payment of subrogation obligations of the City under the terms of a surety policy or surety policies with respect to Parity Obligations.

(c) In the event a surety policy issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to
exceed the average annual principal and interest requirements of all Parity Revenue Obligations, the City, may transfer such excess amount to any fund or funds established for the payment of or security for the Parity Revenue Obligations (including any escrow established for the final payment of any such obligations pursuant to Tex. Gov't Code Ann., ch. 1207) or use such excess amount for any lawful purpose now or hereafter provided by law; provided, however, that except as otherwise may be permitted by applicable law, any portion of such amount constituting proceeds of bonds or other obligations of the City, or taxes, may be used only for purposes for which such proceeds or taxes could have been used lawfully at the time of the deposit thereof into the Reserve Fund.

(d) In the event (a) the issuer of a surety policy becomes insolvent, or (b) the issuer of a surety policy defaults in its payment obligations thereunder, or (c) the claims paying ability of the issuer of the surety policy falls below "AAA" by S&P or "Aaa" by Moody's, the obligation to reimburse the issuer of the surety policy shall be subordinate to the cash replenishment of the Reserve Fund. In the event (a) the rating of the claims paying ability of the issuer of the surety policy falls below "AAA" by S&P or "Aaa" by Moody's, the City shall either (i) deposit into the Reserve Fund, in accordance with this section, an amount sufficient to cause the money or investments on deposit in the Reserve Fund to accumulate to the average annual principal and interest requirements on the Parity Revenue Obligations within thirty-six (36) months, or (ii) replace such instrument with a surety policy, within six (6) months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the Surety policy falls below "A" by S&P or Moody's, or (b) the issuer of the surety policy defaults in its payment obligations hereunder, or (c) the issuer of the surety policy becomes insolvent, the City shall either (i) deposit into the Reserve Fund, in accordance with this section, amounts sufficient to cause the money or investments on deposit in the Reserve Fund to accumulate to the average annual principal and interest requirements on the Parity Revenue Obligations, or (ii) replace such instrument with a surety policy, within six (6) months of such occurrence.

Section 8.06. Escrow Fund.

(a) Money on deposit in the Escrow Fund, including investment earnings thereof, shall be used for the purpose of refunding the Refunded Obligations in accordance with the Escrow Agreement.

(b) Any amounts remaining in the Escrow Fund after the accomplishment of the purposes for which the Bonds are hereby issued, including investment earnings of the Escrow Fund, shall be deposited into the Interest and Sinking Fund.

(c) Regions Bank is hereby designated as the Escrow Agent. The execution and delivery of the Escrow Agreement, specifying the duties and responsibilities of the City and the Escrow Agent, is hereby approved with such changes as may be approved by the Mayor of the City, and the Mayor and City Clerk of the City are hereby authorized to execute such agreement.
Section 8.07.  Deficiencies in Funds.

If in any month the City shall, for any reason, fail to pay into the Interest and Sinking Fund and Reserve Fund the full amounts required, amounts equivalent to such deficiencies shall be set apart and paid into said Funds from the first available and unallocated revenues of the System for the following month or months and such payments shall be in addition to the amounts hereinabove provided to be otherwise paid into said Funds during such month or months.

Section 8.08.  Excess Revenues.

Any revenues in excess of those required to establish and maintain the Funds as above required may be used to purchase and retire Parity Revenue Obligations in the open market at not exceeding the market value thereof, the redemption of such obligations, or for any lawful purpose now or hereafter provided by law.

Section 8.09.  Security of Funds.

All moneys on deposit in the funds referred to in this Ordinance shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

Section 8.10.  Investments.

(a) Money in the Funds established by this Ordinance, shall be held at a designated State depository institution and invested in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and collateralized in accordance with the Public Funds Collateral Act, Government Code, Chapter 2257.

(b) Any securities or obligations in which money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.11.  Investment Income.

Interest and income derived from investment of any fund created by this Ordinance shall be credited to such fund.
ARTICLE IX

ADDITIONAL OBLIGATIONS

Section 9.01. Issuance of Additional Parity Obligations Authorized.

In addition to the right to issue obligations of inferior lien as authorized by the laws of this State, the City reserves the right to issue Additional Parity Obligations which, when duly authorized and issued in compliance with law and the terms and conditions hereinafter appearing, shall be on a parity with the Bonds herein authorized, payable from and equally and ratably secured by a lien on and pledge of the Net Revenues of the System; and the Bonds and Additional Parity Obligations shall in all respects be of equal dignity. The Additional Parity Obligations may be issued in one or more installments, provided, however, that none shall be issued unless and until the following conditions have been met:

(a) The City is not then in default as to any covenant, condition or obligation prescribed in an ordinance authorizing the issuance of the outstanding Parity Revenue Obligations.

(b) The proposed Additional Parity Obligations shall have been approved by the Attorney General of Texas.

(c) Each of the Funds created for the payment, security and benefit of the Parity Revenue Obligations contains the amount of money then required to be on deposit therein.

(d) The City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed Additional Parity Obligations or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed Additional Parity Obligations is adopted, the "net revenues" of the System were equal to at least 1.20 times the combined average annual principal and interest requirements on all Parity Revenue Obligations to be outstanding after the issuance of the proposed Additional Parity Obligations. In making a determination of such net revenues, the Certified Public Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues test, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as being in effect for the entire period covered by the certificate or report. The term "net revenues" as used in this Section 9.01 shall mean the gross revenues of the System after deduction of maintenance and operating expenses, but not deducting depreciation or expenditures which, under standard accounting practices, are classed as capital expenditures.
(e) The Additional Parity Obligations are made to mature on _________ or __________, either or both, of each year in which they are scheduled to mature.

(f) The ordinance authorizing the Additional Parity Obligations provides (i) that the Interest and Sinking Fund be augmented by amounts adequate to accumulate the sum required to pay the principal and interest on such obligations as the same shall become due, and (ii) the amount to be accumulated and maintained in the Reserve Fund, or such amount together with the amount or amounts any surety policy or policies, shall be increased to an amount not less than the average annual principal and interest requirements of all Parity Revenue Obligations to be outstanding after giving effect to the issuance of the proposed additional obligations, and any additional amount required to be maintained in the Reserve Fund shall be accumulated within sixty-one months from the date of delivery of such Additional Parity Obligations.

(g) Parity Revenue Obligations may be refunded (pursuant to any law then available) upon such terms and conditions as the governing body of the City may deem to be in the best interest of the City and its inhabitants; and if less than all such outstanding Parity Revenue Obligations are refunded, the proposed refunding obligations shall be considered as "Additional Parity Obligations" under the provisions of this Section, and the report or certificate required by paragraph (d) shall give effect to the issuance of the proposed refunding obligations and shall not give effect to the obligations being refunded.

ARTICLE X

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 10.01. Rates and Charges.

The City covenants and agrees with the Owners of the Bonds that so long as any Parity Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will charge and collect for services rendered by the System amounts sufficient at all times to:

(a) Pay all operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining Net Revenues;

(b) Establish and maintain the Interest and Sinking Fund and Reserve Fund, including payment of any Policy Costs, as defined in Section 14.02(a), created for the payment and security of the Parity Revenue Obligations; and

(c) Pay the requirements of all other outstanding lawful indebtedness of the System as and when the same becomes due.
Section 10.02. Maintenance and Operation; Insurance.

The City shall maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. So long as any Parity Revenue Obligations are outstanding, the City agrees to maintain insurance for the benefit of the holder or holders of the obligations on the System of a kind and in an amount which usually would be carried by private companies engaged in a similar type of business. Nothing in this ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

Section 10.03. Records; Accounts; Accounting Reports.

The City hereby covenants and agrees that so long as any Parity Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the operation of the System, separate and apart from all other records and accounts, in which complete and correct entries shall be made of all transactions relating thereto, as provided by Tex. Gov't Code Ann. ch. 1502, as amended, and that the owner or owners of any of said Parity Revenue Obligations or any duly authorized agent or agents of such owners shall have the right at all reasonable times to inspect all such records, accounts and data relating thereto, and to inspect the System and all properties comprising same. The City further agrees that within 90 days following the close of each fiscal year, it will cause an audit of such books and accounts to be made in accordance with generally accepted accounting principles by an independent firm of Certified Public Accountants or Licensed Public Accountants. Each such audit, in addition to whatever other matters may be thought proper by the Accountant, shall particularly include the following:

(a) A detailed statement of the income and expenditures of the System for such fiscal year.

(b) A balance sheet as of the end of such fiscal year.

(c) The Accountant's comments regarding the manner in which the City has carried out the requirements of this ordinance and his recommendations for any changes or improvements in the operation, records and accounts of the System.

(d) A list of the insurance policies in force at the end of the fiscal year on the System properties, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.

(e) A list of the securities which have been on deposit as security for the money in the Interest and Sinking Fund throughout the fiscal year, a list of the securities, if any, in which the
Reserve Fund has been invested, and a statement of the manner in which money in the System Fund has been secured in such fiscal year.

(f) The number of properties connected with the System. Expenses incurred in making the audits above referred to are to be regarded as maintenance and operating expenses of the System and paid as such.

Section 10.04. Special Covenants.

The City hereby further covenants as follows:

(a) The City has the lawful power to pledge the net revenues supporting this issue of Bonds and has lawfully exercised said power under the Constitution and laws of the State of Texas, including said power existing under Tex. Gov't Code Ann. ch. 1502; that the Bonds and the Additional Parity Obligations, when issued, shall be ratably secured under said pledge in such manner that one issue of Parity Revenue Obligations shall have no preference over any other issue.

(b) Other than for the pledge made for the payment and security of the Parity Revenue Obligations to be outstanding following issuance of the Bonds and certain obligations of the City secured by and payable from a lien on and pledge of the Net Revenues inferior to those securing payment of the Bonds, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(c) So long as any of the Bonds or any interest thereon remain outstanding, the City will not sell or encumber the System or any substantial part thereof, provided that this shall not be construed to prohibit the sale of such machinery or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System; also, with the exception of the Additional Parity Obligations expressly permitted by this Ordinance to be issued, it will not encumber the net revenues of the System unless such encumbrance is made junior and subordinate to all of the provisions of this Ordinance.

(d) No free service of the System shall be allowed, and should the City or any of its agencies or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of moneys from sources other than the revenues and income of the System.

(e) To the extent that it legally may, the City further covenants and agrees that, as long as any Parity Revenue Obligations, or any interest thereon, are outstanding, no franchise shall be granted for the installation or operation of any competing waterworks or sewer system; and that the City will prohibit the operation of any water system or sewer system other than those owned by the City, and the operation of any such system by anyone other than this City is hereby prohibited.
Section 10.05. Payment of the Bonds.

While any of the Bonds are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay the interest on and the principal of the Bonds, as applicable, as will accrue or mature on each applicable Interest Payment Date.

Section 10.06. Other Representations and Covenants.

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State of Texas to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 10.07. Covenants Regarding Tax Exemption of Interest on the Bonds.

(a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds of the Bonds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;


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(3) to take any action to assure that no amount which is greater than the lesser of $5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without
limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) *Proceeds.* The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds not expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the City Manager or Director of Finance of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds. This Ordinance is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

(d) *Allocation Of, and Limitation On, Expenditures for the Project.* The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Order (the "Project") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) *Disposition of Project.* The City covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless any action taken in connection with such disposition will not
adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the City may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an "Event of Default," to-wit:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Owner to the City.

Section 11.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then and in every case any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.
Section 11.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XII

DISCHARGE AND DEFEASANCE

Section 12.01. Defeasance of Bonds.

(a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the revenues herein pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance
with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the City retains the right under Texas law to later call that Defeased Bond for redemption in accordance with the provisions of this Ordinance, the City may call such Defeased Bond for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

ARTICLE XIII

CONTINUING DISCLOSURE UNDERTAKING

Section 13.01 Annual Reports.

The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of any fiscal year, financial information and operating data with respect to the City of the general type included in the application to the TWDB for
financial assistance. Any financial statements to be so provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "A" hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements within such period, and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB’s internet web site or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

Section 13.02. Event Notices.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, of any of the following events with respect to the Bonds:

A. Principal and interest payment delinquencies;

B. Non-payment related defaults, if material within the meaning of the federal securities laws;

C. Unscheduled draws on debt service reserves reflecting financial difficulties;

D. Unscheduled draws on credit enhancements reflecting financial difficulties;

E. Substitution of credit or liquidity providers, or their failure to perform;

F. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds;

G. Modifications to rights of holders of the Bonds, if material within the
meaning of the federal securities laws;

H. Bond calls, if material within the meaning of the federal securities laws and tender offers;

I. Defeasances;

J. Release, substitution, or sale of property securing repayment of the Bonds, if material within the meaning of the federal securities laws;

K. Rating changes;

L. Bankruptcy, insolvency, receivership or similar event of the City;

M. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material within the meaning of the federal securities laws; and

N. Appointment of a successor or additional trustee or the change of name of a trustee, if material within the meaning of the federal securities laws.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

Section 13.03. Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Article XII of this Ordinance that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete
presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consents to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this
sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the
primary offering of the Bonds.

ARTICLE XIV

AMENDMENTS; FURTHER PROCEDURES; AND SEVERABILITY

Section 14.01. Amendments.

This Ordinance shall not be amended or repealed by the City while any Bond remains
outstanding, except as permitted by this Section. The City, without the consent of or notice to
any Owner, from time to time and at any time, may amend this Ordinance in any manner not
detrimental to the interests of the Owners, including the curing of any ambiguity,
inconsistency, or formal defect or omission herein. In addition, the City, with the written
consent of Owners holding a majority in aggregate principal amount of the Bonds then
outstanding affected thereby, may amend, add to, or rescind any of the provisions of this
Ordinance; provided that, without the consent of all Owners of then outstanding Bonds, no such
amendment, addition, or recission shall (i) extend the time or times of payment of the principal
of and interest on the Bonds, reduce the principal amount thereof, redemption price therefor,
or the rate of interest thereon, or in any other way modify the terms of payment of the principal of
or interest on the Bonds, (ii) give any preference to any Bond over any other Bond, or (iii) reduce
the aggregate principal amount of Bonds required for consent to any such amendment, addition,
or recission.

Section 14.02. Further Procedures.

The officers and employees of the City are hereby authorized and directed from time to
time and at any time to do and perform all such acts and things and to execute, acknowledge and
deliver in the name and on behalf of and under the corporate seal of the City all such
instruments, whether mentioned herein or not, as may be necessary or desirable in order to carry
out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the
Paying Agent/Registrar Agreement, and the Private Placement Memorandum. In addition, prior
to the initial delivery of the Bonds, the Mayor, the City Manager or Director of Finance of the
City, and Bond Counsel are hereby authorized and directed to approve any technical changes or
corrections to this Ordinance or to any of the instruments authorized and approved by this
Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more
completely document the transactions contemplated and approved by this Ordinance and as
described in the Private Placement Memorandum, (ii) obtain a rating from any of the national
bond rating agencies, or (iii) obtain the approval of the Bonds by the Attorney General of Texas.
In the event that any officer of the City whose signature shall appear on any certificate shall
cease to be such officer before the delivery of such certificate, such signature nevertheless shall
be valid and sufficient for all purposes the same as if such officer had remained in office until
such delivery.
Section 14.03. Severability.

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance is held to be invalid or unenforceable, the remainder of this Ordinance and the application of such section, article, paragraph, sentence, clause, phrase or word to other persons and circumstances nevertheless shall be valid and enforceable; and it is hereby declared that this Ordinance would have been enacted without such invalid or unenforceable provision.

Section 14.04. No Personal Liability.

No covenant or agreement contained in the Bonds, this Ordinance or any corollary instrument shall be deemed to be the covenant or agreement of any member of the City Council or any officer, agent, employee or representative of the City Council in his or her individual capacity, and neither the directors, officers, agents, employees or representatives of the City Council nor any person executing the Bonds shall be personally liable thereon or be subject to any personal liability for damages or otherwise or accountability by reason of the issuance thereof, or any actions taken or duties performed, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the issuance of the Bonds.

Section 14.05. Payment of Attorney General Fee.

The City hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) $9,500, provided that such fee shall not be less than $750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The appropriate member of the City's staff is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds.

ARTICLE XV

COMPLIANCE WITH THE TEXAS WATER DEVELOPMENT BOARD'S RULES AND REGULATIONS

Section 15.01. Compliance with the Texas Water Development Board's Rules and Regulations.

(a) General. The City covenants to comply with the rules and regulations of the TWDB, and to maintain insurance on the District’s System in that amount required by the TWDB.
(b) **Final Accounting.** The City shall render a final accounting to the TWDB, within 60 days of project completion, in reference to the total cost incurred by the City for the improvements and extensions to the System together with a copy of “as built” plans of the project upon completion.

(c) **Surplus Bond Proceeds.** The City shall use any surplus proceeds from the Bonds remaining after completion of the Utility System improvements, to redeem in inverse annual order of maturity, the Bonds owned by the TWDB. Any remaining surplus thereafter shall be transferred to the credit of the Interest and Sinking Account transferred to any Reserve Fund or, as authorized by the Executive Administrator of the TWDB, for any eligible project cost.

(d) **Annual Reports.** At the end of each fiscal year (and in no event later than 120 days), annual audits of the City, prepared by a Certified Public Accountant in accordance with generally accepted auditing practices, shall be delivered to the TWDB as long as the State owns any of the Bonds.

(e) **Final Accounting.** If, following completion of the project, the Executive Administrator of the TWDB disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the City shall, immediately after filing the final accounting, return to TWDB the cost as determined by the Executive Administrator relating to the parts of the project not constructed in accordance with the plans and specifications, to the nearest multiple of $5,000, and the TWDB shall thereupon cancel and deliver to the City, in inverse maturity order, a like amount of Bonds held by the TWDB.

(f) **Davis-Bacon Compliance.** All laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The City, all contractors, and all subcontractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB.

(g) **Accountability and Transparency Compliance.** The city shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Bonds are outstanding.

(h) **Disposition of Proceeds.** All loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule.
(i) **Indemnification.** The City further agrees, to the extent permitted by law and solely from water and wastewater funds provided by the City to indemnify, hold harmless and protect the TWDB from any and all claims or causes of action arising from the sampling, analysis, transport, removal and off-site disposition of any contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities related to the City.

(j) **Contract Requirement.** The City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines.

(k) **Remedies.** The TWDB, so long as it is owner of the Bonds, may exercise all remedies available to it in law or equity, and any provision of the Bonds that restricts or limits the TWDB’s full exercise of these remedies shall be of no force and effect.

(l) **Environmental Expenditures.** The City covenants and agrees that none of the proceeds of the Bonds will be expended on costs incurred or to be incurred relating to the sampling, testing, removing or disposing of potentially contaminated soils and/or media at the project site.

(m) **Environmental Indemnity.** The City agrees to indemnify, hold harmless and protect the TWDB, so long as it is owner of the Bonds, from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

(n) **Disadvantaged Businesses.** Prior to the release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City will provide documentation to the TWDB that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program.

(o) **Prohibition Against Acquiring TWDB Source Series Bonds.** Neither the city nor a related party thereto, will acquire any of TWDB's Source Series Bonds in an amount related to the amount of the Bonds to be acquired from the City by the TWDB.

(p) **Environmental Finds.** The City covenants and agrees to comply with all conditions as specified in the final environmental finding of the TWDB Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.
PASSED AND APPROVED on first and final reading on this May 2, 2017.

Mayor, City of San Marcos, Texas

ATTEST:

City Clerk, City of San Marcos, Texas

[CITY SEAL]

APPROVED AS TO LEGALITY:

City Attorney, City of San Marcos, Texas
EXHIBIT A

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Article XIII of this Ordinance.

1. Annual audited financial statements of the City.

2. Information of the general type in the Application to the Texas Water Development Board under the heading "Fiscal Information."

Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.
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EXECUTION

EXHIBIT A - DESCRIPTION OF ANNUAL FINANCIAL INFORMATION
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$5,445,839 TO CITY OF SAN MARCOS
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$4,760,000 CITY OF SAN MARCOS, TEXAS, WATER AND WASTEWATER SYSTEM
REVENUE BONDS,
PROPOSED SERIES 2017A
AND
$685,839 IN PRINCIPAL FORGIVENESS

(17-010)

WHEREAS, the City of San Marcos (City) has filed an application for financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73696; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB’s proposed purchase of $4,760,000 City of San Marcos, Texas, Water and Wastewater System Revenue Bonds, Proposed Series 2017A (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of $685,839, all as is more specifically set forth in the application and in recommendations of the TWDB’s staff; and

WHEREAS, the City has offered a pledge of net revenues of the City’s water and wastewater system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;

2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as well as state law, in accordance with Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB’s rules;

4. that the City has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;

5. that the TWDB has made a timely and concerted effort to solicit projects that address green infrastructure, water, or energy efficiency improvements and other environmentally
innovative activities and has determined that the entire Project, or a portion of the Project, satisfies the EPA’s criteria for Green Projects;

6. that the Executive Administrator issued a Categorical Exclusion on November 18, 2016, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of San Marcos for financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund through the TWDB’s proposed purchase of $4,760,000 City of San Marcos, Texas, Water and Wastewater System Revenue Bonds, Proposed Series 2017A and the execution of a Principal Forgiveness Agreement in the amount of $685,839. This commitment will expire on July 31, 2017.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City’s compliance with all applicable requirements contained in 31 TAC Chapter 375;

4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;

5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City’s Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and
the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;

7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) deposit into a reserve fund;

9. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

10. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

11. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

12. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an
interest and sinking tax rate sufficient for the repayment of all system debt service requirements;

13. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

Conditions Related to Tax-Exempt Status

16. the City’s bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the City’s bond counsel opinion must also state that the Obligations are not “private activity bonds.” Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become “private activity bonds” within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:

a. proceeds of the TWDB’s Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and

c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

20. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:

a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;

c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB’s Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;

d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;

21. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
22. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;

23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;

24. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

25. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

27. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB;

28. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;

29. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;
30. the Obligations and Principal Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

31. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 et seq. related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

32. the City shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

33. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;

34. at the TWDB’s option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

35. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

36. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 et seq. and 33 U.S.C. § 1382(b)(14);

Pledge Conditions for the Loan

37. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
38. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;

39. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if:

(a) the City is not then in default as to any covenant, condition, or obligation prescribed in an ordinance authorizing the issuance of outstanding parity obligations;

(b) the proposed additional revenue obligations have been approved by the Texas Attorney General;

(c) each of the respective funds created and dedicated to the payment, security, and benefit of the additional revenue obligations contains the amount of money then required to be on deposit therein;

(d) the City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed additional revenue obligations, or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed additional revenue obligations is adopted, the “net revenues” of the System (after operations and maintenance is considered, but not deducting depreciation or expenditures, which under standard accounting practices are classed as capital expenditures) are equal to at least 1.20 times the combined average annual principal and interest requirements on all outstanding revenue obligations to be outstanding after the issuance of the proposed parity revenue obligations. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator. In making a determination of such net revenues, the CPA may take into consideration a change in the rates and charges for services and facilities afforded by the City’s systems that became effective at least sixty (60) days prior the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues text, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as be in in effect for the entire period covered by the certificate or report, and;

(e) the additional revenue obligations are made to mature on February 15 or August 15, either or both, of each year in which they are scheduled to mature.

PROVIDED, however, the commitment is subject to the following special conditions:
Special Conditions:

40. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

41. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and

42. the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.

APPROVED and ordered of record this 26th day of January, 2017.

TEXAS WATER DEVELOPMENT BOARD

[Signature]
Bech K. Bruun, Chairman

DATE SIGNED: 1-26-17

ATTEST:

[Signature]
Jeff Walker
Executive Administrator
AGENDA CAPTION:
Consider approval of Ordinance 2017-24, on first and final reading as allowed by Section 1201.028 of the Texas Government Code, authorizing the issuance and sale of City of San Marcos, Texas, Waterworks And Waste Water System Revenue Bonds, Series 2017B in the amount of $1,000,000; providing for the security for and payment of said bonds; prescribing the form of said bonds; awarding the sale thereof; approving the Private Placement Memorandum; enacting other provisions relating to the subject.

Meeting date: May 2, 2017

Department:

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

CITY COUNCIL GOAL:
Goal #5 - Maintain and improve City’s infrastructure.

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]
ERPG4 - A population prepared for and resilient to man-made and natural disasters.

BACKGROUND:
In September 2016 the City Council approved a resolution for the filing of an application with the Texas Water Development Board (TWDB) seeking financial assistance for the Blanco and San Marcos Rivers Flood Mitigation Project. In January the TWDB approved financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund through the purchase of $1,000,000 of City of San Marcos water and wastewater revenue bonds and $961,821 in principal forgiveness.

This action approves the sale of bonds to the TWDB.
ORDINANCE NO. 2017-__

ORDINANCE
AUTHORIZING THE ISSUANCE OF

$1,000,000
CITY OF SAN MARCOS, TEXAS
WATERWORKS AND WASTE WATER SYSTEM REVENUE BONDS
SERIES 2017B

Adopted on May 2, 2017
ORDINANCE NO. 2017-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AUTHORIZING THE ISSUANCE AND SALE OF CITY OF SAN MARCOS, TEXAS, WATERWORKS AND WASTE WATER SYSTEM REVENUE BONDS, SERIES 2017B; PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID BONDS; PRESCRIBING THE FORM OF SAID BONDS; AWARDING THE SALE THEREOF; APPROVING THE PRIVATE PLACEMENT MEMORANDUM; ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, Tex. Gov't Code Ann. ch. 1502 provides that the governing body of a municipality may issue public securities for the purposes hereinafter provided, and the City Council (the "City Council") of the City of San Marcos, Texas (the "City") finds and determines that it is necessary, useful and appropriate for the City's public purposes to authorize and provide for the issuance and sale of revenue bonds of the City for such purposes, as hereinafter provided; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Ordinance has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Ordinance, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. ch. 551; Now, Therefore

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance the following terms shall have the meanings specified below:

"Additional Parity Obligations" means those obligations the City reserves the right to issue on a parity with the Bonds, herein authorized in accordance with the terms and conditions prescribed in Section 9.01 hereof.

"Bond" means any of the Bonds.

"Bonds" means the City's bonds entitled "City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2017B" authorized to be issued by Section 3.01 of this Ordinance.
"Closing Date" means the date of the initial delivery of and payment for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions relating thereto.

"Defeasance Securities" means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the City adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations under applicable Texas law that may be used to defease obligations such as the Bonds.

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named herein, its office in Houston, Texas, and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"Escrow Agent" means Regions Bank.

"Escrow Agreement” means the agreement authorized by Article V of this Ordinance.

"Escrow Fund" means the fund referred to in Article VIII of this Ordinance and established by the Escrow Agreement to hold cash and securities for the payment of principal of and interest on the Refunded Bonds.

"Event of Default" means any Event of Default as defined in Section 11.01 of this Ordinance.

"Federal Securities" as used herein means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

"Fiscal Year" means twelve months' period beginning October 1 of each year and ending September 30 of the succeeding year.

"Initial Bond" means the Bond described in Section 3.04(d) and 6.02(d).
"Interest and Sinking Fund" means the interest and sinking fund provided by Section 8.01(b) of this Ordinance.

"Interest Payment Date" means the date or dates upon which interest on the Bonds is scheduled to be paid until the maturity of the Bonds, such dates being _________ and _________ of each year commencing ____________, 20__. 

"MSRB" means the Municipal Securities Rulemaking Board.

"Net Revenues" means the gross revenues of the System less the expense of operation and maintenance, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, provided, however, that only such repairs and extensions as in the judgment of the City Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any special obligations payable from and secured by a lien on the net revenues of the System shall be deducted in determining "Net Revenues".

"Ordinance" means this Ordinance.

"Original Issue Date" means the date of the Bonds designated in Section 3.02(a) of this Ordinance.

"Owner" means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

"Parity Revenue Obligations" means the Previously Issued Parity Obligations, the Bonds and Additional Parity Obligations.

"Paying Agent/Registrar" means Regions Bank, any successor thereto or an entity which is appointed as and assumes the duties of paying agent/registrar as provided in this Ordinance.

"Previously Issued Parity Obligations" means the outstanding bonds of the following issues:

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2006;

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Taxable Series 2006A;

City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2007; and


"Purchaser" means the Texas Water Development Board (the "TWDB") initially purchasing the Bonds from the City.

"Record Date" means the last business day of the month next preceding an Interest Payment Date.

"Register" means the Register specified in Section 3.06(a) of this Ordinance.

"Reserve Fund" means the reserve fund provided by Section 8.01(c) of this Ordinance.

"Revenue Fund" means the revenue fund provided by Section 8.01(a) of this Ordinance.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"Special Payment Date" means the Special Payment Date prescribed by Section 3.03(b) of this Ordinance.

"System" means the City's combined waterworks and sewer (waste water) system, including all present and future extensions, enlargements, additions, replacements and improvements thereto.

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Bonds as the same become due and payable or money set aside for the payment of Bonds duly called for redemption prior to maturity, and remaining unclaimed for 90 days after the applicable payment or redemption date.

Section 1.02. Other Definitions.

The terms "City Council" and "City" shall have the respective meanings assigned in the preamble to this Ordinance.

Section 1.03. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.
Section 1.04. **Table of Contents, Titles and Headings.**

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.05. **Interpretation.**

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

**ARTICLE II**

**SECURITY FOR THE BONDS**

Section 2.01. **Pledge of Revenues for Payment of the Bonds.**

The Net Revenues (with the exception of those in excess of the amounts required to establish and maintain the Funds as hereinafter provided) are hereby irrevocably pledged for the payment of the principal of and interest on the Parity Revenue Obligations, including the establishment and maintenance of the Reserve Fund hereinafter provided.

Section 2.02. **Special Obligations.**

The Bonds are special obligations of the City payable from the Net Revenues, and the Holders thereof not entitled to demand payment thereof out of any money raised by taxation.

Section 2.03. **Perfection of Security Interest.**

Chapter 1208, Government Code applies to the issuance of the Bonds and the pledge of the revenues granted by the City under Section 2.01 of this Ordinance, and such pledge, therefore, is valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the revenues granted by the City under Section 2.01 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business and Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable
provisions of Chapter 9, Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01. Authorization.

The City's bonds to be designated "City of San Marcos, Texas, Waterworks and Waste Water System Revenue Bonds, Series 2017B," are hereby authorized to be issued and delivered in accordance with the laws of the State of Texas in the aggregate principal amount of $1,000,000 for the purpose of (i) acquiring, constructing and installing additions, improvements and extensions to the City's waterworks and waste water system and (ii) paying costs of issuance for the Bonds.

Section 3.02. Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall have the Original Issue Date of __________, 2017, shall be in fully registered form, without coupons, in the denomination of $5,000 or any integral multiple thereof, and shall be numbered separately from one upward or such other designation acceptable to the City and the Paying Agent/Registrar.

(b) The Bonds shall mature on __________ in the years and in the principal amounts and interest rates set forth below, interest on each Bond accruing from the Original Issue Date or the most recent Interest Payment Date to which interest has been paid or provided for at the per annum rates of interest, payable semiannually on __________ and __________ of each year until the principal amount shall have been paid or provision for such payment shall have been made, commencing __________, 20__, as follows:

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Section 3.03. Medium, Method and Place of Payment.

(a) The principal of, premium, if any, and interest on the Bonds shall be paid in lawful money of the United States of America as provided in this Section.

(b) Interest on the Bonds shall be payable to the Owners whose names appear in the Register at the close of business on the Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date", which shall be at least 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

(c) Interest on the Bonds shall be paid by check (dated as of the Interest Payment Date) and sent by the Paying Agent/Registrar to the person entitled to such payment by United States mail, first class postage prepaid, to the address of such person as it appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expenses of such other customary banking arrangements. The foregoing notwithstanding, so long as TWDB is the registered owner of 100% in aggregate principal amount of the bonds then outstanding, payment of principal and interest on the Bonds shall be made thereto by wire transfer, at no expense to the TWDB.

(d) The principal of each Bond shall be paid to the person in whose name such Bond is registered on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office.

(e) If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close; and payment on such
date shall have the same force and effect as if made on the original date payment was due.

(f) Subject to Title 6, Texas Property Code, as amended, Unclaimed Payments remaining unclaimed for three years after the applicable payment or redemption date shall be paid by the Paying Agent/Registrar to the City, to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat, abandoned property, or similar law.

Section 3.04. Execution and Initial Registration.

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Clerk of the City, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided in this Ordinance, duly authenticated by manual execution of the Paying Agent/Registrar. It shall not be required that the same authorized representative of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered on the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided in this Ordinance, manually executed by the Comptroller of Public Accounts of the State of Texas or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Closing Date, one Initial Bond representing the entire principal amount of the Bonds, payable in stated installments to the TWDB or its designee, executed by manual or facsimile signature of the Mayor and City Clerk of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC on behalf of the TWDB, one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all of the Bonds for such maturity, registered in the name of Cede & Co., as
nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC’s FAST System, as evidenced by agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof and premium, if any, thereon, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that interest is to be paid to the person in whose name the Bond is registered on the Record Date), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the person deemed to be the Owner of any Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) Registration of any Bond may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the Bonds, or any portion thereof in any integral multiple of $5,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the Bond or any portion thereof registered in the name of such assignee or assignees. No transfer of any Bond shall be effective until entered in the Register. Upon assignment and transfer of any Bond or portion thereof, a new Bond or Bonds will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned Bond. To the extent possible the Paying Agent/Registrar will issue such new Bond or Bonds in not more than three business days after receipt of the Bond to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Bond may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office, together with a written request therefor duly executed by the registered owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the
Paying Agent/Registrar, for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. If a portion of any Bond is redeemed prior to its scheduled maturity as provided herein, a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in the denomination or denominations of any integral multiple of $5,000 at the request of the registered owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon surrender thereof for cancellation. To the extent possible, a new Bond or Bonds shall be delivered by the Paying Agent/Registrar to the registered owner of the Bond or Bonds in not more than three business days after receipt of the Bond to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Bond issued in exchange for any Bond or portion thereof assigned, transferred or converted shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall convert and exchange the Bonds as provided herein, and each substitute Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such substitute Bond is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of Bonds, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a Bond. In addition, the City hereby covenants with the Owners of the Bonds that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on the Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of Bonds as provided herein.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a Bond.
Section 3.07. Cancellation and Authentication.

(a) All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such Bonds.

(b) Each substitute Bond issued pursuant to the provisions of Sections 3.06 and 3.09 of this Ordinance, in conversion of and exchange for or replacement of any Bond or Bonds issued under this Ordinance, shall have printed thereon a Paying Agent/Registrar's Authentication Certificate, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, manually sign and date such Certificate, and no such Bond shall be deemed to be issued or outstanding unless such Certificate is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein, and said Bonds shall be of customary type and composition and be printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Tex. Gov't Ann. ch. 1201, as amended, and particularly subchapter D thereof, the duty of conversion and exchange or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Paying Agent/Registrar's Authentication Certificate, the converted and exchanged or replaced Bonds shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial Bond which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) Bonds issued in conversion and exchange or replacement of any other Bond or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) shall be payable as to principal and interest, all as provided, and in the manner required or indicated, in the Form of Bonds set forth in this Ordinance.

Section 3.08. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar, at the Designated Payment/Transfer Office, of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other
governmental charge that is authorized to be imposed in connection therewith and any other
expenses connected herewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the
Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence
of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall
authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a
number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her
ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying
Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not
limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or
other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the
Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the
original Bond in lieu of which such replacement Bond was issued presents for payment such
original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such
replacement Bond from the person to whom it was delivered or any person taking therefrom,
except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity
provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the
Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully
taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its
discretion, instead of issuing a replacement Bond, may pay such Bond.

(e) Each replacement Bond delivered in accordance with this Section shall constitute
an original contractual obligation of the City and shall be entitled to the benefits and security of
this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond
is delivered.

Section 3.09. Book-Entry-Only System.

(a) The definitive Bonds shall be initially issued in the form of a separate single fully
registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each
such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as
provided in Section 3.11 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered Owner at the close of business on the Record Date, the term "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The previous execution and delivery of the Blanket Letter of Representation with respect to obligations of the City is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Bonds.

Section 3.10. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the City determines to discontinue the book-entry-only system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bonds, and only after providing notice of such action to the TWDB so long as it is holder of any Bonds, the City shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and
DTC Participants of the appointment of such successor securities depository, and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Security Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.11. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE IV

REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional and Mandatory Redemption.

The Bonds maturing on and after August 15, 2028, before their respective scheduled maturity in whole or from time to time in part in integral multiples of $5,000, on August 15, 2027, or on any date thereafter, in inverse order of maturity and at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the redemption date. If less than all of the Bonds are to be redeemed, the City shall determine the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof within such maturity or maturities and in such amounts, for redemption.
ARTICLE V

PAYING AGENT/REGISTRAR AGREEMENT AND ESCROW AGREEMENT

Section 5.01. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints Regions Bank, as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each Bond to which payments with respect to the Bonds shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Bonds, and of all conversions, exchanges and replacements of such Bonds, as provided in this Ordinance.

(c) The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar is hereby approved and the Director of Finance is hereby authorized to complete, amend, modify, execute, and deliver such Paying Agent/Registrar Agreement, as necessary.

(d) The Escrow Agreement by and between the City and Regions Bank, as Escrow Agent (the "Escrow Agreement") is hereby approved, and the Director of Finance is hereby authorized to complete, amend, modify and execute the Escrow Agreement, as necessary. The Bonds have been purchased by the TWDB pursuant to its Resolution No. 17-010, adopted on January 26, 2017 (the "TWDB Resolution"), which provides that the Bonds are being purchased pursuant to the pre-design commitment option from the Clean Water State Revolving Fund and that in accordance therewith the Executive Administrator of the TWDB will purchase the Bonds on an installment basis with the proceeds of each such installment delivery to be deposited into the Bond Proceeds Account. Such installments shall be delivered in accordance with the terms of the Escrow Agreement. So long as a portion of the Bonds are held by the TWDB, the Bond Proceeds Account shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code,
Chapter 2257, or other applicable law that may be enacted during the life of the Bonds.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be (i) a commercial bank, trust company, or other entity duly qualified and legally authorized under applicable law, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a single entity.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated a certified copy of a resolution of the City (i) giving notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class postage prepaid, at the address in the Register, stating the effective date of the change and the name of the replacement Paying Agent/Registrar and the mailing address of its Designated Payment/Transfer Office.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.
ARTICLE VI
FORM OF THE BONDS

Section 6.01. Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The Bonds shall be printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

Section 6.02. Form of Bonds.

The form of Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) [Form of Bond]

REGISTERED

No. _____ $_______

CITY OF SAN MARCOS, TEXAS
WATERWORKS AND WASTE WATER SYSTEM REVENUE BOND
SERIES 2017B

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>Original Issue Date</th>
<th>CUSIP Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>__________, 2017</td>
<td></td>
</tr>
</tbody>
</table>
The City of San Marcos (the "City") in the County of Hays, State of Texas, for value received, hereby promises to pay to

_______________________________________________

or registered assigns, on the Maturity Date specified above, the sum of

_______________________________________________ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Original Issue Date specified above or the most recent interest payment date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on __________ and __________ of each year, commencing __________, 20__. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the City and the securities depository.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the office in Houston, Texas (the "Designated Payment/Transfer Office"), of the Paying Agent/Registrar executing the registration certificate appearing hereon, or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the person to whom interest is to be paid. The foregoing notwithstanding, so long as the TWDB is the registered owner of 100% in aggregate principal amount of the Bonds then outstanding, payment of principal and interest on the Bonds shall be made thereto by wire transfer, at no expense to the TWDB. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the last business day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled interest payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a
Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day preceding the date of mailing such notice.

During any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of $1,000,000 (herein referred to as the "Bonds"), issued pursuant to a certain Ordinance of the City Council of the City (the "Ordinance") for the purpose of (i) acquiring, constructing and installing additions, improvements and extensions to the City's waterworks and waste water system and (ii) paying costs of issuance for the Bonds.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Bond Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

This Bond and all the Bonds of the series of which it is a part constitute special obligations of the City of San Marcos, Texas, and, together with certain Previously Issued Parity Obligations defined and described in the Ordinance, are payable as to both principal and interest from and equally secured by a first and prior lien on and pledge of the Net Revenues of the City's combined Waterworks and Waste Water System. Reference is hereby made to the Ordinance for a more complete statement of the covenants and provisions securing the payment of this Bond and the series of which it is one.
Whenever the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

The City expressly reserves the right to issue further and additional special revenue obligations equally secured by a lien on and pledge of the net revenues of the City’s combined Waterworks and Waste Water System on a parity with the bonds of this issue; provided, however, that any and all such additional parity obligations may be issued only in accordance with and subject to the covenants, conditions, limitations and restrictions relating thereto which are set out and contained in the Ordinance, to which reference is hereby made for more complete and full particulars.

The holders of the Bonds are not entitled to demand payment thereof out of any money raised by taxation.

The Bonds are not subject to optional redemption prior to maturity.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, this Bond has been duly executed on behalf of the City, under its official seal, in accordance with law.
(b) [Form of Certificate of Paying Agent/Registrar]

CERTIFICATE OF PAYING AGENT/REGISTRAR

This is one of the Bonds referred to in the within mentioned Ordinance. The series of Bonds of which this Bond is a part was originally issued as one Initial Bond which was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

REGIONS BANK, Houston, Texas,
as Paying Agent/Registrar

Dated: _____________________

By:____________________________________

Authorized Signatory

(c) [Form of Assignment]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto (print or typewrite name, address and zip code of transferee):

____________________________________________________________________________
____________________________________________________________________________

(Social Security or other identifying number:_______________________) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints

____________________________________________________________________________

attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated:__________________

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed by members of the New York
Stock Exchange or a commercial bank or trust company.

Signature Guaranteed By:

________________________________________
Authorized Signatory

(d) Initial Bond Insertions.

(i) The Initial Bond shall be in the form set forth in paragraph (a) of this Section, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As Shown Below" and "CUSIP NO. ________" deleted;

B. in the first paragraph:

the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on _____________ in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<table>
<thead>
<tr>
<th>Years</th>
<th>Principal Installs</th>
<th>Interest Rates</th>
</tr>
</thead>
</table>

(Information to be inserted from Section 3.02(b) hereof.)

C. In the second paragraph of the Initial Bond, "initial" shall be inserted before "Paying Agent/Registrar" in the first sentence, "executing the registration certificate appearing hereon," shall be deleted and an additional sentence shall be added to the paragraph as follows: "The initial Paying Agent/Registrar is Regions Bank."

D. the Initial Bond shall be numbered R-1.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond in lieu of the Certificate of Paying Agent/Registrar:
REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _________________
THE STATE OF TEXAS §

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to
the effect that the Attorney General of the State of Texas has approved this Bond, and that this
Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this
__________________________

[SEAL] Comptroller of Public Accounts
of the State of Texas

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division
of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such
numbers on the face of the Bonds. It is expressly provided, however, that the presence or
absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the
legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to
be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 6.04. Municipal Bond Insurance.

In the event that municipal bond guaranty insurance shall be obtained with respect to the
Bonds, the Bonds, including the Initial Bond, may bear an appropriate legend, as provided by
such insurer.
ARTICLE VII

SALE OF THE BONDS; CONTROL AND DELIVERY OF THE BONDS

Section 7.01. Sale of Bonds.

(a) To achieve the lowest borrowing costs for the projects set forth in Section 3.01 of this Ordinance, the Bonds shall be sold to the TWDB. The TWDB will receive at or prior to closing, an origination fee of 1.85% of the aggregate initial amount of Bonds sold, calculated pursuant to 31 Texas Administrative Code Chapter 375.

(b) All officers of the City are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds.

Section 7.02. Control and Delivery of Bonds.

(a) The Mayor of the City is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor of the City, against receipt by the City of all amounts due to the City under the terms of sale.

ARTICLE VIII

FUNDS AND ACCOUNTS, INITIAL DEPOSITS AND APPLICATION OF MONEY

Section 8.01. Fund Designations.

The City hereby covenants and agrees that all revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end the City hereby confirms its previous creation and establishment of the following special Funds pursuant to the ordinances authorizing the issuance of the Previously Issued Parity Obligations, to-wit:

(a) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Fund (the "Revenue Fund"). This Fund shall be kept in the City's official depository bank.

(b) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Interest and Sinking Fund (the "Interest and Sinking Fund"). This Fund shall be kept at
an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and interest on the Parity Revenue Obligations when and as the same shall become due and payable.

(c) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Reserve Fund (the "Reserve Fund"). This Fund shall be kept at an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and/or interest on the Parity Revenue Obligations falling due at any time when there is not sufficient money available in the Interest and Sinking Fund.

(d) The City of San Marcos, Texas Waterworks and Waste Water System Revenue Bonds Escrow Fund (the "Escrow Fund"). This Fund shall be kept at an official depository bank of the City.

The special Funds herein provided shall continue to be maintained at all times while any of the Parity Revenue Obligations remain outstanding.

Section 8.02. Initial Deposits; Construction Fund.

On the Closing Date, the City shall cause the proceeds from the sale of the Bonds to be deposited as follows:

(i) first, all accrued interest on the Bonds from the Original Issue Date until the Closing Date and premium, if any, shall be deposited to the credit of the Interest and Sinking Fund;

(ii) second, the remaining balance, less any amounts paid at Closing as costs of issuance, shall be deposited to the credit of a construction fund or funds.

Section 8.03. Revenue Fund.

All revenues of every nature received through the operation of the System shall be deposited from day to day as collected into the Revenue Fund, to be kept separate and apart from all other City funds and accounts. Moneys deposited in the Revenue Fund shall be pledged and appropriated to the following uses and in the order of precedence shown:

(a) To the payment of all reasonable and proper expenses of operating and maintaining the System as set forth in the definition of "Net Revenues" contained in Section 1.01 hereof.

(b) To the payment, without priority, of all amounts required to be deposited in the Interest and Sinking Fund herein established for the payment of the Parity Revenue Obligations.

(c) To the payment of all amounts required to be deposited in the Reserve Fund
pursuant to this Ordinance or any ordinance relating to the issuance of Parity Revenue Obligations.

(d) To any other proper City purpose now or hereafter permitted by law.

Section 8.04. Interest and Sinking Fund.

(a) The City hereby covenants and agrees to make monthly deposits to the Interest and Sinking Fund from moneys in the Revenue Fund to pay the principal of and interest on the Bonds as follows:

(i) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Sinking Fund and available for such purpose, to pay the interest scheduled to accrue and become due and payable with respect to the Bonds on the next succeeding Interest Payment Date;

(ii) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, on hand in the Interest and Sinking Fund and available for such purpose, to pay the principal scheduled to mature and come due on the Bonds on the next succeeding Interest Payment Date on which principal of the Bonds is to be payable.

(b) The monthly deposits to the Interest and Sinking Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Interest and Sinking Fund and Reserve Fund is equal to the amount required to pay all outstanding obligations (principal and/or interest) for which said Fund was created and established to pay or (ii) the Bonds are no longer outstanding, i.e., fully paid as to principal and interest or all of the Bonds have been refunded.

(c) Any proceeds of the Bonds not required to complete the improvements and extensions to the System or required to be deposited otherwise by this Ordinance, shall be deposited to the Interest and Sinking Fund. Proceeds of the Bonds so deposited, accrued interest and any other amount or amounts received from the Purchaser of the Bonds and required by this Ordinance to be deposited to the Interest and Sinking Fund, may be taken into consideration and reduce the amount of the monthly deposits hereinabove provided which would otherwise be required to be deposited in the Interest and Sinking Fund from the Net Revenues of the System.
Section 8.05. Reserve Fund.

(a) The City hereby covenants and agrees with the holders of the Bonds that it will provide for the accumulation of, and when accumulated, will thereafter continuously maintain in the Reserve Fund an amount equal to not less than the average annual principal and interest requirements of the Parity Revenue Obligations (calculated on a fiscal year basis as of the date the last series of Parity Revenue Obligations were authorized). Immediately following the delivery of the Bonds, the appropriate City officials shall calculate and determine the average annual principal and interest requirements for the Parity Revenue Obligations then outstanding. After deducting the amount then on deposit in the Reserve Fund from such calculation, the amount of the difference, if any, shall be deposited in the Reserve Fund in sixty (60) substantially equal monthly payments on or before the 10th day of each month; the initial monthly deposit to be made on or before the 10th day of the month next following the month the Bonds are delivered. After the total amount required to be on deposit in the Reserve Fund has been accumulated, monthly payments to said Fund may be terminated; provided, however, should the amount on deposit therein be reduced below the sum required to be maintained in said Fund after the same has been accumulated, payments to said Fund in an amount equal to the deficiency shall be resumed and continued to be made on or before the 10th day of each month until the total amount then required to be on deposit in the Reserve Fund has been fully restored. In the event money in the Reserve Fund is used for an authorized purpose while monthly payments are being made to said Fund, the amount required to restore the sum then required to be on deposit therein shall be added to the payments then being made in the following month or months until the total amount then required to be on deposit in said Fund has been fully restored.

(b) Notwithstanding the requirements of subsection (a) above, and only as and to the extent permitted by law and, so long as TWDB is the registered owner of 100% in aggregate principal amount of the Bonds then outstanding, upon giving written notice to and approval by the Executive Administrator of TWDB, the City may provide a surety policy or policies issued in amounts equal to all or part (as may be specified in the ordinance authorizing any series of Parity Revenue Obligations) of the average annual principal and interest requirements of the Parity Revenue Obligations, in lieu of depositing cash into the Reserve Fund; provided, however, that no such surety policy may be so substituted unless (i) the substitution of the surety policy will not cause any ratings then assigned to the Bonds by either Moody's Investors Service or Standard & Poor's Ratings Group to be lowered and (ii) the City Council finds that the substitution of the surety policy for all or part of the average annual principal and interest requirements of the Parity Revenue Obligations is cost effective. Subject to the terms of the surety policy, the City shall apply the proceeds of the Revenue Fund prorata to (i) the reestablishment of any cash balance required to be maintained in the Reserve Fund and (ii) the payment of subrogation obligations of the City under the terms of a surety policy or surety policies with respect to Parity Obligations.

(c) In the event a surety policy issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the average annual principal and interest requirements of all Parity Revenue Obligations,
the City, may transfer such excess amount to any fund or funds established for the payment of or security for the Parity Revenue Obligations (including any escrow established for the final payment of any such obligations pursuant to Tex. Gov't Code Ann., ch. 1207) or use such excess amount for any lawful purpose now or hereafter provided by law; provided, however, that except as otherwise may be permitted by applicable law, any portion of such amount constituting proceeds of bonds or other obligations of the City, or taxes, may be used only for purposes for which such proceeds or taxes could have been used lawfully at the time of the deposit thereof into the Reserve Fund.

(d) In the event (a) the issuer of a surety policy becomes insolvent, or (b) the issuer of a surety policy defaults in its payment obligations thereunder, or (c) the claims paying ability of the issuer of the surety policy falls below "AAA" by S&P or "Aaa" by Moody's, the obligation to reimburse the issuer of the surety policy shall be subordinate to the cash replenishment of the Reserve Fund. In the event (a) the rating of the claims paying ability of the issuer of the surety policy falls below "AAA" by S&P or "Aaa" by Moody's, the City shall either (i) deposit into the Reserve Fund, in accordance with this section, an amount sufficient to cause the money or investments on deposit in the Reserve Fund to accumulate to the average annual principal and interest requirements on the Parity Revenue Obligations within thirty-six (36) months, or (ii) replace such instrument with a surety policy, within six (6) months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety policy falls below "A" by S&P or Moody's, or (b) the issuer of the surety policy defaults in its payment obligations hereunder, or (c) the issuer of the surety policy becomes insolvent, the City shall either (i) deposit into the Reserve Fund, in accordance with this section, amounts sufficient to cause the money or investments on deposit in the Reserve Fund to accumulate to the average annual principal and interest requirements on the Parity Revenue Obligations, or (ii) replace such instrument with a surety policy, within six (6) months of such occurrence.

Section 8.06. Escrow Fund.

(a) Money on deposit in the Escrow Fund, including investment earnings thereof, shall be used for the purpose of refunding the Refunded Obligations in accordance with the Escrow Agreement.

(b) Any amounts remaining in the Escrow Fund after the accomplishment of the purposes for which the Bonds are hereby issued, including investment earnings of the Escrow Fund, shall be deposited into the Interest and Sinking Fund.

(c) Regions Bank is hereby designated as the Escrow Agent. The execution and delivery of the Escrow Agreement, specifying the duties and responsibilities of the City and the Escrow Agent, is hereby approved with such changes as may be approved by the Mayor of the City, and the Mayor and City Clerk of the City are hereby authorized to execute such agreement.
Section 8.07. Deficiencies in Funds.

If in any month the City shall, for any reason, fail to pay into the Interest and Sinking Fund and Reserve Fund the full amounts required, amounts equivalent to such deficiencies shall be set apart and paid into said Funds from the first available and unallocated revenues of the System for the following month or months and such payments shall be in addition to the amounts hereinabove provided to be otherwise paid into said Funds during such month or months.

Section 8.08. Excess Revenues.

Any revenues in excess of those required to establish and maintain the Funds as above required may be used to purchase and retire Parity Revenue Obligations in the open market at not exceeding the market value thereof, the redemption of such obligations, or for any lawful purpose now or hereafter provided by law.

Section 8.09. Security of Funds.

All moneys on deposit in the funds referred to in this Ordinance shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

Section 8.10. Investments.

(a) Money in the Funds established by this Ordinance, shall be held at a designated State depository institution and invested in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and collateralized in accordance with the Public Funds Collateral Act, Government Code, Chapter 2257.

(b) Any securities or obligations in which money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.11. Investment Income.

Interest and income derived from investment of any fund created by this Ordinance shall be credited to such fund.
ARTICLE IX

ADDITIONAL OBLIGATIONS

Section 9.01. Issuance of Additional Parity Obligations Authorized.

In addition to the right to issue obligations of inferior lien as authorized by the laws of this State, the City reserves the right to issue Additional Parity Obligations which, when duly authorized and issued in compliance with law and the terms and conditions hereinafter appearing, shall be on a parity with the Bonds herein authorized, payable from and equally and ratably secured by a lien on and pledge of the Net Revenues of the System; and the Bonds and Additional Parity Obligations shall in all respects be of equal dignity. The Additional Parity Obligations may be issued in one or more installments, provided, however, that none shall be issued unless and until the following conditions have been met:

(a) The City is not then in default as to any covenant, condition or obligation prescribed in an ordinance authorizing the issuance of the outstanding Parity Revenue Obligations.

(b) The proposed Additional Parity Obligations shall have been approved by the Attorney General of Texas.

(c) Each of the Funds created for the payment, security and benefit of the Parity Revenue Obligations contains the amount of money then required to be on deposit therein.

(d) The City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed Additional Parity Obligations or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed Additional Parity Obligations is adopted, the "net revenues" of the System were equal to at least 1.20 times the combined average annual principal and interest requirements on all Parity Revenue Obligations to be outstanding after the issuance of the proposed Additional Parity Obligations. In making a determination of such net revenues, the Certified Public Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues test, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as being in effect for the entire period covered by the certificate or report. The term "net revenues" as used in this Section 9.01 shall mean the gross revenues of the System after deduction of maintenance and operating expenses, but not deducting depreciation or expenditures which, under standard accounting practices, are classed as capital expenditures.
(e) The Additional Parity Obligations are made to mature on _______ or
________, either or both, of each year in which they are scheduled to mature.

(f) The ordinance authorizing the Additional Parity Obligations provides (i) that the
Interest and Sinking Fund be augmented by amounts adequate to accumulate the sum required to
pay the principal and interest on such obligations as the same shall become due, and (ii) the
amount to be accumulated and maintained in the Reserve Fund, or such amount together with the
amount or amounts any surety policy or policies, shall be increased to an amount not less than
the average annual principal and interest requirements of all Parity Revenue Obligations to be
outstanding after giving effect to the issuance of the proposed additional obligations, and any
additional amount required to be maintained in the Reserve Fund shall be accumulated within
sixty-one months from the date of delivery of such Additional Parity Obligations.

(g) Parity Revenue Obligations may be refunded (pursuant to any law then available)
upon such terms and conditions as the governing body of the City may deem to be in the best
interest of the City and its inhabitants; and if less than all such outstanding Parity Revenue
Obligations are refunded, the proposed refunding obligations shall be considered as “Additional
Parity Obligations” under the provisions of this Section, and the report or certificate required by
paragraph (d) shall give effect to the issuance of the proposed refunding obligations and shall not
give effect to the obligations being refunded.

ARTICLE X

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 10.01. Rates and Charges.

The City covenants and agrees with the Owners of the Bonds that so long as any Parity
Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will charge and
collect for services rendered by the System amounts sufficient at all times to:

(a) Pay all operating, maintenance, depreciation, replacement and betterment
expenses, and other costs deductible in determining Net Revenues;

(b) Establish and maintain the Interest and Sinking Fund and Reserve Fund, including
payment of any Policy Costs, as defined in Section 14.02(a), created for the payment and
security of the Parity Revenue Obligations; and

(c) Pay the requirements of all other outstanding lawful indebtedness of the System
as and when the same becomes due.
Section 10.02. Maintenance and Operation; Insurance.

The City shall maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. So long as any Parity Revenue Obligations are outstanding, the City agrees to maintain insurance for the benefit of the holder or holders of the obligations on the System of a kind and in an amount which usually would be carried by private companies engaged in a similar type of business. Nothing in this ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

Section 10.03. Records; Accounts; Accounting Reports.

The City hereby covenants and agrees that so long as any Parity Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the operation of the System, separate and apart from all other records and accounts, in which complete and correct entries shall be made of all transactions relating thereto, as provided by Tex. Gov't Code Ann. ch. 1502, as amended, and that the owner or owners of any of said Parity Revenue Obligations or any duly authorized agent or agents of such owners shall have the right at all reasonable times to inspect all such records, accounts and data relating thereto, and to inspect the System and all properties comprising same. The City further agrees that within 90 days following the close of each fiscal year, it will cause an audit of such books and accounts to be made in accordance with generally accepted accounting principles by an independent firm of Certified Public Accountants or Licensed Public Accountants. Each such audit, in addition to whatever other matters may be thought proper by the Accountant, shall particularly include the following:

(a) A detailed statement of the income and expenditures of the System for such fiscal year.

(b) A balance sheet as of the end of such fiscal year.

(c) The Accountant's comments regarding the manner in which the City has carried out the requirements of this ordinance and his recommendations for any changes or improvements in the operation, records and accounts of the System.

(d) A list of the insurance policies in force at the end of the fiscal year on the System properties, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.

(e) A list of the securities which have been on deposit as security for the money in the Interest and Sinking Fund throughout the fiscal year, a list of the securities, if any, in which the
Reserve Fund has been invested, and a statement of the manner in which money in the System Fund has been secured in such fiscal year.

(f) The number of properties connected with the System.

Expenses incurred in making the audits above referred to are to be regarded as maintenance and operating expenses of the System and paid as such.

Section 10.04. Special Covenants.

The City hereby further covenants as follows:

(a) The City has the lawful power to pledge the net revenues supporting this issue of Bonds and has lawfully exercised said power under the Constitution and laws of the State of Texas, including said power existing under Tex. Gov't Code Ann. ch. 1502; that the Bonds and the Additional Parity Obligations, when issued, shall be ratably secured under said pledge in such manner that one issue of Parity Revenue Obligations shall have no preference over any other issue.

(b) Other than for the pledge made for the payment and security of the Parity Revenue Obligations to be outstanding following issuance of the Bonds and certain obligations of the City secured by and payable from a lien on and pledge of the Net Revenues inferior to those securing payment of the Bonds, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(c) So long as any of the Bonds or any interest thereon remain outstanding, the City will not sell or encumber the System or any substantial part thereof, provided that this shall not be construed to prohibit the sale of such machinery or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System; also, with the exception of the Additional Parity Obligations expressly permitted by this Ordinance to be issued, it will not encumber the net revenues of the System unless such encumbrance is made junior and subordinate to all of the provisions of this Ordinance.

(d) No free service of the System shall be allowed, and should the City or any of its agencies or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of moneys from sources other than the revenues and income of the System.

(e) To the extent that it legally may, the City further covenants and agrees that, as long as any Parity Revenue Obligations, or any interest thereon, are outstanding, no franchise shall be granted for the installation or operation of any competing waterworks or sewer system; and that the City will prohibit the operation of any water system or sewer system other than those owned by the City, and the operation of any such system by anyone other than this City is hereby prohibited.
Section 10.05. Payment of the Bonds.

While any of the Bonds are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay the interest on and the principal of the Bonds, as applicable, as will accrue or mature on each applicable Interest Payment Date.

Section 10.06. Other Representations and Covenants.

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State of Texas to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 10.07. Covenants Regarding Tax Exemption of Interest on the Bonds.

(a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code”), the interest on which is not includable in the "gross income” of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds of the Bonds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use” which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
(3) to take any action to assure that no amount which is greater than the lesser of $5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without
limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) **Proceeds.** The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds not expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the City Manager or Director of Finance of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds. This Ordinance is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

(d) **Allocation Of, and Limitation On, Expenditures for the Project.** The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Order (the "Project") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) **Disposition of Project.** The City covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless any action taken in connection with such disposition will not
adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the City may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE XI
DEFAULT AND REMEDIES

Section 11.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an "Event of Default," to-wit:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Owner to the City.

Section 11.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then and in every case any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.
Section 11.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XII
DISCHARGE AND DEFEASANCE

Section 12.01. Defeasance of Bonds.

(a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the revenues herein pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City
Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the City retains the right under Texas law to later call that Defeased Bond for redemption in accordance with the provisions of this Ordinance, the City may call such Defeased Bond for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

ARTICLE XIII
CONTINUING DISCLOSURE UNDERTAKING

Section 13.01 Annual Reports.

The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of any fiscal year, financial information and operating data with respect to the City of the general type included in the application to the TWDB for financial assistance. Any financial statements to be so provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "A" hereto, or such other
accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements within such period, and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet web site or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

Section 13.02. Event Notices.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, of any of the following events with respect to the Bonds:

A. Principal and interest payment delinquencies;

B. Non-payment related defaults, if material within the meaning of the federal securities laws;

C. Unscheduled draws on debt service reserves reflecting financial difficulties;

D. Unscheduled draws on credit enhancements reflecting financial difficulties;

E. Substitution of credit or liquidity providers, or their failure to perform;

F. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds;

G. Modifications to rights of holders of the Bonds, if material within the meaning of the federal securities laws;
H. Bond calls, if material within the meaning of the federal securities laws and tender offers;

I. Defeasances;

J. Release, substitution, or sale of property securing repayment of the Bonds, if material within the meaning of the federal securities laws;

K. Rating changes;

L. Bankruptcy, insolvency, receivership or similar event of the City;

M. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material within the meaning of the federal securities laws; and

N. Appointment of a successor or additional trustee or the change of name of a trustee, if material within the meaning of the federal securities laws.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

Section 13.03. Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Article XII of this Ordinance that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update
any information provided in accordance with this Section or otherwise, except as expressly
provided herein. The City does not make any representation or warranty concerning such
information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER
OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN
CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM
ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS
PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND
REMEDY OF SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT
OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR
SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall
comprise a breach of or default under this Ordinance for purposes of any other provision of this
Ordinance.

Should the Rule be amended to obligate the City to make filings with or provide notices
to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect
to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the
duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to
changed circumstances that arise from a change in legal requirements, a change in law, or a
change in the identity, nature, status, or type of operations of the City, but only if (1) the
provisions of this Section, as so amended, would have permitted an underwriter to purchase or
sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account
any amendments or interpretations of the Rule since such offering as well as such changed
circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any
greater amount required by any other provision of this Ordinance that authorizes such an
amendment) of the outstanding Bonds consents to such amendment or (b) a person that is
unaffiliated with the City (such as nationally recognized bond counsel) determines that such
amendment will not materially impair the interest of the holders and beneficial owners of the
Bonds. If the City so amends the provisions of this Section, it shall include with any amended
financial information or operating data next provided in accordance with paragraph (a) of this
Section an explanation, in narrative form, of the reason for the amendment and of the impact of
any change in the type of financial information or operating data so provided. The City may also
amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or
repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that
such provisions of the Rule are invalid, but only if and to the extent that the provisions of this
sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the
primary offering of the Bonds.
ARTICLE XIV

AMENDMENTS; FURTHER PROCEDURES; AND SEVERABILITY

Section 14.01. Amendments.

This Ordinance shall not be amended or repealed by the City while any Bond remains outstanding, except as permitted by this Section. The City, without the consent of or notice to any Owner, from time to time and at any time, may amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City, with the written consent of Owners holding a majority in aggregate principal amount of the Bonds then outstanding affected thereby, may amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of then outstanding Bonds, no such amendment, addition, or rescission shall (i) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (ii) give any preference to any Bond over any other Bond, or (iii) reduce the aggregate principal amount of Bonds required for consent to any such amendment, addition, or rescission.

Section 14.02. Further Procedures.

The officers and employees of the City are hereby authorized and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of and under the corporate seal of the City all such instruments, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, and the Private Placement Memorandum. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Manager or Director of Finance of the City, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Private Placement Memorandum, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Attorney General of Texas. In the event that any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.
Section 14.03. Severability.

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance is held to be invalid or unenforceable, the remainder of this Ordinance and the application of such section, article, paragraph, sentence, clause, phrase or word to other persons and circumstances nevertheless shall be valid and enforceable; and it is hereby declared that this Ordinance would have been enacted without such invalid or unenforceable provision.

Section 14.04. No Personal Liability.

No covenant or agreement contained in the Bonds, this Ordinance or any corollary instrument shall be deemed to be the covenant or agreement of any member of the City Council or any officer, agent, employee or representative of the City Council in his or her individual capacity, and neither the directors, officers, agents, employees or representatives of the City Council nor any person executing the Bonds shall be personally liable thereon or be subject to any personal liability for damages or otherwise or accountability by reason of the issuance thereof, or any actions taken or duties performed, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the issuance of the Bonds.

Section 14.05. Payment of Attorney General Fee.

The City hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) $9,500, provided that such fee shall not be less than $750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The appropriate member of the City's staff is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds.

ARTICLE XV

COMPLIANCE WITH THE TEXAS WATER DEVELOPMENT BOARD’S RULES AND REGULATIONS

Section 15.01. Compliance with the Texas Water Development Board’s Rules and Regulations.

(a) General. The City covenants to comply with the rules and regulations of the TWDB, and to maintain insurance on the District’s System in that amount required by the TWDB.
Final Accounting. The City shall render a final accounting to the TWDB, within 60 days of project completion, in reference to the total cost incurred by the City for the improvements and extensions to the System together with a copy of “as built” plans of the project upon completion.

Surplus Bond Proceeds. The City shall use any surplus proceeds from the Bonds remaining after completion of the Utility System improvements, to redeem in inverse annual order of maturity, the Bonds owned by the TWDB. Any remaining surplus thereafter shall be transferred to the credit of the Interest and Sinking Account transferred to any Reserve Fund or, as authorized by the Executive Administrator of the TWDB, for any eligible project cost.

Annual Reports. At the end of each fiscal year (and in no event later than 120 days), annual audits of the City, prepared by a Certified Public Accountant in accordance with generally accepted auditing practices, shall be delivered to the TWDB as long as the State owns any of the Bonds.

Final Accounting. If, following completion of the project, the Executive Administrator of the TWDB disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the City shall, immediately after filing the final accounting, return to TWDB the cost as determined by the Executive Administrator relating to the parts of the project not constructed in accordance with the plans and specifications, to the nearest multiple of $5,000, and the TWDB shall thereupon cancel and deliver to the City, in inverse maturity order, a like amount of Bonds held by the TWDB.

Davis-Bacon Compliance. All laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The City, all contractors, and all subcontractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB.

Accountability and Transparency Compliance. The city shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Bonds are outstanding.

Disposition of Proceeds. All loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule.
(i) **Indemnification.** The City further agrees, to the extent permitted by law and solely from water and wastewater funds provided by the City to indemnify, hold harmless and protect the TWDB from any and all claims or causes of action arising from the sampling, analysis, transport, removal and off-site disposition of any contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities related to the City.

(j) **Contract Requirement.** The City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines.

(k) **Remedies.** The TWDB, so long as it is owner of the Bonds, may exercise all remedies available to it in law or equity, and any provision of the Bonds that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect.

(l) **Environmental Expenditures.** The City covenants and agrees that none of the proceeds of the Bonds will be expended on costs incurred or to be incurred relating to the sampling, testing, removing or disposing of potentially contaminated soils and/or media at the project site.

(m) **Environmental Indemnity.** The City agrees to indemnify, hold harmless and protect the TWDB, so long as it is owner of the Bonds, from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

(n) **Disadvantaged Businesses.** Prior to the release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City will provide documentation to the TWDB that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program.

(o) **Prohibition Against Acquiring TWDB Source Series Bonds.** Neither the city nor a related party thereto, will acquire any of TWDB's Source Series Bonds in an amount related to the amount of the Bonds to be acquired from the City by the TWDB.

(p) **Environmental Finds.** The City covenants and agrees to comply with all conditions as specified in the final environmental finding of the TWDB Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.
PASSED AND APPROVED on first and final reading on this May 2, 2017.

Mayor, City of San Marcos, Texas

ATTEST:

City Clerk, City of San Marcos, Texas

[CITY SEAL]

APPROVED AS TO LEGALITY:

City Attorney, City of San Marcos, Texas
EXHIBIT A

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Article XIII of this Ordinance.

1. Annual audited financial statements of the City.

   2. Information of the general type in the Application to the Texas Water Development Board under the heading "Fiscal Information."

Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.
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EXECUTION

EXHIBIT A - DESCRIPTION OF ANNUAL FINANCIAL INFORMATION
February 1, 2017

The Honorable Daniel Guerrero, Mayor
City of San Marcos
630 E, Hopkins
San Marcos, TX, 78666

Re: City of San Marcos
TWDB Project No. 73748 Closing Requirements
Clean Water State Revolving Fund Financial Commitment
$1,000,000 loan and $961,821 principal forgiveness

Dear Mr. Guerrero:


The loan will be evidenced by TWDB’s purchase of your bonds. You may be required to execute a financing agreement that will be provided under separate cover. Utilizing the outline provided below, create a schedule for closing the loan and receiving funds. Required closing documents and TWDB team contact information are listed on the next page. Prior to submitting draft documents, please provide to your TWDB financial analyst the dates for your bond ordinance adoption and preferred closing date.

<table>
<thead>
<tr>
<th>Documentation or Event</th>
<th>Deadline (business days)</th>
<th>Due To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bond ordinance, draft</td>
<td>30 days prior to adoption date</td>
<td>TWDB Attorney</td>
</tr>
<tr>
<td>2. Interest rates for bond ordinance *</td>
<td>5 days prior to adoption date</td>
<td>Borrower</td>
</tr>
<tr>
<td>Bond ordinance adoption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Budget for the release of funds at closing **</td>
<td>18 days prior to closing date</td>
<td>TWDB Engineering Reviewer</td>
</tr>
<tr>
<td>4. Escrow Release Authorization</td>
<td>13 days prior to closing date</td>
<td>Borrower</td>
</tr>
<tr>
<td>5. Final closing documents (see below)</td>
<td>8 days prior to closing date</td>
<td>TWDB Financial Analyst</td>
</tr>
</tbody>
</table>

Closing

*Interest rates expire forty-five (45) days after your adoption date.

**If required, a template for an outlay report and instructions will be provided.

Our Mission
To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

Board Members
Bech Bruun, Chairman | Kathleen Jackson, Board Member | Peter Lake, Board Member
Jeff Walker, Executive Administrator
The Honorable Daniel Guerrero, Mayor
City of San Marcos
February 1, 2017
Page 2

**Required final closing documents:**

- Attorney General Opinion
- Comptroller’s Certificate
- Debt Service Schedule
- Escrow Agreement, executed
- Financial Advisor’s Closing Instructions
- Paying Agent Agreement, executed
- Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement
- Vendor Identification Form
- Principal Forgiveness Agreement, executed
- Outlay Report, approved

Our team looks forward to working with you to make this a successful project. Please include the project number listed above when sending correspondence related to this project. If you have any questions or seek additional information, you may contact any of the team members or me at Dain.Larsen@twdb.texas.org or 512/463-1618. Team members contact information:

Issa McDaniel, Project Manager, 512/463-1706
Hector Estrada, Financial Analyst, 512/463-7959
Lauren Dill, Environmental Reviewer, 512/475-1501
Alexis Lorick, Attorney, 512/463-2776

Sincerely,

Dain Larsen
Team Manager/ Central Region

cc via email: Heather Hurlbert, Finance Director
Laurie A. Moyer, Director of Engineering
Carol Polumbo, Bond Counsel
Jared Miller, City Manager
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$1,961,821 TO THE CITY OF SAN MARCOS
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$1,000,000 CITY OF SAN MARCOS, TEXAS WATER AND WASTEWATER SYSTEM
REVENUE BONDS,
PROPOSED SERIES 2017B
AND
$961,821 IN PRINCIPAL FORGIVENESS

(17-011)

WHEREAS, the City of San Marcos (City) has filed an application for financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, and design of certain wastewater system improvements identified as a flood mitigation project in Project No. 73748; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB’s proposed purchase of $1,000,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Proposed Series 2017B (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of $961,821, all as is more specifically set forth in the application and in recommendations of the TWDB’s staff; and

WHEREAS, the City has offered a pledge of net revenues of the City’s water and wastewater system as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB’s pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;

2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as well as state law, in accordance with Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB’s rules; and

4. that the City meets the definition of “Disadvantaged Community” in 31 TAC § 375.1(23) and is therefore eligible for principal forgiveness through the CWSRF.
NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of San Marcos for financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund through the TWDB’s proposed purchase of $1,000,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Proposed Series 2017B and the execution of a Principal Forgiveness Agreement in the amount of $961,821. This commitment will expire on July 31, 2017.

Such commitment is conditioned as follows:

**Standard Conditions**

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City’s compliance with all applicable requirements contained in 31 TAC Chapter 375;

4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;

5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City’s Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City’s Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB’s bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount
necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;

7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) deposit into a reserve fund;

9. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

10. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

11. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

12. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;

13. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be
reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

**Conditions Related To Tax-Exempt Status**

16. the City’s bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the City’s bond counsel opinion must also state that the Obligations are not “private activity bonds.” Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become “private activity bonds” within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:

   a. proceeds of the TWDB’s Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;

   b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and

   c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10
percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

20. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:

a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;

c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB’s Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;

d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;

21. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;

22. the Obligations must provide that the City will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;

23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City’s reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
24. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

25. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

27. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor’s implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB;

28. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;

29. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;

30. the Obligations and Principal Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

31. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 et seq. related to maintaining project accounts containing
financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

32. the City shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

33. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;

34. at the TWDB’s option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

35. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

36. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 et seq. and 33 U.S.C. § 1382(b)(14).

Pledge Conditions for the Loan

37. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;

38. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
39. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if:

(a) the City is not then in default as to any covenant, condition, or obligation prescribed in an ordinance authorizing the issuance of outstanding parity obligations;

(b) the proposed additional revenue obligations have been approved by the Texas Attorney General;

(c) each of the respective funds created and dedicated to the payment, security, and benefit of the additional revenue obligations contains the amount of money then required to be on deposit therein;

(d) the City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed additional revenue obligations, or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed additional revenue obligations is adopted, the “net revenues” of the System (after operations and maintenance is considered, but not deducting depreciation or expenditures, which under standard accounting practices are classed as capital expenditures) are equal to at least 1.20 times the combined average annual principal and interest requirements on all outstanding revenue obligations to be outstanding after the issuance of the proposed parity revenue obligations. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator. In making a determination of such net revenues, the CPA may take into consideration a change in the rates and charges for services and facilities afforded by the City’s systems that became effective at least sixty (60) days prior the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues text, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as be in in effect for the entire period covered by the certificate or report, and;

(e) the additional revenue obligations are made to mature on February 15 or August 15, either or both, of each year in which they are scheduled to mature.

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

40. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
41. The Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 26th day of January, 2017.

TEXAS WATER DEVELOPMENT BOARD

[Signature]
Beck K. Bruun, Chairman

DATE SIGNED: __/__/17

ATTEST:

[Signature]
Jeff Walker
Executive Administrator
AGENDA CAPTION:
Consider approval of Ordinance 2017-25, on the first of two readings, creating a two-hour parking restriction between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday in the general area of downtown San Marcos as authorized by Section 82.160 of the San Marcos City Code and amending the traffic register to reflect such parking restriction; and including procedural provisions.

Meeting date: May 2, 2017

Department: CMO - Kevin Burke, Economic Development Administrator

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

CITY COUNCIL GOAL:

COMPREHENSIVE PLAN ELEMENT(s):

BACKGROUND:
The “Downtown Parking Initiative” report was completed in December 2012. The report established seven “Action Items” for future implementation:

1. Create a parking management district
2. Hire a parking program manager
3. Develop a business & funding plan
4. Implement paid on-street parking
5. Develop mid- to long-term parking resources
6. Develop parking supply additions
7. Parking program branding, marketing & communications strategy

Council held a workshop regarding “Downtown Parking & One-Way/Two-Way Conversion” on October 14, 2015. Council directed Staff to use an independent entity / consultant to work with staff on the Downtown Parking Initiative.


Kimley-Horn and staff conducted a series of stakeholder meetings in August 2016 and developed a set of
“Near-Term Action Items” based on stakeholder feedback.

Council directed staff to move forward within implementation of the near-term recommendations on December 6, 2016. The near-term recommendations and the staff presentation to Council are attached for your reference.

This item is in response to Near Term Recommendation #2: Uniform 2-Hour Parking Time Limit Downtown. It is recommended that the City of San Marcos immediately implement changes to existing on-street time restrictions to adopt a uniform 2-hour parking time limit for the entire downtown area, Monday through Friday, between the hours of 8 a.m. and 5 p.m. This time restriction will not apply to designated loading zones or established residential permit areas.

This recommended approach will simplify parking regulations for patrons as well as simplify implementation of the proposed Mobile License Plate Recognition (MLPR) parking enforcement system. The application of this uniform time limit and the MLPR parking enforcement system will be considered “pilot programs” and will be reviewed and evaluated as parking management program implementation continues.

The attached exhibit describes the area designated as 2-hour time limited parking under this Ordinance.

Staff recommends approval.
ORDINANCE NO. 2017 - ________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CREATING A TWO-HOUR PARKING RESTRICTION BETWEEN THE HOURS OF 8:00 A.M. AND 5:00 P.M. MONDAY THROUGH FRIDAY IN THE GENERAL AREA OF DOWNTOWN SAN MARCOS AS AUTHORIZED BY SECTION 82.160 OF THE SAN MARCOS CITY CODE AND AMENDING THE TRAFFIC REGISTER TO REFLECT SUCH PARKING RESTRICTION; AND INCLUDING PROCEDURAL PROVISIONS.

RECITALS:

1. Section 82.160 of the San Marcos City Code allows the placement of signs on public streets or in a public area giving notice that parking is limited to a specified time.

2. The designation of a two-hour parking zone in the general area of downtown 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. A two-hour parking zone, to be in effect between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, is hereby designated on both sides of the road beginning at the junction of South Guadalupe Street and the Union Pacific Railroad right-of-way (point of origin), continuing north and east along said Union Pacific right-of-way to South CM Allen Parkway, continuing north on South CM Allen Parkway to University Drive, continuing west on University Drive to North LBJ Drive, continuing north on North LBJ Drive to Woods Street, continuing west on Woods Street to North Comanche Street, continuing south on North Comanche Street to Lindsey Street, continuing west and south on Lindsey Street to Moore Street, continuing south and east on Moore Street to North Street, continuing south on South Guadalupe Street to the point of origin as depicted in Exhibit A.

SECTION 2. The two-hour parking zone established under Section 1 does not apply to designated loading zones or residential permit areas established by previous ordinances.

SECTION 3. The Traffic Register maintained under section 82.067 of the San Marcos City Code is amended to reflect the two-hour parking designation established under Section 1.

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

PASSED AND APPROVED on first reading on May 2, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 16, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
November 21, 2016

Mr. Kevin J. Burke, AICP
Economic Development & Downtown Administrator
City of San Marcos, TX
630 E. Hopkins
San Marcos, TX 78666

RE: Technical Memorandum/Project Update

Dear Mr. Burke,

The following is combination project update and technical memorandum related to our active parking management consulting assignment. This memorandum contains several Near-Term Recommendations for staff and City Council review and consideration.

Near-Term Action Items

Based on input received from City staff and community stakeholders, the project team is recommending several action items as project near-term deliverables. These program recommendations include the following action items:

Recommendation # 1: Enhance and Expand the Parking Enforcement Program

It is recommended that the City of San Marcos immediately pursue implementation of an enhanced and expanded parking enforcement program using license plate recognition technology.

This recommendation reflects feedback from downtown stakeholders and Council Members requesting enhanced and expanded parking enforcement while continuing to advance plans for on-street paid parking.

Accompanying this recommendation is a Technical Memorandum with guidance on the procurement of Mobile License Plate Recognition technology.
This document addresses common issues faced by municipalities when considering this technology. It also outlines the major system components, common issues and misconceptions and other considerations such as:

- Tracking LPR Capture Rates
- The ability of perform/track manual corrections
- Capturing GPS coordinates
- System analytics including:
  - Turnover rate
  - Scofflaw history
  - Behavior analytics by user groups
    - Employees
    - Students
    - Car parked multiple times within same parking space
- Tracking payments, appeals, error rates, who received permits, etc.
- Integration with parking meters
- Integration with mobile payment providers such as Pay-by-Phone, ParkMobile, etc.
- Integration with other city departments to share data as well as improve payment of citations
- Calculation of occupancy data coincident with enforcement process.

We are also providing a supplemental whitepaper that discusses our experience utilizing Mobile LPR systems as a parking occupancy data collection tool.

**Recommendation # 2: Uniform 2-Hour Parking Time Limit Downtown**

It is recommended that the City of San Marcos immediately implement changes to existing on-street time restrictions to adopt a uniform 2-hour parking time limit for the entire downtown area.

The application of this uniform time limit approach combined with the additional citation data that will be derived from the new LPR system will be considered “pilot programs” and will be reviewed and evaluated as parking management program implementation continues. This recommended approach is geared toward simplifying parking regulations for both parking patrons as well as making the implementation of the new mobile LPR system less complex.
Recommendation # 3: Pursue New Parking Supply Additions

As parking enforcement program enhancements are made and planning for paid on-street parking continues, a likely result will be displacement of employees and students from on-street spaces. Providing as many on-street parking spaces as possible will be an ongoing need. City staff will identify underutilized on-street areas and potentially underutilized off-street areas that could add to the overall parking supply at minimal expense. Approximately 20 - 30 new parking spaces, in locations to be determined by staff, are anticipated.

Recommendation # 4: Begin Development of an Employee Parking Program

In anticipation of the impact of a potential on-street paid parking program, it is recommended that the City begin developing an “employee parking program” and other basic Transportation Demand Management (TDM) strategies.

The concept of an “Employee Parking Program” is a collection of strategies focused on providing long-term parking for employees. This could take the form of:

- Conversion of peripheral on-street spaces (with low demand) to employee permit parking
- Special discounted parking for employees at Texas State University garages
- Creation of smaller, City-owned surface parking lots for employee parking
- Possible lower cost remote parking areas (potentially supplemented by shuttle programs)
- Stacked parking options (that may require some form of valet assist) to “shoe-horn” more parking in to surface lots or garages

In addition, the City should begin exploring a range of basic Transportation Demand Management (TDM) strategies to better manage the parking demand side of the parking supply/demand equation. Transportation Demand Management (also referred to as traffic demand management or travel demand management) is the application of strategies and policies to reduce travel demand (specifically that of single-occupancy private vehicles), or to redistribute this demand in space or in time.

In transportation and parking, as in any network, managing demand can be a cost-effective alternative to increasing capacity. A demand management approach to transport also has the potential to deliver better environmental outcomes, improved public health, stronger communities, and more prosperous and livable cities. TDM techniques link with and support community movements for sustainable transportation.
Although other non-motorized modes play a role – such as bicycling and walking – larger impacts are gained through the use of alternate motorized modes. Other strategies may also be employed such as work schedule adjustments, telework options and land use or space allocation analyses. Policy related alternatives are another important area in the development of a comprehensive TDM program and will be explored in more detail at a later date. These policy related approaches would include tactics such as parking pricing, parking cash-out, transit subsidies, preferred parking for alternative transportation users, etc.

Kimley-Horn has recently created a document we call our “TDM Quick Guide” as a summary of potential TDM strategies. Another reference document is an article due to be published in next month’s Parking Professional magazine on the emerging topic of “Shared Mobility.” Project manager Dennis Burns recently attended a new conference on this topic and was asked by the International Parking Institute to write an article on his “takeaways” from the 2016 Shared Mobility Summit which occurred in Chicago in October of this year.

We are continuing to work on a variety of other scope elements for this project; however, this technical memorandum summarizes our near-term project recommendations.

Best regards,

Dennis Burns, CAPP
Project Manager
Kimley-Horn and Associates
Parking Management Program
Near-Term Recommendations
The purpose of this item is to present the near-term recommendations of our parking management consultant, Kimley-Horn, and to seek direction regarding implementation of these recommended action items.
Near-Term Recommendations

1. Enhance and Expand the Parking Enforcement Program
Recommendation # 1:

Pursue implementation of an enhanced and expanded parking enforcement program using License Plate Recognition (LPR) technology.

Reflects feedback from stakeholders and Council Members requesting enhanced parking enforcement while we continue to advance plans for on-street paid parking.

Technical Memorandum provides guidance on procurement and use of License Plate Recognition technology.
Near-Term Recommendations

1. Enhance and Expand the Parking Enforcement Program

2. Uniform 2-Hour Parking Time Limit Downtown
Recommendation # 2:

Implement changes to existing on-street time restrictions to adopt a uniform 2-hour parking time limit for the entire downtown area.

This approach is geared toward simplifying parking regulations for parking patrons and simplifying LPR system implementation.
Near-Term Recommendations

1. Enhance and Expand the Parking Enforcement Program
2. Uniform 2-Hour Parking Time Limit Downtown
3. Pursue New On-Street Parking Supply Additions
Recommendation # 3:

Staff will identify underutilized on-street areas, and potentially underutilized off-street areas, that could add to the overall parking supply at minimal expense.
Near-Term Recommendations

1. Enhance and Expand the Parking Enforcement Program
2. Uniform 2-Hour Parking Time Limit Downtown
3. Pursue New On-Street Parking Supply Additions

4. Begin Development of an Employee Parking Program
Recommendation # 4:

Begin development of an “employee parking program” in anticipation of on-street paid parking implementation.

Program is a collection of strategies focused on providing long-term parking for employees.

Continue to explore comprehensive approach to Transportation Demand Management (TDM).
Next Steps

- LPR procurement
- Privacy policy development
- Traffic register amendment(s)
- Begin enhanced parking enforcement
AGENDA CAPTION:
Consider approval of Ordinance 2017-26, on the first of two readings, amending Chapter 82 of the City of San Marcos Code of Ordinances to create a new Section 82.190 establishing a Downtown Employee Parking Permit Program; and providing an effective date.

Meeting date: May 2, 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:

COMPREHENSIVE PLAN ELEMENT(s):

BACKGROUND:
The “Downtown Parking Initiative” report was completed in December 2012. The report established seven “Action Items” for future implementation:

1. Create a parking management district
2. Hire a parking program manager
3. Develop a business & funding plan
4. Implement paid on-street parking
5. Develop mid- to long-term parking resources
6. Develop parking supply additions
7. Parking program branding, marketing & communications strategy

Council held a workshop regarding “Downtown Parking & One-Way/Two-Way Conversion” on October 14, 2015. Council directed Staff to use an independent entity / consultant to work with staff on the Downtown Parking Initiative.


Kimley-Horn and staff conducted a series of stakeholder meetings in August 2016 and developed a set of
“Near-Term Action Items” based on stakeholder feedback.

Council directed staff to move forward within implementation of the near-term recommendations on December 6, 2016.

This item is in response to Near Term Recommendation #4: Begin Development of an Employee Parking Program. The concept of an “Employee Parking Program” is a collection of strategies focused on providing long-term parking for employees. As described by Kimley-Horn, this could take the form of:

- Conversion of peripheral on-street spaces (with low demand) to employee permit parking
- Special discounted parking for employees at Texas State University garages
- Creation of smaller, City-owned surface parking lots for employee parking
- Possible lower cost remote parking areas (potentially supplemented by shuttle programs)

In discussion with Council on December 6, 2016, and most recently on March 7, 2017, staff described our intent to move forward with the creation of an employee parking permit program, in line with the first bullet point above.

The ordinance establishes an Employee Parking Permit Program, under which peripheral on-street spaces with low parking demand, may be designated by the City Council as areas for “Employee Parking by Permit Only.”

Employers located in downtown San Marcos will be eligible to purchase a limited number of permits for their employees. Each Employee Parking Permit will be linked to a specific license plate number, facilitating enforcement through the City’s Mobile License Plate Recognition (MLPR) parking enforcement system.

The ordinance authorizes the City Manager to establish such policies and procedures as necessary to implement the program.

For purposes of this program, “Downtown” is defined as the Main Street Program area, as shown in the attached exhibit.

Prior to approval of the ordinance on first reading, staff is seeking further direction on two specific elements of the program:
File #: Ord. 2017-26, Version: 1

- Cost per permit per year
- Number of permits per employer

A separate Ordinance on this agenda provides for Council consideration and approval of four initial “Employee Parking by Permit Only” areas at the periphery of downtown.
ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 82 OF THE SAN MARCOS CITY CODE TO CREATE A NEW SECTION 82.190 ESTABLISHING A DOWNTOWN EMPLOYEE PARKING PERMIT PROGRAM; 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 82, Traffic and Vehicles, Article 4, Stopping, Standing, Parking, is hereby amended by adding a new Division 3, Section 82.190 to read as set forth below. Underlining is shown to indicate newly added text.

DIVISION 2. DOWNTOWN PARKING

Sec. 82.190. Employee parking program for downtown businesses.

(a) Definitions. As used in this section, the following terms shall have the meanings ascribed in this subsection, unless the context of their usage clearly indicates another meaning:

Block means both sides of a street between two intersecting streets.

Employee permit parking area means any area of public right-of-way in downtown, upon which the city council limits parking during specified times to employees having an employee parking permit.

Downtown means the contiguous area in the city that is in the Main Street Program operating area.

Employee means a person who is employed full-time or part-time in downtown by an Employer.

Employer means a person or business organization operating a business in Downtown that employs persons in Downtown.
Employee parking program coordinator means a person designated by the city to oversee the employee parking permit program established by this section.

Employee parking program guidelines means operating policies and procedures established by the city.

Employee parking permit means a permit issued by the city pursuant to this section to an employer that grants to an employee the right to park in an employee permit parking area during the hours of the day in which the employee is performing job duties for the employer.

(b) Initiation of request for establishment of employee permit parking area(s). The establishment of an employee permit parking area must originate from the City Council or City Manager and shall be adopted by an ordinance amending the traffic register maintained under section 82.067.

(c) Establishment of employee permit parking area(s). The city council shall conduct a public hearing on the establishment of an employee permit parking area. Following the conclusion of the public hearing, the city council may approve, reject or modify the proposed employee permit parking area(s). The city council will establish an employee permit parking area by adopting an ordinance which shall describe the location of the employee permit parking area and the specific times during which the area is restricted to parking for employees only.

(d) Employee permit parking area removal. Once an employee permit parking area is established, a removal request may only be initiated no sooner than the first anniversary of the date on which the ordinance establishing the area was adopted. The request for the removal of the employee permit parking area must originate from the city council or city manager.

(e) Permits. Employee parking permits are issued to an employer for use by individual employees who will park or leave a vehicle standing in an employee permit parking area. Employee parking permits are linked to a specific vehicle license plate number for purposes of application, payment and enforcement. Employee parking permits are valid for one year from the date of issuance.

(1) Application for permit. Any employer wishing to receive an employee permit parking permit will be required to complete an application. This application will verify that the applicant meets the definition of employer ascribed in the section. The application will also verify a vehicle license number for each employee parking permit purchased by the employer.

(2) Cost. Each employee parking permit shall cost $__.00 per year.
(3) **Number of permits.** The combined total number of employee parking permits for each employer is limited to 20 permits per year.

(f) Nothing in this section shall change or alter existing no parking or tow away zones designated under applicable ordinances for purposes of traffic management and control.

(g) **Parking without valid permit prohibited.** No person shall park or leave standing any vehicle, whether attended or unattended, in an employee permit parking area during the posted times reserved exclusively for parking by employees for the specific area without a valid employee parking permit. Revoked or expired permits are not considered to be valid permits for purposes of this subsection. Parking violations under this section are subject to the level two civil penalty for parking in a no parking zone under section 82.159.

(h) The city manager, residential parking permit program coordinator, and the city traffic engineer may serve as an administrative committee authorized to establish and amend the employee parking program guidelines.

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 and publication.

PASSED AND APPROVED on first reading on May 2, 2017.

PASSED, APPROVED AND ADOPTED on second reading on May 16, 2017.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case Michael J. Cosentino
City Clerk City Attorney
Employee Parking & Commute Option Programs

A White Paper
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1 INTRODUCTION

Developing a Comprehensive Approach to Employee Parking and Commute Option Programs

“Every day 130 million people commute to worksites across the nation, from large downtown office buildings to suburban office parks, and every location in between. Employees face increasing challenges getting to work in the most efficient, affordable and sustainable way – a challenge that can negatively impact productivity if not addressed. Progressive employers understand the steps available to improve the commute options for their workforce can have wide-ranging benefits including:

- Attracting and retaining employees
- Improving work life balance
- Achieving corporate sustainability and climate goals
- Reducing transportation costs and tax savings”

The quote above comes from a paper published by the Association for Commuter Transportation entitled “Getting to Work – Spotlight on employer-sponsored commuter programs”. This paper is just one resource provided as an appendix to this whitepaper that focuses on the development of a comprehensive approach to employee parking as well as providing a range of alternatives including creative commuter options.

This whitepaper (Employee Parking & Commute Option Programs) begins by discussing “Why Parking Matters” and the many impacts parking can have on communities, employers and employees, including such elements as “the myth of free parking”, economic considerations, costs associated with land use, transportation costs, sustainability issues and direct and indirect costs. It then documents research on effective employer parking programs, policies and best practices and then broadens its scope to explore a wide range of commute option programs that have been proven effective in mitigating employee parking demand and providing a range of transportation alternatives and employee transportation benefits.

2 WHY PARKING MATTERS

The design and availability of parking has the potential to shape both the look and feel of a city, the quality of life of its citizens and visitors, and the potential for new growth and development. The need to accommodate parking must be balanced with other competing goals for the built environment such as livability and economic development. It is important to acknowledge that it is impossible to accommodate the land consumption that would be required to park every vehicle since it would prevent the City from achieving its goals of being a sustainable, livable community.

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1 “Getting to Work – Spotlight on employer-sponsored commuter programs” Taking ACTion – January 2017, Association for Commuter Transportation
2 Excerpt from the Denver Parking Strategic Plan, October 2010
PARKING:

- Impacts the look and feel of a city and its neighborhoods
- Is shaped across multiple levels of policy, regulation and administration
- Is an important component of the overall land use and transportation system
- Can affect traffic congestion
- Has cost and value associated with every space
- Is dynamic and varies based on the surrounding land use and time of day
- Is part of a larger city system with many stakeholders
- May require tradeoffs in our behavior, expectations, and choices
- Demand is most intense where there are centers of activity, mixes of land uses, and where land is valuable
- Takes up land as one off-street space = 300+ square feet of physical space.
- Structures cost upwards of $18,000 - $30,000 per space.
- Affects housing affordability
- Can contribute to urban sprawl and pollution

**EVERYONE PAYS FOR PARKING**

Whether it is through a direct or indirect charge or an impact, parking is never free. Even in situations where parking appears to be free, like at grocery stores or shopping centers, the real costs of parking are often hidden. Businesses that provide free parking might fund the cost of providing parking through their annual operating budgets. Other businesses might even pass on those costs through the price of their goods or services. Likewise, the parking spot on the street in front of a home has a cost that is paid for by tax receipts.

The cost of parking, however, is more than just physical. The opportunity costs associated show that parking is worth much more than the amount of quarters it takes to plug a meter. Its value is evident in terms of economic development, land use, the health and connectivity of the overall transportation system, and environmental sustainability.

**ECONOMIC DEVELOPMENT COSTS**

Effective parking policies and management strategies directly impact local economic development. Parking supply is often a key consideration for businesses considering any City as a location since they must consider access for both employees and customers. Customers think about parking as they make decisions regarding where to shop, do business, and play. Customers may choose to go elsewhere if the parking associated with a business or commercial area is limited, perceived as too far away, is too expensive, or is inconvenient.

The Urban Land Institute document, “Ten Principles for Rebuilding Neighborhood Retail (2004)”, encourages balancing a walkable environment with convenient access in urban shopping locations. It advocates for “high visibility, a sense of personal security, and adequate convenient parking” as necessities for successful retail but warns that “without them retail will likely fail,
regardless of the sophistication of the shopping environment or the quality of the tenants”. The parking decisions made by the affected stakeholders and their economic impacts are important since it relies on tax revenues from retail sales to fund city services for both residents and businesses. In some cases, there is a relationship between the provision of parking and economic vitality. The goal is to achieve what is often a delicate balance between local area interests and overall city and community interests to create lively, attractive, and sustainable places.

**COSTS ASSOCIATED WITH LAND USE AND NEIGHBORHOODS**

In a typical North American city, the amount of space dedicated to roadways accounts for about 30% of the total land use. Land used specifically for parking simply adds to the overall percentage of space that is dedicated primarily to automobiles.

In addition, the visual impact of too much surface parking in an area can be striking. If the supply of surface parking is underutilized, it may also be perceived as unsafe or may not attract new development. The decision to use large areas for surface parking in urban areas where land values are high may not be the most cost-effective or efficient use of land for both individual community and city interests.

Finally, parking requirements for new development may significantly impact construction costs and impact the financial feasibility of a project. Many communities are poised to invite new development of many shapes and sizes. This growth will contribute much to the vitality of different neighborhoods as well as the communities. Future land choices should support the City’s goals of providing affordable housing choices, increased services, jobs, and neighborhood retail.

**TRANSPORTATION COSTS**

Parking is an important component of the overall transportation and mobility network since the design and location of parking can influence personal travel choices. If there is a reasonable chance of free and available parking at one’s destination, it is more likely that an individual will choose a private automobile for the trip. Free and abundant parking provides no incentive to utilize alternative forms of transportation; prioritizing the use of personal vehicles over walking, cycling, or transit use. In addition, the location of parking can directly impact safety, circulation, and access for users of other transportation modes. The use of on-street parking should be weighed against other potential uses of available right-of-way such as bike lanes or dedicated transit lanes. While congestion and air pollution levels increase with additional vehicles on the road, decreasing the number of vehicles on the road could reduce parking demand, traffic congestion, and pollution levels.

**ENVIRONMENTAL SUSTAINABILITY COSTS**

The quality of a community’s environment is impacted when land is dedicated to parking uses. Large surface parking lots can contribute to the “heat island effect” when asphalt absorbs and retains heat from the sunlight. Additionally, ground covered with asphalt or concrete is impermeable, which inhibits natural drainage and can carry run-off water containing oil, gas, grease or other fluids into storm drains, rivers, or streams. This ultimately impacts the City’s overall water quality. Land dedicated to cars for roadways or parking should instead be balanced with opportunities for green spaces where plants and trees help improve air and water quality.
**DIRECT COSTS**

Parking requires substantial capital and operating expenditures that are not always recovered from those who use the spaces. Cities, corporate campuses and other large institutions routinely manage hundreds of on and off-street parking spaces, however, only a very small fraction of those spaces typically produce revenue. Each space has an associated cost in terms of land value, maintenance, utility and management expenses.

Land utilized for on-street parking is a scarce and highly valuable resource. Effectively managing on-street parking primarily as a short-term, high turn-over resource is highly recommended. It is costly to build additional parking even if it is developed as surface lot parking. It is especially expensive when it requires the construction of underground or raised structures. In addition, each space must be maintained to make sure it is safe, accessible, and complies with zoning requirements or other city standards. Successful parking systems also require constant monitoring and administrative management to make sure that they are meeting the needs of users and citywide goals. Parking studies, data collection, and other evaluation strategies are costly and time consuming but are often necessary to calibrate the usefulness of the overall system.

Active parking management has a significant cost impact for municipalities. Many cities devote full-time staff teams to the management of parking operations and enforcement. Enforcement teams that monitor parking management compliance require personnel and equipment resources. Parking technologies that improve customer service and performance for users, such as online citation payment websites or the installation of new, more convenient meter technologies also represent significant capital investments for the City. Finally, the maintenance of on- and off-street parking facilities includes costs such as resurfacing concrete and asphalt, striping, and signage to ensure that parking spaces are functional and clearly marked. Although meters and enforcement activities can generate citation or fine revenue for the City, expenditures to keep parking inventory and programs running effectively often cut deeply into any profits.

The bottom line is that parking is an essential element of modern society and its impacts and cost are not insignificant. However, an effectively managed parking system can also contribute greatly to health, vitality and image of any community or campus; and within the realm of parking management, one of the biggest elements of an effectively managed system is the development of effective strategies and policies to address employee parking. In this context, employee parking can mean either managing your own employees, or in a broader context, having a range of options to address the needs of employees areas where parking is managed.

3 EMPLOYEE PARKING PROGRAM RESEARCH

Because accommodating parking for employees/commuters accounts for such a large percentage of parking needs for any community, and because employers can offer their employees alternatives to driving single occupant vehicles, interest in exploring the range of strategies employed by parking management organizations in a variety of parking environments is high. Combine this with the often significant cost of providing parking, recent surges in advanced transportation demand management solutions (largely driven by technology and mobile communications) as well as the emergence of a new topic area being referred to as “Shared Mobility,” and it is easy to understand why this topic area is currently receiving a lot of attention.
As part of the research for this project, Kimley-Horn reached out to several of the top parking management professionals across the country to get their input relative to the issues associated with developing and implementing effective employee parking programs. Below is summary of the feedback we received.

**INSIGHTS FROM ACTIVE PARKING MANAGEMENT PROFESSIONALS**

**City of Beverly Hills, CA**

**Topic:** Valet Stack / Tandem Parking Options:

- Although no one likes to leave their keys, in our experience, ‘monthly’ users (employees) that do it daily have more issues; claims, complaints, etc. than occasional customers. To address, we have done a few different things...
  - Sold reduced monthly permits to companies that will manage their own tandem parking; we just ‘enforce’ to ensure that their employees are using the designated areas.
  - Pushed monthly users to blocked tandem spaces so they can keep their keys and parking transient behind over the course of the day with attendant-assist
  - Once valets get used to the users’ schedules, we often don’t have to move a vehicle at all

- **Topic:** Part-time Employees:
  - We have identified two user profiles that are most likely to either park/re-park in free areas or in residential areas
    - Those that work all day 1-3 days per week
    - Those that less than a full day (1/2 day) 4-6 days per week
  - We have considered, but have not had great success with, the concept of offering multi-monthly discounts
    - Restaurants are a good example of where this can work, but there is typically no one that is assigned the task or willing to organize their parking, such as the business. The business usually takes an arms-length approach to their employee parking problem, leaving the City to deal with the issues.
    - The concept of “multi-monthly discounts” is that the business may have 10 or 20 employees, but there may only be 5 employees present at any one time
• Under this concept, the City would allow businesses to purchase 5 full price monthly parking permits and then as many additional permits at a reduced rate (1/2, 2/3, whatever) but only allow 5 vehicles in the facility at one time. Most modern parking access and revenue control systems (PARCS) can provide the capabilities to manage this approach.

• The key issue is having a program that can be communicated to the business and getting the business to be an active partner

• Topic: Evening Employee Parking:
  o For evening employee parking, we identified an ‘exit window’ that most of the evening employees (mostly restaurants) were leaving the facility. We created a reduced flat rate based on time of exit of $2 or $3. This means that if you arrived to work at 5pm and exited the facility between, say 10p-12a, your fee would be a flat rate of $2. If you exited at 9pm, it would have been $6 or even $18 if you were paying the day/hourly rate and not the standard evening flat rate.
  o This program was created when we installed pay-on-foot equipment in our facilities and were collecting fees 24 hrs a day. The local restaurants were complaining that their business was down because people used to grab dinner after work (like 7/8pm) and wait until the attendant left for the evening at 9pm to exit free. We made a compromise to help address the issues of restaurant patrons with the reduced flat rate window, which also became a benefit for evening employees.

• Topic: Below-Market-Rate Parking for Employees:
  o We piloted a Below-Market-Rate program with the Chamber of Commerce as the administrator of the program.
    ▪ We sold the Chamber a book of reduced rate monthly/daily passes at a 50% discount
    ▪ The program stipulated an hourly wage cap to ensure it was going to those least likely to purchase (or afford) monthly parking and abusers of the park/repark or residential areas.
    ▪ The Chamber added a small ‘fee’ for the sale of the permit to cover their costs.
  o If you can find a way to get the local business to be an active partner, I think that is one of the best ways to both find solutions and offer more organized programs. For instance, you offer the business the ability to purchase the
parking at the extreme discount and not just individuals so there is connectivity to the business and accountability for usage/fraud.

- With respect to wait lists, one of the things to consider/manage is who is on the list.
- One of the things we found that told us we were too far below market, in that people that already had convenient parking were on our waiting lists for 1-2 years because it was so much cheaper.
- Consider how many spaces you will allow a single user/business to place on the list and let people know up front how long from the time you notify them of available parking you will wait until you go to the next person on the list.

**City of Lincoln, NE**

Topic: High Parking Demand – Parking Supply Issues:

- The City of Lincoln has reached the point of demand that has us looking at constructing a new garage. In the meantime, however, the two programs we are looking at most closely are:
  - On-street permit (digital) parking in remote metered spaces.
  - Subsidizing bus ridership for current monthly parkers in an effort to “buy back” some of the monthly spaces currently in use.
- We are also looking at the shuttle option to better access the existing parking in some of our outlying areas but the cost is not in line with the current budget. Perhaps if the need becomes more critical this option will become more attractive.

**City of Houston, TX**

Topic: Managing the high costs of providing employee parking:

- We are at the point where we need to make some recommendations to the Mayor about the Employee Parking & Transit Program. We spend about $4 million/year on parking/transit for City employees. The City pays for either a parking space or a transit pass.
- Recently, all our paring rates just went up and we are looking at ways to better manage this program. We’ve done a quick survey of other employers in the area and it’s an even split between those who pay for parking and those employers who partially pay for the parking.
- We are interested in “parking cash out” for the employees but it’s a hard sell because taxes are impacted. But we are considering partial subsidies of parking and full subsidies for transit. **Note:** Parking cash out is a program that allows employees to opt out of having
a parking space and instead receive compensation. The employer who leases (or owns) a space pays the employee not to park.

- We have a vanpool and carpool program and those vehicles have preferred parking, but the scale of this initiative is small and in the past, interest has been limited. For employees who opt for transit, we offer 12 days of free parking in the garage if they need to drive (per year) and we also offer emergency transportation for transit employees (we call a taxi – only have had to do that once since we’ve taken over the program).

- We also require all employees enrolled in the transit & parking program to resolve any outstanding parking citations to their personal vehicles in addition to billing departments when employees fail to resolve parking citations on city vehicles.

- Finally, we incorporated peace officer parking into the rollout – as you know, peace officers park anywhere and everywhere – we have a general order that prohibits them from parking within 4 blocks of headquarters if they work at headquarters, but this is routinely violated. Additionally, they would leave a badge or a ball cap or homemade placard on the vehicle which we were not in favor of.
  
  o  Now we issue placards to the police department employees – if they work in headquarters, they get a blue placard – so they may park at a meter but it can’t be within 4 blocks of headquarters. If the peace officer works at the one of the satellite offices, they get a yellow placard which allows them to park in the vicinity of headquarters.

- I feel like we just encourage single occupant vehicle (SOV) usage and contribute to the traffic madness instead of leading the way out of it. See Houston’s Employee Parking Administrative Policy on the program and the memo they sent to the Mayor’s office with their recommendations (see Appendix).

4 WHY SHOULD EMPLOYERS AND MUNICIPALITIES CARE ABOUT PARKING?

The following section was modified and updated from an excellent document originally published by Metro in Seattle, entitled Managing Employee Parking in a Changing Market. Metro developed this handbook for use by employers who provide parking for their employees. Production of this handbook was made possible by a grant from the Federal Transit Administration. Eileen Kadesh of Metro's Market Development section and Diana Ehrlich, a graduate student at the University of Washington, coordinated development of this guide.

At first glance, parking management – management of the location, cost, availability and demand for parking – may not seem like a very important topic. Yet, there are two good reasons why employers and municipalities should take a fresh look at their parking policies:
**Reason No. 1: Effective parking management can save you money.**

- Employers and communities who own their own sites will find effective parking management can help them recoup the cost of their initial investment in parking.
- Employers and communities who lease their sites and do not pay a separate charge for parking in their leases may gain more control over the number of parking spaces assigned to them by developers or building management. This change can lead to more competitive rents.
- Effective parking management can help employers and communities avoid the need to build new parking spaces or lease additional parking.
- Where employers reduce parking supply or charge market rates for parking, they also may reduce drastically the cost of setting up a trip reduction program.

**Reason No. 2: Effective parking management is one of the best ways to influence employees to stop driving to work alone.**

- Research has shown there is a strong relationship between the availability and cost of parking and the choice of a commute mode. More than 75 percent of the people who drive to work in U.S. cities use parking provided by their employers. And 90 percent of those workers don't pay to park. For many employers, free parking at work is a stronger incentive to drive than if their employer offered instead to give them free use of an automobile and free gasoline for their trips.

**Reason No. 3: Parking is Expensive**

- Employers spend a tremendous amount of money on parking. Costs associated with parking include taxes, construction and maintenance, in addition to the opportunity costs of converting spaces to uses with higher financial return.

- A 1985 survey in southern California found the cost to firms for employee parking ranged from $26,000 to $377,000 a year, with a median of about $40,000 a year.

- About 75 percent of suburban economic center parking is surface parking. A well-designed facility uses 300 to 325 square feet per car, including space for aisles, landscaping and other features. Surface parking costs approximately $11 to $16 per square foot to build, including paving and drainage, lighting, landscaping and basic access and revenue control equipment. A parking stall of 320 square feet, therefore, would cost between $3,500 and $5,000 per space in 2017 dollars.

- Parking structures cost $18,000 to $32,000 per space, depending on their height and design, plus the cost of land in 2017 dollars. Below-grade parking can cost 1.5 – 2.0 times the cost of above grade parking structures per space to develop. A parking fee of
approximately $200 per month would be required only recover this capital cost. An additional charge would be necessary to cover operating costs.

**Why do employers provide free parking?**

- Employer-provided parking subsidies have been an integral part of the benefit package used to attract and keep employees. These subsidies can be direct (employers buy or reimburse employee parking) or indirect (employers pay higher lease rates). Indirect subsidies are most common in suburban areas.
  
  - Parking subsidies are nontaxable to $155 per month, so employers can provide a fringe benefit with a value that exceeds the same amount of taxable income.
  
  - Suburban employers do not normally have parking costs itemized separately in their building leases. The total rent includes the cost of parking for those employers. Thus, suburban employers usually do not know how much it costs them to provide parking for their employees. They also have no monetary incentive to encourage their employees to use less parking. Those conditions have led to abundant free parking in the suburbs.

- A survey conducted by the Orange County Transit Authority in California asked 50 employers who did not charge their employees for parking their reasons for that policy (employers could respond more than once). Ninety-two percent said they provided free parking because it’s considered an employee benefit. Many employers (42 percent) said they never considered the issue. Twenty percent said charging for parking would be too time consuming. Only one employer suggested a union or employee contract as the reason. These findings confirm the prevalent view of parking by employers – free parking is standard practice and largely a non-issue.

**5 IT’S TIME FOR A NEW PERSPECTIVE**

We want to make the case for reconsidering your business’ or community’s employee parking policies. Below are some compelling reasons such a strategy will become critical in the next few years as companies (and cities!) struggle to remain competitive.

*Market Conditions are Changing*

Several factors will affect employer parking policies during the next decade:

*The Commute Trip Reduction Law*

- Many communities are affected by state Commute Trip Reduction (CTR) laws. Undoubtedly, some employers will consider parking strategies only as a last resort. But others are looking ahead and realizing that commute alternative programs often have poor results when parking is plentiful and provided free to employees.
If employers reduce parking supply or charge market rates for parking, the cost for setting up a CTR program can drop drastically.

**Tightening of Parking Supply**

- Of the 52 employer demand management programs featured as models in the CTR guidelines, 50 percent began because of parking shortages at the work site. Many companies facing a shortage of parking, decided to meet the goals of the CTR Law by not building or leasing any new parking.

- Hospitals are one type of business facing a changing market for parking. As the number of outpatient surgeries increase in comparison with lengthy hospital stays, the need for more outpatient parking is becoming apparent. Hospitals offered significant incentives to their employees mainly to ease the parking situation and provide more spaces for patients.

**Increasing Flexibility in Leases**

- Some building management companies will let tenants out of their leases under certain conditions. The tenants can turn in parking spaces they no longer need and reduce their costs proportionately. Until now, tenants in those buildings did not know their parking cost because the lease did not itemize it separately. Market conditions in many downtowns make it more advantageous for lessors to rent parking spaces daily, instead of monthly. So, if an employer in this situation can persuade some portion of its employees to give up their cars and shift to alternate modes, the company can save money.

- Boulder Colorado employees the acronym S.U.M.P. to describe their overall approach to parking. S.U.M.P. stands for: Shared, Unbundled, Managed and Priced

**Economic Conditions**

- Because of the state of the economy, many companies are finding they need to cut costs to survive. Companies can save money by changing their parking policies in several ways:
  - Charge employees for parking or simply stop providing parking, requiring employees to find their own parking or choose other ways to commute.
  - Decide not to build or lease additional employee parking and focus instead on reducing the demand for the limited parking supply.
  - Convert excess parking supply to uses that are more profitable or beneficial to employees. Some ideas are to lease the parking to other companies, construct additional buildings on the space or convert the parking area to open space with a recreation or picnic area for employees.
Desire for More Choice

- Employees are beginning to ask for an array of transportation choices as part of a benefit package. In response to this request and the need to reduce solo driving, some employers have begun to broaden their definition of accessibility from simply providing parking to offering a range of commuter services. Free parking by itself may not be enough to satisfy employee expectations.

- What would commuters do if employers did not subsidize parking? Researchers in Seattle who have analyzed case studies in the United States and Canada suggest that at least 20 percent of commuters who now drive alone would choose to carpool or use public transit if employers required them to pay market rates for parking they now receive free.

- Local studies provide comparable numbers. In a survey by Metro in downtown Seattle, more than 30 percent of the employees interviewed said they would drive alone less or ride the bus if they had to pay the full price of parking. Of about 24 percent of employees interviewed in downtown said they would try ridesharing or use transit if parking costs increased significantly.

- Some employers might dismiss survey results by concluding that what people say they will do is far different from what they really do. Following that concern, below are the experiences of two employers who stopped subsidizing employee parking.

Case Study #1: CH2M Hill

- CH2M Hill, a transportation engineering firm, faced a major challenge when it moved from a suburban area to downtown Bellevue, WA. Of the 89 percent of employees who drove to work alone, 80 percent said no alternatives would make them switch. Despite that response, a parking charge of $40 per month (scheduled to increase each year until it reaches market rate), a new comprehensive parking management program and commute subsidy program produced dramatic results. In one year, CH2M Hill’s single-occupant vehicle (SOV) rate dropped from 89 percent to about 62 percent - a 27 percent reduction in SOV commuting. Today, the company still maintains a 50-60 percent SOV rate, in an area where the average SOV rate is 82 percent.
Case Study #2: Bellevue City Hall

- Bellevue City Hall traditionally had more employees than parking stalls. It responded to the parking shortage by charging a parking fee of $30 per month. The SOV rate for the site dropped from 75 percent to 55 percent the following year - a 20 percent reduction. Key to that success was the fact that the parking charge was only one part of the city’s rideshare parking management program. Besides the parking charge, the program featured a transportation allowance to all alternative-mode users, a bus-pass subsidy, a fleet-ride program and a guaranteed ride home program. Of note is Bellevue City Hall’s location outside the downtown area because transit service is not readily available.

6 EXPLORING THE EMERGING FIELD OF SHARED MOBILITY

The emerging area being referred to as “shared mobility” provides great promise for offering a range of alternatives that can help mitigate the need for employee parking by providing a menu of alternatives to single occupant vehicle usage. An “eco-system map” was recently created for the Silicon Valley “Mobility as a Service” project, where mobility aggregators are beginning to integrate various programs and services.

The menu of shared mobility options provided below identifies several major categories related mobility as a service. Examples for each category are provided below. For more information on specific programs a Google search by the program name will generally provide a good overview of program scope and options.

- Enterprise Commute Trip Reduction (Examples: Luum, Ride Amigos, etc.)
- Mobility Aggregators (Examples: Moovit, Moovel, Urban Engines, etc.)
- Public Transit
- Private Sector Transit (Examples: Bridj, Chariot, Go Carma, Via, etc.)
- Rideshare w/in 10 min (Examples: Lyft Carpool, UberPool, Ford Dynamic Social Shuttle, etc.)
- Rideshare w/in 24 hours (Examples: Carma, HOVee Carzac, etc.)
- Taxi-like services (Examples: Lyft, Uber, Juno, Sidecar, etc.)
- Carshare (Examples: Car2Go, Zipcar, Enterprise Car Share, etc.)
- P2P Carshare (Examples: Getaround, RelayRides, Ford Car Swap, etc.)
- Bikeshare (Examples: Motivate, DecoBike, Bcycle, NextBike, etc.)
- Personal Electric Transport (Examples: Enzo foldable ebike, GenZe electric bikes, Scoot (heavy scooter rental, etc.)
- Vanpooling (Examples: Enterprise, Vride, etc.)
- Commute Mode Detection Technologies (Examples: Strava, MapMyRide, Moves, etc.)
- Smartphone Transit Payment (Examples: Passport, GlobeSherpa, Masabi, etc.)
- Smartphone Parking (Examples: ParkMe, Parkmobile, Pay-by-Phone, etc.)
- Miscellaneous Apps (Examples: City Mapper, Transitscreen, Modeify – TDM Trip Planner, etc.)
- Commuter Benefits (Examples: Commuter Check Direct, Commuter Benefits, Wageworks, etc.)
- Robotaxi (Uber w Robot Driver)
- Personal Rapid Transit (Examples: 2getthere, Ultra Global (London Heathrow), etc.)
- Niche ride match (Examples: Zimride, Otto (eRide Share), etc.)
- SOV Apps (Examples: WAZE social traffic, Twist for Rendezvous, etc.)
- Niche Transport (Examples: Boost by Benz, Shuddle, Hop/Skip/Drive, etc.)

As parking and TDM programs merge to offer more comprehensive tapestries of “access and mobility management strategies”, this document can be a helpful and informative resource that illustrates the scope, variety and evolution of this emerging area of the parking industry that is now being calling “shared mobility.”

7 SO, HOW DO YOU MAKE A CHANGE?

The following is one recommended approach to evaluating an employee parking program.

**Employee Parking Program Assessment Strategy**

After calculating your company's cost for providing employee parking, you may decide you are ready for a change. If so, here are a number of steps to be considered in developing parking management strategies:

1. Solicit top management support for parking management.
2. Form an internal committee to evaluate the parking situation and help propose strategies and solutions.
3. Evaluate site characteristics. Inventory existing parking supply and use.
4. Define objectives for parking management, and evaluate appropriate actions.
5. Check labor union agreements for parking stipulations (if applicable). Include a labor representative on your internal committee.
6. Review the costs or savings associated with each strategy. For carpool and vanpool parking subsidies and preferential spaces, assess future costs by first estimating demand.
7. Integrate parking management strategies into the total commute trip reduction program.
8. Market the parking management program with the marketing of other transportation alternatives.

Above all, don’t carry out parking management in isolation, but include it as part of a total commute trip reduction program. Couple parking restrictions with other transportation alternatives - all as part of a total transportation benefit package. Without sufficient alternatives, unhappy employees who continue to drive to work alone may be the most noticeable result!

**ADDRESSING EMPLOYER CONCERNS**

Employers cite a variety of arguments to justify continuing employee parking subsidies. Many of these concerns, however, are based on inadequate information or failure to fully explore the wide range of solutions available. Here are the most common reasons for not tackling the issue of parking subsidies:

*If employers charge for parking, employees will quit*

Many local companies can testify that dropping subsidized parking by itself does not cause employees to quit. The key to a successful program is offering positive choices to employees. Employers should not begin a parking charge without offering attractive alternatives to driving alone.

*Charging for parking is an administrative burden*

Setting up a computerized payroll deduction system is one way to administer a parking charge efficiently. Time spent administering the program is limited to start-up and occasional changes. Some companies, however, believe employees are more aware of the amount they pay for parking if required to write a separate monthly check, instead of having the fee taken out of their paychecks automatically. For any system, revenue from the parking charge should exceed the cost of administering the program.

*Union concerns*

Most employers have not raised the issue of parking with their unions. This is still a largely unexplored area. However, employers will need to check with unions if they propose to take away free parking and should plan to offer other transportation benefits to balance the perceived loss.

*Inadequate commuting options for employees*

Companies have taken widely varying approaches to overcome the problem of inadequate transit service. Some have paid for special shuttles that run between nearby park-and-ride lots and their work site. Others have begun their own vanpool program. Others have worked with local transit agencies to begin special shared-cost transit service plus vanpools tailored to the needs of a specific employee market.

When highly promoted by company management, ridesharing also can be effective for companies in low-density areas. Kenmore Trucks in Seattle achieved a 66 percent SOV
rate primarily by promoting the use of carpools and vanpools with a combination of reserved parking spaces for rideshare vehicles and general tightening of parking supply has been an effective incentive for employees to leave their own cars at home.

**Inability to change an employer’s parking allocation written into its lease agreement**

An increasing number of building management companies are willing to allow some flexibility in lease agreements. That flexibility is still the exception, however. Employers must check with their building management to discuss the potential for reducing their parking allocation and associated costs.

**Potential for employees to park free on streets or lots next to the work site**

This problem is very real and is one major reason to support on-street paid parking. Paid on-street parking reserves these most convenient parking spaces for customers (and not employees). Providing cost-effective employee parking areas, ideally at a range of cost points can free off-site parking and support a range of other commute options for those employees willing to consider these alternatives. Stricter and more effective parking enforcement measures, such as leveraging new mobile license plate recognition technologies and towing from lots of adjacent businesses, also could help with reducing “spillover” parking.

**The need to deal with multiple sites**

An employer with multiple sites may find there are equity issues in beginning a parking management program at one site and not providing the same program at the company’s other sites. Readily available transit service may help justify dropping a parking subsidy at a downtown site. Labor unions may complain, however, about a parking policy that does not apply company wide. One solution may be to offer other incentives to accompany a parking charge.

### 8 PARKING MANAGEMENT STRATEGIES THAT WORK

It is not expected or even recommended that employers make a sudden change from completely subsidizing employee parking to charging employees the market rate.

Instead, a thoughtfully considered plan undertaken incrementally may be the most successful approach. Following are some ways to get employees on your side by introducing a parking charge gradually:

**Introduce a parking charge for new employees only.**

Many companies successfully using this approach to ease into priced parking. The impact of such a strategy will depend on the company's rate of attrition and turnover. Gradually over the years, the parking charge will come to apply to most of the site's employees.
Allow employees to 'turn in' their parking spaces voluntarily in exchange for receiving the cash value of the parking space ("Parking Cash Out").

The theory behind this strategy is that asking commuters to choose between a free parking space and its cash value makes clear that parking has a cost - the cash not taken. The new "price" for taking the 'free' parking would increase the perceived cost of solo driving to work.

Compared with other solutions to the employer-paid parking problem, the cash option requirement is least intrusive in the employer's decisions about employee compensation. The only added cost for an employer would be requests from current "ridesharers" for the cash value of parking subsidies they have not taken.

In choosing between a parking subsidy and its cash equivalent, employees would have to know the cash is taxable, while the parking subsidy is not. Research on commuters in Los Angeles, however, suggests that the taxable nature of cash does not diminish its attractiveness seriously.

For more information on Parking Cash-Out – See the link at the end of this paper. Parking Cash Out was published by the American Planning Association and written by professor Donald Shoup.

Provide a transportation allowance.

Some companies, offer a transportation allowance when they introduce a parking charge. A transportation allowance is usually a salary increase provided to all employees or to employees who do not drive alone. If a company levies a $40 parking charge, for example, the company may provide all employees a $40 transportation allowance. To be effective, the parking charge should be high enough so that the out-of-pocket cash required to make up the difference between the transportation allowance and the parking fee serves as a disincentive to park. Employees who do not drive alone can pocket the extra cash. Some companies provide a transit, carpool or vanpool subsidy besides the transportation allowance.

Begin a parking charge for single-occupant vehicles, but provide discounted or free parking to "ridesharers".

When carpoolers split the cost of a normal parking charge, they already cut their parking costs. Reducing the parking charge for rideshare vehicles even more provides a significant incentive for employees to carpool or vanpool. Some businesses allow carpoolers to park free, sending a powerful message to employees that company management values and supports ridesharing. While the employer does not gain revenue from parking spaces provided free to "ridesharers", it reduces the need for more parking. The company then may be able to reach its commute trip reduction goals or reduce their parking problems as more employees use carpools for commuting.
**Begin with a low parking fee and increase it annually until it reaches market rate.**

Although this plan can help generate some revenue for the employer, it will not cause a significant shift to alternative commute modes for several years. As such, it is probably not as effective as beginning with a moderate charge and increasing it to market rate faster. This incremental increase will give employees a chance to adjust to the idea of paying for parking.

**Provide employees with other transportation incentives while introducing a parking fee.**

Incentives such as a ”flexpass“ program, free parking days for ridesharers and guaranteed ride home are examples of programs that can help employees accept a parking charge.

9 **SYSTEMS AND EQUIPMENT TO SUPPORT EMPLOYEE PROGRAM IMPLEMENTATION**

In addition, we have also provided several equipment/programmatic approaches that readers may find interesting. The resource section of this white paper includes:

- **Parking Logix** - The OpenSpace™ Counting Solutions are sensor-enabled speed humps for parking facilities. It includes an embedded sensor which detects and counts vehicles as they drive over the humps while entering and leaving a parking facility. The sensors can differentiate between motorized (cars, trucks, etc.) and nonmotorized (bikes) traffic to provide accurate vehicle counts for oncoming motorists. OpenSpace™ sensors have been designed with a battery life of 3 years and are covered by a full 2 year warranty.

- **Parkifi** - Parkifi provides real-time spot occupancy visibility on an easy-to-use dashboard, potentially making a city’s on- and off street spots more profitable and efficient.

- **Streetline** - Parking Data and Analytics: What Can Your Parking Spaces Tell You?

- **Locomobi** - is an information technology leader that delivers innovative enterprise hardware and software solutions, including a revolutionary License Plate Recognition (LPR) system, for some of the biggest names in parking and transportation in North America. LocoMobi’s full vertical integration allows for the unique ability to custom tailor true end-to-end parking and transportation systems through modular application. From equipment and hardware to cloud-based solutions and mobile payments, LocoMobi accommodates a broad range of environments that include municipalities, commercial and residential buildings, airports, universities, hotels, self-storage facilities and campgrounds. In addition, LocoMobi provides unique solutions for the tolling and transit markets.

- **LUUM** – See link to Seattle Children’s Hospital Case Study in the Appendices
10  IN SUMMARY...

Changing your parking policy doesn't have to be painful. Parking management can help your company save money and, simultaneously, free up parking for customers and other visitors. You can use it to reward employees who rideshare and increase employee satisfaction by making company transportation programs more equitable.

To begin reshaping your parking program, the following steps are recommended:

1. Calculate your parking costs. Use the sample parking cost worksheet in the appendix of this handbook.

2. Forecast your parking needs. With an aggressive CTR program, can you reduce your supply?

3. Check your building’s lease for parking provisions. Perhaps you can negotiate a reduction in your parking allocation with the building management.

4. Form an employee parking committee to help design your parking benefits package. When you involve employees from the beginning, they will be more willing to accept the program you eventually adopt.
11 APPENDICES/RESOURCES

Employee parking program vary greatly depending on a wide range of factors including community size, program sophistication, parking supply/demand, availability of high quality transit and transportation alternative programs.

In the Appendices/Resources section of this paper, we have included a variety of “case study examples” which we hope will provide both examples of the variation in program types and specific program elements. These “case study examples” come in the form of program policies, marketing and employee information documents.

Probably the most advanced and sophisticated program we are aware of is the excellent program developed and implemented at Seattle Children’s Hospital which has evolved into the LUUM software program. A case study of this program can be found at: http://www.nunes-ueno.com/case-study.html.

Another great resource noted in this paper is a document created by the Association of Commuter Transportation entitled: Getting to Work – Spotlight on Employer-Sponsored Commuter Programs. This document can be found at: http://actweb.org/wp-content/uploads/2017/01/Getting-to-Work-Jan-2017-Final.pdf

The Donald Shoup book on “Parking Cash-Out” is another recommended resource. This book can be found at: http://shoup.bol.ucla.edu/Parking%20Cash%20Out%20Report.pdf

In addition to the resources noted above, the following additional resources are provided as separate documents:

- Appendix # 1: ACDA Employee Parking Program
- Appendix # 2: UNC Employee Parking
- Appendix # 3: Sacramento Discount Employee Parking Program
- Appendix # 4: City of Palo Alto, CA - A Better Place to Work & Park
- Appendix # 5: Newport Beach, CA – Employee Parking Program
- Appendix # 7: MUSC Employee Parking Services
- Appendix # 8: Generic Employee Parking Policy
- Appendix # 9: City of Pomona – Employee Parking Policy
- Appendix # 10: Phoenix Sky Harbor Airport Employee Parking Policy
- Appendix # 11: City of Houston Employee Parking Policy
- Appendix # 12: Mayo Clinic Employee Parking Brochure
- Appendix # 13: Mayo Clinic Nursing Parking
This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
AGENDA CAPTION:
Consider approval of Resolution 2017-83R, approving a principal forgiveness agreement with the Texas Water Development Board that forgives an amount not to exceed $685,839 out of $5,445,839 in principal funds to the city from the Clean Water State Revolving Fund to finance the construction of certain Wastewater System Improvements; authorizing the city manager or mayor to execute said agreement on behalf of the city; and declaring an effective date.

Meeting date: May 2, 2017

Department: Finance & Eng/CIP

Funds Required:
Account Number:
Funds Available:
Account Name:

CITY COUNCIL GOAL:
Goal #5: Maintain & improve City’s infrastructure

COMPREHENSIVE PLAN ELEMENT(s): [add the Plan elements and Goal # and Objective(s)]
ERPG3O5 - Develop reclaimed water infrastructure plan for activity nodes.
ERPG4 - A population prepared for and resilient to man-made and natural disasters.

BACKGROUND:
In September 2016 the City Council approved a resolution for the filing of an application with the Texas Water Development Board (TWDB) seeking financial assistance for the Water Reuse Expansion Project. In January the TWDB approved financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund through the purchase of $4,4760,000 of City of San Marcos water and wastewater revenue bonds and $625,839 in principal forgiveness.

This action approves the loan forgiveness agreement.
CERTIFICATE FOR RESOLUTION

I, the undersigned City Clerk of the City of San Marcos, Texas, hereby certify as follows:

1. The City Council of said City convened in Regular Session on May 2, 2017, at the regular meeting place thereof, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

   John Thomaides, Mayor
   Saul Gonzales, Councilmember
   Jane Hughson, Councilmember
   Melissa Derrick, Councilmember
   Lisa Prewitt, Councilmember
   Ed Mihalkanin, Councilmember
   Scott Gregson, Councilmember

   and all of said persons were present, except for the following:_____________________; thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written Resolution entitled

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PRINCIPAL FORGIVENESS AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD THAT FORGIVES AN AMOUNT NOT TO EXCEED $685,839 OUT OF $5,445,839 IN PRINCIPAL FUNDS TO THE CITY FROM THE CLEAN WATER STATE REVOLVING FUND TO FINANCE THE CONSTRUCTION OF CERTAIN WASTEWATER SYSTEM IMPROVEMENTS; AUTHORIZING THE INTERIM CITY MANAGER OR MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

   was duly introduced for consideration of said City Council. It was then duly moved and seconded that said Resolution be passed; and, after due discussion, said motion, carrying with it the passage of said Resolution, prevailed and carried by the following vote:

   AYES: _______  NOES: _______  ABSTENTIONS: _______

2. A true, full and correct copy of the aforesaid Resolution passed at the meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Resolution has been duly recorded in the official minutes of said City Council; the above and foregoing paragraph is a true, full and correct excerpt from said minutes of said meeting pertaining to the passage of said Resolution; the persons named in the above and foregoing paragraph, at the time of said meeting and the passage of said Resolution, were the duly chosen, qualified and acting officers and members of said City Council as indicated therein; each of said officers and members was duly and sufficiently notified officially and personally in advance, of the time, place and purpose of the aforesaid meeting and that said Resolution would be introduced and considered for passage at said meeting, and each of said officers and members consented in advance to the holding of said meeting for such purpose; and said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Tex. Gov't Code Ann., ch. 551.
SIGNED this May 2, 2017.

____________________________________

City Clerk, City of San Marcos, Texas
RESOLUTION NO. 2017-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PRINCIPAL FORGIVENESS AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD THAT FORGIVES AN AMOUNT NOT TO EXCEED $685,839 OUT OF $5,445,839 IN PRINCIPAL FUNDS TO THE CITY FROM THE CLEAN WATER STATE REVOLVING FUND TO FINANCE THE CONSTRUCTION OF CERTAIN WASTEWATER SYSTEM IMPROVEMENTS; AUTHORIZING THE INTERIM CITY MANAGER OR MAYOR 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 Principal Forgiveness Agreement with the Texas Water Development Board (TWDB Commitment No. L1000600, TWDB Project No. 73,696 (IUP Fiscal Year 2017), TWDB Resolution No. 17-010, CFDA No. 66.458 is hereby approved.

PART 2. The Interim City Manager or Mayor is authorized to execute said Principal Forgiveness Agreement on behalf of the City.

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

PASSED AND APPROVED on first and final reading on this May 2, 2017.

John Thomaides
Mayor

ATTEST:

Jamie Lee Case
City Clerk

APPROVED AS TO LEGALITY:

Michael J. Cosentino
City Attorney
Principal Forgiveness Agreement
Clean Water State Revolving Fund

TEXAS WATER DEVELOPMENT BOARD

AND

CITY OF SAN MARCOS

TWDB COMMITMENT NO. L1000600

TWDB PROJECT NO. 73696 (IUP FISCAL YEAR 2017)

TWDB RESOLUTION NO. 17-010

CFDA No. 66.458
# CITY OF SAN MARCOS
TWDB COMMITMENT NO. L1000600
TWDB PROJECT NO. 73696
TWDB RESOLUTION NO. 17-010

PRINCIPAL FORGIVENESS AGREEMENT

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THE STATE OF TEXAS §
COUNTY OF TRAVIS §

TWDB Commitment No. L1000600

PRINCIPAL FORGIVENESS AGREEMENT
BETWEEN THE
TEXAS WATER DEVELOPMENT BOARD
AND THE
CITY OF SAN MARCOS

WHEREAS, the City of San Marcos (City) has filed an application with the Texas Water Development Board (TWDB) for financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund (CWSRF) to finance construction of wastewater system improvements for the project identified as Project No. 73696; and

WHEREAS, on January 26, 2017, the TWDB determined that the City qualifies for principal forgiveness because it meets Green Project requirements pursuant to 31 TAC § 375.18, and the criteria set forth in the 2017 CWSRF Intended Use Plan (IUP), and agreed, pursuant to the TWDB Resolution, to provide financial assistance in the amount of $5,445,839 to the City and further agreed that $685,839 will be forgiven; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Principal Forgiveness Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, and all terms and conditions set forth herein.

ARTICLE I. DEFINITIONS

The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Principal Forgiveness Agreement and the attached exhibits.


Commitment means an offer by the TWDB to provide financial assistance to an Applicant as evidenced by a TWDB resolution.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 375.1(16) and required by the TWDB Resolution.

CWSRF means the Clean Water State Revolving Fund, a program of financial assistance administered by the TWDB for wastewater projects pursuant to the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 et seq.; applicable federal regulations; Texas Water Code, Chapter 15, §§ 15.601 – 15.618; and 31 TAC Chapter 375.
Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget.

EPA means the U.S. Environmental Protection Agency.

Escrow Account means an account established by the City that will be used to manage the Principal Forgiveness Funds in accordance with an escrow agreement acceptable to the Executive Administrator, which is attached hereto as EXHIBIT G, until such time as the Executive Administrator authorizes the release of the Principal Forgiveness Funds to the Construction Account.

Executive Administrator means the Executive Administrator of the TWDB or designated representative.

Financial Assistance means funding made available to eligible Applicants, as authorized in 33 U.S.C. §1383(d), including principal forgiveness.

Force Majeure means acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Green Project means a project or portion of a project that meets the EPA criteria for inclusion in the Green Project Reserve, including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

Green Project Reserve means the equivalent amount of the EPA capitalization grant that is reserved for projects that meet the EPA’s criteria for green projects.

IUP means the Intended Use Plan, State Fiscal Year 2017, approved by the TWDB and the EPA in which the Project was prioritized for funding.

Obligations means the $4,760,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Bond Series 2017A, together with all authorizing documents, which evidence the portion of the financial assistance that is not forgiven, identified as L1000600.

Outlay Report means the TWDB form regarding the total amount of costs incurred by the City relating to the Project for the specified period.

Parties or Party means the TWDB and the City and their authorized successors and assignees.
Principal Forgiveness Funds means the portion of the Financial Assistance that is forgiven, identified as L1000600, in an amount not to exceed $685,839.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 73696.

State means the State of Texas.

TWDB Resolution means TWDB Resolution No. 17-010, dated January 26, 2017, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

ARTICLE II. AUTHORITY AND RECITALS

2.01. AUTHORITY. This Agreement is authorized and required by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., and is also governed by the terms of the IUP; Texas Water Code, Chapter 6; Texas Water Code; Chapter 15, §§ 15.601 – 15.618; 31 TAC Chapter 375; and the TWDB Resolution.

2.02. RECITALS. The Parties agree that the following representations are true and correct and form the basis of this Agreement.

A. The TWDB may provide financial assistance in the form of additional subsidization, such as principal forgiveness, as that term is defined effective July 4, 2016, for all or a portion of the Project costs in an amount which the TWDB has determined to be eligible.

B. On January 26, 2017, the TWDB considered an Application filed by the City for financial assistance from the CWSRF program. Based on the representations made by the City in that Application, the TWDB adopted the TWDB Resolution in which the TWDB:

1. determined that the City qualifies for principal forgiveness and is eligible for financial assistance; and

2. made a commitment to provide financial assistance through the purchase of bonds in an amount not to exceed $5,445,839 for the construction of the Project and to provide additional subsidization in the form of principal forgiveness to the City in an amount not to exceed $685,839 as Principal Forgiveness Funds without the expectation of repayment.

C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Principal Forgiveness Funds in an amount not to exceed $685,839. The Executive Administrator is authorized to execute this Agreement on behalf of the TWDB pursuant to the TWDB Resolution, which is attached to this Agreement as EXHIBIT A. The City is authorized to execute this Agreement through its authorized representative designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as EXHIBIT B.
D. Nothing in this Agreement supersedes or affects any provisions of the Obligations relating to the Financial Assistance amount not forgiven.

ARTICLE III. LEGAL REQUIREMENTS

3.01. APPLICABLE LAWS. In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to plan, design, and construct the Project in compliance with the following:

A. the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., and EPA regulations at 40 CFR Part 35;

B. all federal laws and regulations identified on EXHIBIT C;

C. Texas Water Code, Chapter 15, §§ 15.601 – 15.618; and

D. 31 TAC Chapter 375.

3.02. LABOR STATUTES AND REGULATIONS. The City agrees to comply with the following statutes and regulations, and shall execute the certifications required by the TWDB related to same. Further, the City shall ensure that each contract for work on the Project shall also contain the following requirements.


B. Davis-Bacon Act Wage Rates. In accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., and the applicable IUP and TWDB Guidance on Davis-Bacon Wage Rate Requirements, the City, its contractors and its subcontractors, for the Project that is funded in whole or in part with Principal Forgiveness Funds, shall pay all laborers and mechanics at rates not less than those prevailing on similar projects in the same locality, as determined by the U.S. Secretary of Labor’s Wage and Hour Division, in conformance with the Davis–Bacon Act, 40 U.S.C. §§ 3141 - 3148, 29 CFR Part 5, relating to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, and 29 CFR Part 3, relating to Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States. All contracts and subcontracts for the construction of the Project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of $2,000 the contracts clauses as attached hereto as EXHIBIT D.

C. Contract Work Hours and Safety Standards Act. The City shall ensure that its contractors

3.03. **NO LOBBYING.** The City agrees to comply with 40 CFR Part 34, relating to New Restrictions on Lobbying. The City understands and agrees that none of the Principal Forgiveness Funds provided under this Agreement shall be expended to pay any person for influencing or attempting to influence an officer or employee of any federal entity, or a Member of Congress, with regard to the awarding of any federal contract, federal grant, federal loan, or the extension, continuation, renewal, amendment or modification of any federal contract, loan, or grant. The City shall require that all contracts in excess of $100,000 for work implementing the Project contain the following statement: IN ACCORDANCE WITH THE BYRD ANTI-LOBBYING AMENDMENT, ANY RECIPIENT WHO MAKES A PROHIBITED EXPENDITURE UNDER TITLE 40 CFR PART 34 OR FAILS TO FILE THE REQUIRED CERTIFICATION OR LOBBYING FORMS SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN $10,000 AND NOT MORE THAN $100,000 FOR EACH SUCH EXPENDITURE.

3.04. **IRON AND STEEL.** The City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States as required by the Federal Water Pollution Control Act, 33 U.S.C. § 1388, related EPA SRF Policy Guidelines and the TWDB American Iron and Steel Guidance, unless the City has requested and obtained a waiver from EPA pertaining to the Project. This section applies in a manner consistent with United States obligations under international agreements. If the City is a signatory to such an agreement, then the City is under the obligation to determine its applicability and requirements and document the actions taken to comply for the TWDB.

3.05. **PROCUREMENT.** The City shall comply with the following when procuring goods and services for work on the Project according to the requirements in this section.

A. **Debarred and Suspended Vendors.** Prior to selecting any contractor, the City shall ensure that the contractor is not listed on the federal Excluded Parties List System and is not suspended or disbarred by either the State or the federal government. See the following websites for lists of suspended and debarred federal and State vendors: [www.sam.gov](http://www.sam.gov) and [www.window.state.tx.us/procurement/prog/vendor_performance/debarred](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred).

B. **State Procurement Requirements.** All purchases for goods, services or commodities made with funds provided under this Agreement shall comply with State and local procurement and contracting laws.

C. **Disadvantaged Business Enterprises.** The City agrees to comply with 40 CFR Part 33, relating to Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs.

D. **Contracts for Architectural or Engineering Professional Services.** The City agrees to comply with 33 U.S.C. § 1382(b)(14) (Section 602(b)(14) of the Federal Water Pollution Control Act), relating to Capitalization Grant Agreements and 40 U.S.C. §§ 1101 et seq., relating to the Selection of Architects and Engineers.
ARTICLE IV. CONSTRUCTION

4.01. PROJECT REQUIREMENTS. The City shall comply with the following:

A. Plans and Specifications. The City shall construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC §§ 375.81 – 375.83.

B. Changes to Plans and Specifications. The City shall not make or implement any changes to the scope of the Executive Administrator’s approved Project or to the specifications for the Project including, but not limited to, changes to the Green Project Reserve portion of the Project without the written approval of the Executive Administrator.

C. Project Schedule. The City shall adhere to the TWDB approved Project schedule, attached as EXHIBIT E, and shall timely and expeditiously use funds and complete the Project. The City shall not exceed or revise the Project schedule except upon written approval from the TWDB. The City shall not delay the Project completion date except by Amendment to this Agreement.

D. Project Budget. The City shall be solely responsible for all costs that exceed the TWDB approved Project budget, attached as EXHIBIT F. The City shall notify the Executive Administrator immediately when it appears that the Project budget may not be sufficient to complete the Project. The City shall not exceed the Project budget except by Amendment to this Agreement.

E. Environmental Compliance. The City shall comply with all environmental conditions and shall implement environmental mitigation measures as required through TWDB environmental review under 31 TAC Chapter 375, Subchapter E.

4.02. PROGRESS REPORTS. The Executive Administrator may request reports on the progress of the Project at any time. The reports shall contain information as directed by the Executive Administrator and shall be submitted periodically as requested. The City shall respond as requested and a failure to respond may result in withholding the release of funds from the Escrow Account.

ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS

5.01. CONDITIONS FOR DISBURSEMENT OF PRINCIPAL FORGIVENESS FUNDS. No Principal Forgiveness Funds shall be deposited into the Escrow Account or released until the applicable requirements and conditions in the TWDB Resolution and 31 TAC § 375.93, relating to Disbursement of Funds, are met. Construction funds shall not be released unless the City has complied with 31 TAC Chapter 375, Subchapter E, relating to Environmental Reviews and Determinations and 31 TAC §§ 375.81 – 375.83, relating to Engineering Review and Approval. If other conditions affect the release of funds, the Parties agree to negotiate in good faith regarding any new or different terms or conditions that become applicable to the release of Principal
Forgiveness Funds.

5.02. **DELIVERY OF PRINCIPAL FORGIVENESS FUNDS.** The TWDB shall deposit the Principal Forgiveness Funds in an approved Escrow Account to be released to the City’s Construction Account at the direction of the Executive Administrator.

A. **Outlay Reports and Invoices.** The City shall submit the following documentation:

1. TWDB Outlay Report forms identifying:
   a. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
   b. invoices, receipts or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an eligible expense incurred by the City.

2. Outlay Report forms are due to TWDB quarterly during the planning, acquisition and design phases and monthly during the construction phase of the Project until the completion of the Project.

B. **Release from Escrow Account.** The Executive Administrator shall authorize the release of Principal Forgiveness Funds from Escrow when Outlay Reports have been approved by the TWDB.

5.03. **INELIGIBLE EXPENSES.** The City must use Principal Forgiveness Funds for Eligible Expenses. The City must return any Principal Forgiveness Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Principal Forgiveness Funds used for any ineligible or unverified expenses shall be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is insufficient to fully offset the amount of improperly expended Principal Forgiveness Funds, the City must use other funds to fully repay the TWDB.

5.04. **MAINTENANCE OF PROJECT ACCOUNTS** The City must maintain all project accounts containing funds disbursed for the planning, acquisition, design, or construction of a project, as applicable, in compliance with generally accepted accounting principles (GAAP), including the reporting of underlying infrastructure assets.

5.05. **FINAL ACCOUNTING.** The City shall provide a final accounting of funds expended on the Project pursuant to 31 TAC § 375.106 and return any remaining Principal Forgiveness Funds in a manner determined by the Executive Administrator.

5.06. **LEGAL STATUS.** The City must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility.
5.07. **WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN.** If applicable, the City shall adopt and implement a water conservation and drought contingency plan that complies with Texas Water Code §§ 11.1271 and 11.1272 and 31 TAC §§ 363.15 and 375.43.

5.08. **WATER AUDIT.** If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually shall perform and file a water audit computing the City’s most recent annual system water loss with the TWDB. The first water audit shall be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits.

5.09. **REGISTRATION REQUIREMENT.** Pursuant to the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252, the City shall obtain a Data Universal Numbering System (DUNS) Number and shall maintain registration in the System for Award Management (SAM).

5.10. **ANNUAL FINANCIAL AUDIT.** During the Term of this Agreement, the City shall submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits shall be submitted to the TWDB no later than 180 days after the close of the City’s fiscal year.

5.11. **INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS.** Financial Assistance funds are public funds and, as such, these funds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

5.12. **SPECIAL CONDITIONS.** The City shall comply with all conditions as specified in the final environmental finding of the Executive Administrator of the TWDB, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.

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ARTICLE VI. NON-PERFORMANCE AND REMEDIES

6.01. **STOP WORK ORDERS.**

A. **Stop Work Order (SWO).** The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO shall provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO shall provide the City with a specified time to cure.

B. **City’s Response.** The City shall provide a written response to the SWO and shall provide the Executive Administrator with a detailed plan to address and cure the conditions causing the SWO. The City shall provide the response within five business days from its receipt of the SWO.
C. Executive Administrator’s Reply. The Executive Administrator may accept, reject or amend the City’s plan and shall provide notice of such action to the City within five business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City’s execution of the plan to cure. The Executive Administrator may modify the City’s plan to cure only in a manner consistent with the terms and conditions of this Agreement.

D. City’s Option. The City shall notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City shall continue work to complete all obligations under this Agreement.

6.02. TERMINATION. The TWDB may terminate this Agreement in writing at any time. Upon receipt of a notice of termination, the City shall immediately discontinue all work in connection with the performance of this Agreement and shall promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement, provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City shall be payable from the funding provided pursuant to this Agreement.

Within thirty days of the notice of termination, the City shall submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

6.03. SURVIVAL OF TERMS AND CONDITIONS.

A. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement that:

1. the Parties have expressly agreed shall survive any such termination or expiration, if any; or

2. by their nature, would be intended to be applicable following any such termination or expiration.

B. The Parties expressly agree that the following terms and conditions survive the termination or expiration of this Agreement.

1. Article V, Sections 5.03, 5.04, 5.05, 5.07, 5.08, and 5.09.

2. Article VII, General Terms and Conditions.

6.04. REAL ESTATE. If the City purchases real estate for the Project with Principal Forgiveness Funds and any of the real estate or portion of the real estate is not used for the Project, the City shall repay to the TWDB the full amount of the Principal Forgiveness Funds for purchase
of the real estate that is not used for the Project. Such amount shall be due and payable within 90 days after termination or expiration of this Agreement.

6.05. REMEDIES.

A. The City shall have all remedies available in law or equity.

B. The TWDB shall have all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.

ARTICLE VII. GENERAL TERMS AND CONDITIONS

7.01. INSURANCE AND INDEMNIFICATION.

A. The City shall at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City shall insure against risks, accidents, casualties or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB's interest in the Project.

B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City shall indemnify and hold the TWDB and the State harmless to the extent that the City may do so in accordance with State law.

C. Principal forgiveness proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

7.02. PERMITS. The City shall be responsible for timely filing applications for all licenses, permits, registrations and other authorizations that the City has identified in the application for financial assistance as required for the construction of the Project. The City shall submit copies of all of these final licenses, permits, registrations and other authorizations issued by local, state and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

7.03. RECORDS. The City shall comply with all terms and conditions relating to records of the Project as follows:

A. Duty to Maintain Records. The City shall maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City shall also require its contractors to maintain financial accounting records consistent with
Generally Accepted Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation shall be accurate, current, and shall reflect recordation of the transactions at or about the time the transactions occurred;

1. **Single Audit Act, 31 U.S.C. §§ 7501 – 7507.** The City shall comply with the Single Audit Act, and with Office of Management and Budget (OMB) Circular A-133 ensuring an audit is conducted in accordance with OMB Circulars.

2. **Green Projects.** If all or part of the Project is designated as a Green Project, then the City shall maintain separate tracking of the expenses related to that Project or portion of the Project that has been designated as an approved Green Project.

**B. Duty to Retain Records.** The City shall retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of 31 TAC § 375.107, relating to Records Retention. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after the Obligations are paid in full.

**C. Public Records.** The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City shall promptly respond to a request by the TWDB for copies of any of the City’s records related to this Agreement; and

**D. Access to Records.**

1. **State Auditor.** By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Principal Forgiveness Funds received pursuant to this Agreement. The City shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Principal Forgiveness Funds received pursuant to the contract or subcontract.

2. **TWDB, EPA, and Comptroller General of the United States.** The City agrees that the TWDB, the EPA, and the Comptroller General of the United States shall have full access to any books, documents, papers, and records which are related to the
funds expended under this Agreement and that further these federal entities may audit, examine, copy excerpts, and make transcriptions of any such books, documents, papers, and records. The standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by the EPA and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement shall be made available for audit, examination, excerption, and transcription by the staff of the TWDB within a reasonable time after a request from the TWDB. The City understands and agrees that the EPA’s Regional Administrator may, after a thirty day written notice, review any records the Regional Administrator deems necessary to determine compliance with all requirements concerning the Principal Forgiveness Funds provided under this Agreement.

7.04. **UPDATING INFORMATION.** The City shall provide the TWDB with updated information, reports, statements and certifications as requested by the Executive Administrator relating to the financial condition of the City or the Project and the use of Principal Forgiveness Funds. The City shall promptly notify the TWDB of any material change in the activities, prospects or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, obligations and agreements under this Principal Forgiveness Agreement.

7.05. **FORCE MAJEURE.** Unless otherwise provided, neither the City nor the TWDB nor any agency of the State shall be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by *Force Majeure*. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such *Force Majeure* or otherwise waive this right as a defense.

7.06. **NON-ASSIGNABILITY.** The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the TWDB.

7.07. **ENTIRE AGREEMENT AND AMENDMENT.** This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.01 do not require an amendment to this Agreement unless a change to the Project Schedule, EXHIBIT E or the Project Budget, EXHIBIT F, results in a different project completion date or total budget amount.

7.08. **NO WAIVER.** The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement shall not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.
7.09. **NO DEBT CREATED.** Each Party agrees and understands that, by this Agreement, the State, acting through the TWDB, is not lending its credit or in any manner creating a debt on behalf of the State. To the extent that the City is not securing the Obligations with ad valorem taxes, each Party agrees and understands that, pursuant to this Agreement, the City is not lending its credit or in any other manner creating a debt on behalf of the City.

7.10. **LAW AND VENUE.** The validity, operation, and performance of this Agreement shall be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the planning, design, acquisition and construction of the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Hays County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB shall be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

7.11. **NOTICES.** All notices, notifications, or requests required or permitted by this Agreement shall be in writing and shall be transmitted by personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received by the Party to whom notice is sent.

Texas Water Development Board
Attn: Executive Administrator
Physical Address:
1700 N. Congress Ave., 6th Floor
Austin, Texas 78701-1496
Mailing Address:
P.O. Box 13231
Austin, Texas 78711-3231

City of San Marcos
Attn: <<ENTITY CONTACT>>
Physical Address:
<<ENTITY ADDRESS>>
Mailing Address:
<<ENTITY ADDRESS>>

7.12. **TERM.** This Agreement is effective on the date signed by the Executive Administrator. The Agreement shall expire upon the successful completion of the Project and Final Accounting in accordance with Section 5.05 of this Agreement.

**TEXAS WATER DEVELOPMENT BOARD**

Jeff Walker Executive Administrator

**CITY OF SAN MARCOS**

<<RESPONSIBLE OFFICIAL>>
<<TITLE>>
EXHIBIT A
TWDB Resolution No. 17-010
EXHIBIT B
City of San Marcos’s Resolution
EXHIBIT C
List of Federal Laws and Authorities (Cross-Cutters)

The basic rules for complying with cross-cutting federal authorities are set-out in the CWSRF regulations at 40 C.F.R. § 35.3145 and in the DWSRF regulations at 40 C.F.R. § 35.3575. A list of and link to these authorities is provided below and also available from the Environmental Protection Agency (EPA) at: http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm. A handbook on the applicability of the cross-cutting federal authorities is available from EPA at http://www.epa.gov/owm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/CrosscutterHandbook.pdf.

Environmental Authorities
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities
- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Procurement Requirements for Architectural and Engineering Services under 40 U.S.C. § 1101 and Section 602 of the Clean Water Act
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549

Social Policy Authorities
- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 (2)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Anti-Lobbying Provisions (40 CFR Part 30) [applies only to capitalization grant recipients]

The Civil Rights Act and related anti-discrimination statutes apply to all the operations of the SRF program.
EXHIBIT D
Davis-Bacon Contract and Subcontract Provisions

(a) GENERAL CONTRACT AND SUBCONTRACT PROVISIONS.

The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1 and the Water Resources Reform and Development Act of 2014, the following clauses:

(1) Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.


(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for
fringe benefits where appropriate), documentation of the action taken and the request, including the local wage
determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit
the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S.
Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The
Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification
request within 30 days of receipt and so advise the State award official or will notify the State award official within
the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives,
and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for
fringe benefits, where appropriate), the award official shall refer the request and the local wage determination,
including the views of all interested parties and the recommendation of the State award official, to the Administrator
for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or
an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the
contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or
(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first
day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe
benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage
determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of
the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe
benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the
contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require
the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding

The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the
Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal
contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing
wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may
be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the
contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any
laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or
part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant,
or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee
of funds until such violations have ceased.

(3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and
preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such
records shall contain the name, address, and social security number of each such worker, his or her correct
classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe
benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and
weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found
under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably
anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the
contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the
plan or program is financially responsible, and that the plan or program has been communicated in writing to the
laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing
such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees
(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements

TWDB Commitment No. <<LFNNNNNNN>>
Exhibit D, Page 4 of 7
The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


b. CONTRACT PROVISIONS FOR CONTRACTS IN EXCESS OF $100,000

Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.
In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages

The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) MAINTENANCE OF RECORDS

In addition to the clauses contained in Section (a), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) COMPLIANCE VERIFICATION

(1) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
(2) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract.\textsuperscript{1} Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor’s submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

\textsuperscript{1} The provision that read “At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor’s submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract” was issued a waiver in EPA Class Deviation memo dated November 16, 2012.
EXHIBIT E
Project Schedule
EXHIBIT F
Project Budget
EXHIBIT G
Escrow Agreement
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$5,445,839 TO CITY OF SAN MARCOS
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$4,760,000 CITY OF SAN MARCOS, TEXAS, WATER AND WASTEWATER SYSTEM
REVENUE BONDS,
PROPOSED SERIES 2017A
AND
$685,839 IN PRINCIPAL FORGIVENESS

(17-010)

WHEREAS, the City of San Marcos (City) has filed an application for financial
assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund (CWSRF) to
finance the construction of certain wastewater system improvements identified as Project No.
73696; and

WHEREAS, the City seeks financial assistance from the Texas Water Development
Board (TWDB) through the TWDB’s proposed purchase of $4,760,000 City of San Marcos,
Texas, Water and Wastewater System Revenue Bonds, Proposed Series 2017A (together with all
authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement
in an amount of $685,839, all as is more specifically set forth in the application and in
recommendations of the TWDB’s staff; and

WHEREAS, the City has offered a pledge of net revenues of the City’s water and
wastewater system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the City will be sufficient to meet all the Obligations
   assumed by the City, in accordance with Texas Water Code § 15.607;

2. that the application and assistance applied for meet the requirements of the Federal Water
   Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as well as state law, in accordance with
   Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program for the more
   efficient use of water that will meet reasonably anticipated local needs and conditions and
   that incorporates practices, techniques or technology prescribed by the Texas Water Code
   and TWDB’s rules;

4. that the City has considered cost-effective, innovative, and nonconventional methods of
   treatment, in accordance with Texas Water Code § 15.007;

5. that the TWDB has made a timely and concerted effort to solicit projects that address
   green infrastructure, water, or energy efficiency improvements and other environmentally
innovative activities and has determined that the entire Project, or a portion of the Project, satisfies the EPA’s criteria for Green Projects;

6. that the Executive Administrator issued a Categorical Exclusion on November 18, 2016, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of San Marcos for financial assistance in the amount of $5,445,839 from the Clean Water State Revolving Fund through the TWDB’s proposed purchase of $4,760,000 City of San Marcos, Texas, Water and Wastewater System Revenue Bonds, Proposed Series 2017A and the execution of a Principal Forgiveness Agreement in the amount of $685,839. This commitment will expire on July 31, 2017.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City’s compliance with all applicable requirements contained in 31 TAC Chapter 375;

4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;

5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City’s Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and
the beneficial owners of the City’s Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB’s bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;

7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) deposit into a reserve fund;

9. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB’s full exercise of these remedies shall be of no force and effect;

10. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

11. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

12. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an
interest and sinking tax rate sufficient for the repayment of all system debt service requirements;

13. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

Conditions Related to Tax-Exempt Status

16. the City’s bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the City’s bond counsel opinion must also state that the Obligations are not “private activity bonds.” Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become “private activity bonds” within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:

a. proceeds of the TWDB’s Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and

c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

20. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:

a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;

c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;

d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;

21. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
22. the Obligations must provide that the City will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;

23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City’s reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;

24. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

25. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

27. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor’s implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB;

28. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;

29. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;
30. the Obligations and Principal Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

31. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 et seq. related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

32. the City shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

33. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;

34. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

35. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

36. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 et seq. and 33 U.S.C. § 1382(b)(14);

Pledge Conditions for the Loan

37. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
38. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;

39. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if:

(a) the City is not then in default as to any covenant, condition, or obligation prescribed in an ordinance authorizing the issuance of outstanding parity obligations;

(b) the proposed additional revenue obligations have been approved by the Texas Attorney General;

(c) each of the respective funds created and dedicated to the payment, security, and benefit of the additional revenue obligations contains the amount of money then required to be on deposit therein;

(d) the City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed additional revenue obligations, or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed additional revenue obligations is adopted, the “net revenues” of the System (after operations and maintenance is considered, but not deducting depreciation or expenditures, which under standard accounting practices are classed as capital expenditures) are equal to at least 1.20 times the combined average annual principal and interest requirements on all outstanding revenue obligations to be outstanding after the issuance of the proposed parity revenue obligations. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator. In making a determination of such net revenues, the CPA may take into consideration a change in the rates and charges for services and facilities afforded by the City’s systems that became effective at least sixty (60) days prior the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues text, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as be in in effect for the entire period covered by the certificate or report, and;

(e) the additional revenue obligations are made to mature on February 15 or August 15, either or both, of each year in which they are scheduled to mature.

PROVIDED, however, the commitment is subject to the following special conditions:
Special Conditions:

40. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

41. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and

42. the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.

APPROVED and ordered of record this 26th day of January, 2017.

TEXAS WATER DEVELOPMENT BOARD

[Signature]

Bech K. Bruun, Chairman

DATE SIGNED: 1-26-17

ATTEST:

[Signature]

Jeff Walker
Executive Administrator
AGENDA CAPTION:
Consider approval of Resolution 2017-84R, approving a principal forgiveness agreement with the Texas Water Development Board that forgives an amount not to exceed $961,821 out of $1,961,821 in principal funds to the city from the Clean Water State Revolving Fund to finance the planning, acquisition and design of certain wastewater system improvements; authorizing the Interim City Manager or mayor to execute said agreement on behalf of the City; and declaring an effective date.

Meeting date:  May 2, 2017

Department:  Finance & Eng/CIP

Funds Required:  
Account Number:  
Funds Available:  
Account Name:  

CITY COUNCIL GOAL:  
Goal#5:  Improve and maintain City’s infrastructure.

COMPREHENSIVE PLAN ELEMENT(s):  [add the Plan elements and Goal # and Objective(s)]
ERPG4 - A population prepared for and resilient to man-made and natural disasters.

BACKGROUND:

In September 2016 the City Council approved a resolution for the filing of an application with the Texas Water Development Board (TWDB) seeking financial assistance for the Blanco and San Marcos Rivers Flood Mitigation Project. In January the TWDB approved financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund through the purchase of $1,000,000 of City of San Marcos water and wastewater revenue bonds and $961,821 in principal forgiveness.

This action approves the Principal Forgiveness Agreement.
CERTIFICATE FOR RESOLUTION

I, the undersigned City Clerk of the City of San Marcos, Texas, hereby certify as follows:

1. The City Council of said City convened in Regular Session on May 2, 2017, at the regular meeting place thereof, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

   John Thomaides, Mayor
   Saul Gonzales, Councilmember
   Jane Hughson, Councilmember
   Melissa Derrick, Councilmember

   Lisa Prewitt, Councilmember
   Ed Mihalkanin, Councilmember
   Scott Gregson, Councilmember

   and all of said persons were present, except for the following: __________________________; thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written Resolution entitled

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PRINCIPAL FORGIVENESS AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD THAT FORGIVES AN AMOUNT NOT TO EXCEED $961,821 OUT OF $1,961,821 IN PRINCIPAL FUNDS TO THE CITY FROM THE CLEAN WATER STATE REVOLVING FUND TO FINANCE THE PLANNING, ACQUISITION AND DESIGN OF CERTAIN WASTEWATER SYSTEM IMPROVEMENTS; AUTHORIZING THE INTERIM CITY MANAGER OR MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

   was duly introduced for consideration of said City Council. It was then duly moved and seconded that said Resolution be passed; and, after due discussion, said motion, carrying with it the passage of said Resolution, prevailed and carried by the following vote:

   AYES: _______    NOES: _______    ABSTENTIONS:

2. A true, full and correct copy of the aforesaid Resolution passed at the meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Resolution has been duly recorded in the official minutes of said City Council; the above and foregoing paragraph is a true, full and correct excerpt from said minutes of said meeting pertaining to the passage of said Resolution; the persons named in the above and foregoing paragraph, at the time of said meeting and the passage of said Resolution, were the duly chosen, qualified and acting officers and members of said City Council as indicated therein; each of said officers and members was duly and sufficiently notified officially and personally in advance, of the time, place and purpose of the aforesaid meeting and that said Resolution would be introduced and considered for passage at said meeting, and each of said officers and members consented in advance to the holding of said meeting for such purpose; and said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Tex. Gov't Code Ann., ch. 551.
SIGNED this May 2, 2017.

____________________________________
City Clerk, City of San Marcos, Texas
RESOLUTION NO. 2017-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PRINCIPAL FORGIVENESS AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD THAT FORGIVES AN AMOUNT NOT TO EXCEED $961,821 OUT OF $1,961,821 IN PRINCIPAL FUNDS TO THE CITY FROM THE CLEAN WATER STATE REVOLVING FUND TO FINANCE THE PLANNING, ACQUISITION AND DESIGN OF CERTAIN WASTEWATER SYSTEM IMPROVEMENTS; AUTHORIZING THE INTERIM CITY MANAGER OR MAYOR 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 Principal Forgiveness Agreement with the Texas Water Development Board (TWDB Commitment No. L1000601, TWDB Project No. 73,748 (IUP Fiscal Year 2017), TWDB Resolution No. 17-010, CFDA No. 66.458 is hereby approved.

PART 2. The Interim City Manager or Mayor is authorized to execute said Principal Forgiveness Agreement on behalf of the City.

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

PASSED AND APPROVED on first and final reading on this May 2, 2017.

John Thomaides
Mayor

ATTEST:

Jamie Lee Case
City Clerk

APPROVED AS TO LEGALITY:

Michael J. Cosentino
City Attorney
Principal Forgiveness Agreement
Clean Water State Revolving Fund

TEXAS WATER DEVELOPMENT BOARD
AND
CITY OF SAN MARCOS

TWDB COMMITMENT NO. L1000601
TWDB PROJECT NO. 73748 (IUP FISCAL YEAR 2017)
TWDB RESOLUTION NO. 17-011
CFDA No. 66.458
CITY OF SAN MARCOS
TWDB COMMITMENT NO. L1000601
TWDB PROJECT NO. 73748
TWDB RESOLUTION NO. 17-011

PRINCIPAL FORGIVENESS AGREEMENT

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PRINCIPAL FORGIVENESS AGREEMENT
BETWEEN THE
TEXAS WATER DEVELOPMENT BOARD
AND THE
CITY OF SAN MARCOS

WHEREAS, the City of San Marcos (City) has filed an application with the Texas Water Development Board (TWDB) for financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund (CWSRF) to finance wastewater system improvements for the project identified as Project No. 73748; and

WHEREAS, on January 26, 2017, the TWDB determined that the City qualifies for principal forgiveness as a Disadvantaged Community pursuant to 31 TAC § 375.18, and the criteria set forth in the 2017 CWSRF Intended Use Plan (IUP), and agreed, pursuant to the TWDB Resolution, to provide financial assistance in the amount of $1,961,821 to the City and further agreed that $961,821 will be forgiven; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Principal Forgiveness Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, and all terms and conditions set forth herein.

ARTICLE I. DEFINITIONS

The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Principal Forgiveness Agreement and the attached exhibits.


Commitment means an offer by the TWDB to provide financial assistance to an Applicant as evidenced by a TWDB resolution.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 375.1(16) and required by the TWDB Resolution.

CWSRF means the Clean Water State Revolving Fund, a program of financial assistance administered by the TWDB for wastewater projects pursuant to the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 et seq.; applicable federal regulations; Texas Water Code, Chapter 15, §§ 15.601 – 15.618; and 31 TAC Chapter 375.
Disadvantaged Community means an area that meets the requirements of a disadvantaged community as defined in 31 TAC § 375.1(23) and the criteria identified in the 2017 CWSRF IUP.

Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget.

EPA means the U.S. Environmental Protection Agency.

Escrow Account means an account established by the City that will be used to manage the Principal Forgiveness Funds in accordance with an escrow agreement acceptable to the Executive Administrator, which is attached hereto as EXHIBIT G, until such time as the Executive Administrator authorizes the release of the Principal Forgiveness Funds to the Construction Account.

Executive Administrator means the Executive Administrator of the TWDB or designated representative.

Financial Assistance means funding made available to eligible Applicants, as authorized in 33 U.S.C. §1383(d), including principal forgiveness.

Force Majeure means acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Green Project means a project or portion of a project that meets the EPA criteria for inclusion in the Green Project Reserve, including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

Green Project Reserve means the equivalent amount of the EPA capitalization grant that is reserved for projects that meet the EPA’s criteria for green projects.

IUP means the Intended Use Plan, State Fiscal Year 2017, approved by the TWDB and the EPA in which the Project was prioritized for funding.

Obligations means the $1,000,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Series 2017B, together with all authorizing documents, which evidence the portion of the financial assistance that is not forgiven, identified as L1000601.

Outlay Report means the TWDB form regarding the total amount of costs incurred by the City relating to the Project for the specified period.
Parties or Party means the TWDB and the City and their authorized successors and assignees.

Principal Forgiveness Funds means the portion of the Financial Assistance that is forgiven, identified as L1000601, in an amount not to exceed $961,821.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 73748.

State means the State of Texas.

TWDB Resolution means TWDB Resolution No. 17-011, dated January 26, 2017, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

ARTICLE II. AUTHORITY AND RECITALS

2.01. AUTHORITY. This Agreement is authorized and required by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., and is also governed by the terms of the IUP; Texas Water Code, Chapter 6; Texas Water Code; Chapter 15, §§ 15.601 – 15.618; 31 TAC Chapter 375; and the TWDB Resolution.

2.02. RECITALS. The Parties agree that the following representations are true and correct and form the basis of this Agreement.

A. The TWDB may provide financial assistance in the form of additional subsidization, such as principal forgiveness, as that term is defined effective July 4, 2016, for all or a portion of the Project costs in an amount which the TWDB has determined to be eligible.

B. On January 26, 2017, the TWDB considered an Application filed by the City for financial assistance from the CWSRF program. Based on the representations made by the City in that Application, the TWDB adopted the TWDB Resolution in which the TWDB:

1. determined that the City qualifies for principal forgiveness and is eligible for financial assistance; and

2. made a commitment to provide financial assistance through the purchase of bonds in an amount not to exceed $1,961,821 for the planning, acquisition, and design, of the Project, and to provide additional subsidization in the form of principal forgiveness to the City in an amount not to exceed $961,821 as Principal Forgiveness Funds without the expectation of repayment.

C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Principal Forgiveness Funds in an amount not to exceed $961,821. The Executive Administrator is authorized to execute this Agreement on behalf of the TWDB pursuant to the TWDB Resolution, which is attached to this Agreement as EXHIBIT A. The City is authorized to execute this Agreement through its authorized representative.
designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as **EXHIBIT B**.

D. Nothing in this Agreement supersedes or affects any provisions of the Obligations relating to the Financial Assistance amount not forgiven.

**ARTICLE III. LEGAL REQUIREMENTS**

**3.01. APPLICABLE LAWS.** In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to plan, design, and construct the Project in compliance with the following:

A. the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, and EPA regulations at 40 CFR Part 35;

B. all federal laws and regulations identified on **EXHIBIT C**;

C. Texas Water Code, Chapter 15, §§ 15.601 – 15.618; and

D. 31 TAC Chapter 375.

**3.02. LABOR STATUTES AND REGULATIONS.** The City agrees to comply with the following statutes and regulations, and shall execute the certifications required by the TWDB related to same. Further, the City shall ensure that each contract for work on the Project shall also contain the following requirements.


B. **Davis-Bacon Act Wage Rates.** In accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, and the applicable IUP and TWDB Guidance on Davis-Bacon Wage Rate Requirements, the City, its contractors and its subcontractors, for the Project that is funded in whole or in part with Principal Forgiveness Funds, shall pay all laborers and mechanics at rates not less than those prevailing on similar projects in the same locality, as determined by the U.S. Secretary of Labor’s Wage and Hour Division, in conformance with the Davis–Bacon Act, 40 U.S.C. §§ 3141 - 3148, 29 CFR Part 5, relating to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, and 29 CFR Part 3, relating to Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States. All contracts and subcontracts for the construction of the Project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of $2,000 the contracts clauses as attached hereto as **EXHIBIT D**.

3.03. NO LOBBYING. The City agrees to comply with 40 CFR Part 34, relating to New Restrictions on Lobbying. The City understands and agrees that none of the Principal Forgiveness Funds provided under this Agreement shall be expended to pay any person for influencing or attempting to influence an officer or employee of any federal entity, or a Member of Congress, with regard to the awarding of any federal contract, federal grant, federal loan, or the extension, continuation, renewal, amendment or modification of any federal contract, loan, or grant. The City shall require that all contracts in excess of $100,000 for work implementing the Project contain the following statement: IN ACCORDANCE WITH THE BYRD ANTI-LOBBYING AMENDMENT, ANY RECIPIENT WHO MAKES A PROHIBITED EXPENDITURE UNDER TITLE 40 CFR PART 34 OR FAILS TO FILE THE REQUIRED CERTIFICATION OR LOBBYING FORMS SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN $10,000 AND NOT MORE THAN $100,000 FOR EACH SUCH EXPENDITURE.

3.04. IRON AND STEEL. The City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States as required by the Federal Water Pollution Control Act, 33 U.S.C. § 1388, related EPA SRF Policy Guidelines and the TWDB American Iron and Steel Guidance, unless the City has requested and obtained a waiver from EPA pertaining to the Project. This section applies in a manner consistent with United States obligations under international agreements. If the City is a signatory to such an agreement, then the City is under the obligation to determine its applicability and requirements and document the actions taken to comply for the TWDB.

3.05. PROCUREMENT. The City shall comply with the following when procuring goods and services for work on the Project according to the requirements in this section.

A. Debarred and Suspended Vendors. Prior to selecting any contractor, the City shall ensure that the contractor is not listed on the federal Excluded Parties List System and is not suspended or disbarred by either the State or the federal government. See the following websites for lists of suspended and debarred federal and State vendors: www.sam.gov and www.window.state.tx.us/procurement/prog/vendor_performance/debarred.

B. State Procurement Requirements. All purchases for goods, services or commodities made with funds provided under this Agreement shall comply with State and local procurement and contracting laws.


D. Contracts for Architectural or Engineering Professional Services. The City agrees to comply with 33 U.S.C. § 1382(b)(14) (Section 602(b)(14) of the Federal Water Pollution Control Act) and 29 CFR Part 5.
4.01. **PROJECT REQUIREMENTS.** The City shall comply with the following:

A. **Plans and Specifications.** The City shall construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC §§ 375.81 – 375.83.

B. **Changes to Plans and Specifications.** The City shall not make or implement any changes to the scope of the Executive Administrator’s approved Project or to the specifications for the Project including, but not limited to, changes to the Green Project Reserve portion of the Project without the written approval of the Executive Administrator.

C. **Project Schedule.** The City shall adhere to the TWDB approved Project schedule, attached as **EXHIBIT E**, and shall timely and expeditiously use funds and complete the Project. The City shall not exceed or revise the Project schedule except upon written approval from the TWDB. The City shall not delay the Project completion date except by Amendment to this Agreement.

D. **Project Budget.** The City shall be solely responsible for all costs that exceed the TWDB approved Project budget, attached as **EXHIBIT F**. The City shall notify the Executive Administrator immediately when it appears that the Project budget may not be sufficient to complete the Project. The City shall not exceed the Project budget except by Amendment to this Agreement.

E. **Environmental Compliance.** The City shall comply with all environmental conditions and shall implement environmental mitigation measures as required through TWDB environmental review under 31 TAC Chapter 375, Subchapter E.

4.02. **PROGRESS REPORTS.** The Executive Administrator may request reports on the progress of the Project at any time. The reports shall contain information as directed by the Executive Administrator and shall be submitted periodically as requested. The City shall respond as requested and a failure to respond may result in withholding the release of funds from the Escrow Account.

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**ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS**

5.01. **CONDITIONS FOR DISBURSEMENT OF PRINCIPAL FORGIVENESS FUNDS.** No Principal Forgiveness Funds shall be deposited into the Escrow Account or released until the applicable requirements and conditions in the TWDB Resolution and 31 TAC § 375.93, relating to Disbursement of Funds, are met. Construction funds shall not be released unless the City has complied with 31 TAC Chapter 375, Subchapter E, relating to Environmental Reviews and Determinations and 31 TAC §§ 375.81 – 375.83, relating to Engineering Review and Approval. If
other conditions affect the release of funds, the Parties agree to negotiate in good faith regarding any new or different terms or conditions that become applicable to the release of Principal Forgiveness Funds.

5.02. DELIVERY OF PRINCIPAL FORGIVENESS FUNDS. The TWDB shall deposit the Principal Forgiveness Funds in an approved Escrow Account to be released to the City’s Construction Account at the direction of the Executive Administrator.

A. Outlay Reports and Invoices. The City shall submit the following documentation:

1. TWDB Outlay Report forms identifying:
   a. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
   b. invoices, receipts or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an eligible expense incurred by the City.

2. Outlay Report forms are due to TWDB quarterly during the planning, acquisition and design phases and monthly during the construction phase of the Project until the completion of the Project.

B. Release from Escrow Account. The Executive Administrator shall authorize the release of Principal Forgiveness Funds from Escrow when Outlay Reports have been approved by the TWDB.

5.03. INELIGIBLE EXPENSES. The City must use Principal Forgiveness Funds for Eligible Expenses. The City must return any Principal Forgiveness Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Principal Forgiveness Funds used for any ineligible or unverified expenses shall be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is insufficient to fully offset the amount of improperly expended Principal Forgiveness Funds, the City must use other funds to fully repay the TWDB.

5.04. MAINTENANCE OF PROJECT ACCOUNTS The City must maintain all project accounts containing funds disbursed for the planning, acquisition, design, or construction of a project, as applicable, in compliance with generally accepted accounting principles (GAAP), including the reporting of underlying infrastructure assets.

5.05. FINAL ACCOUNTING. The City shall provide a final accounting of funds expended on the Project pursuant to 31 TAC § 375.106 and return any remaining Principal Forgiveness Funds in a manner determined by the Executive Administrator.

5.06. LEGAL STATUS. The City must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility.
5.07. **WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN.** If applicable, the City shall adopt and implement a water conservation and drought contingency plan that complies with Texas Water Code §§ 11.1271 and 11.1272 and 31 TAC §§ 363.15 and 375.43.

5.08. **WATER AUDIT.** If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually shall perform and file a water audit computing the City’s most recent annual system water loss with the TWDB. The first water audit shall be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits.

5.09. **REGISTRATION REQUIREMENT.** Pursuant to the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252, the City shall obtain a Data Universal Numbering System (DUNS) Number and shall maintain registration in the System for Award Management (SAM).

5.10. **ANNUAL FINANCIAL AUDIT.** During the Term of this Agreement, the City shall submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits shall be submitted to the TWDB no later than 180 days after the close of the City’s fiscal year.

5.11. **INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS.** Financial Assistance funds are public funds and, as such, these funds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

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**ARTICLE VI. NON-PERFORMANCE AND REMEDIES**

6.01. **STOP WORK ORDERS.**

A. **Stop Work Order (SWO).** The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO shall provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO shall provide the City with a specified time to cure.

B. **City’s Response.** The City shall provide a written response to the SWO and shall provide the Executive Administrator with a detailed plan to address and cure the conditions causing the SWO. The City shall provide the response within five business days from its receipt of the SWO.

C. **Executive Administrator’s Reply.** The Executive Administrator may accept, reject or amend the City’s plan and shall provide notice of such action to the City within five
business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City’s execution of the plan to cure. The Executive Administrator may modify the City’s plan to cure only in a manner consistent with the terms and conditions of this Agreement.

D. **City’s Option.** The City shall notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City shall continue work to complete all obligations under this Agreement.

**6.02. TERMINATION.** The TWDB may terminate this Agreement in writing at any time. Upon receipt of a notice of termination, the City shall immediately discontinue all work in connection with the performance of this Agreement and shall promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement, provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City shall be payable from the funding provided pursuant to this Agreement.

Within thirty days of the notice of termination, the City shall submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

**6.03. SURVIVAL OF TERMS AND CONDITIONS.**

A. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement that:

1. the Parties have expressly agreed shall survive any such termination or expiration, if any; or

2. by their nature, would be intended to be applicable following any such termination or expiration.

B. The Parties expressly agree that the following terms and conditions survive the termination or expiration of this Agreement.

1. Article V, Sections 5.03, 5.04, 5.05, 5.07, 5.08, and 5.09.

2. Article VII, General Terms and Conditions.

**6.04. REAL ESTATE.** If the City purchases real estate for the Project with Principal Forgiveness Funds and any of the real estate or portion of the real estate is not used for the Project, the City shall repay to the TWDB the full amount of the Principal Forgiveness Funds for purchase of the real estate that is not used for the Project. Such amount shall be due and payable within 90 days after termination or expiration of this Agreement.
6.05. **REMEDIES.**

A. The City shall have all remedies available in law or equity.

B. The TWDB shall have all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.

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**ARTICLE VII. GENERAL TERMS AND CONDITIONS**

7.01. **INSURANCE AND INDEMNIFICATION.**

A. The City shall at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City shall insure against risks, accidents, casualties or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB's interest in the Project.

B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City shall indemnify and hold the TWDB and the State harmless to the extent that the City may do so in accordance with State law.

C. Principal forgiveness proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

7.02. **PERMITS.** The City shall be responsible for timely filing applications for all licenses, permits, registrations and other authorizations that the City has identified in the application for financial assistance as required for the planning, acquisition, and design of the Project. The City shall submit copies of all of these final licenses, permits, registrations and other authorizations issued by local, state and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

7.03. **RECORDS.** The City shall comply with all terms and conditions relating to records of the Project as follows:

A. **Duty to Maintain Records.** The City shall maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City shall also require its contractors to maintain financial accounting records consistent with Generally Accepted Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation shall be accurate, current,
and shall reflect recordation of the transactions at or about the time the transactions occurred;

1. **Single Audit Act, 31 U.S.C. §§ 7501 – 7507.** The City shall comply with the Single Audit Act, and with Office of Management and Budget (OMB) Circular A-133 ensuring an audit is conducted in accordance with OMB Circulars.

2. **Green Projects.** If all or part of the Project is designated as a Green Project, then the City shall maintain separate tracking of the expenses related to that Project or portion of the Project that has been designated as an approved Green Project.

**B. Duty to Retain Records.** The City shall retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of 31 TAC § 375.107, relating to Records Retention. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after the Obligations are paid in full.

**C. Public Records.** The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City shall promptly respond to a request by the TWDB for copies of any of the City’s records related to this Agreement; and

**D. Access to Records.**

1. **State Auditor.** By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Principal Forgiveness Funds received pursuant to this Agreement. The City shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Principal Forgiveness Funds received pursuant to the contract or subcontract.

2. **TWDB, EPA, and Comptroller General of the United States.** The City agrees that the TWDB, the EPA, and the Comptroller General of the United States shall have full access to any books, documents, papers, and records which are related to the funds expended under this Agreement and that further these federal entities may audit, examine, copy excerpts, and make transcriptions of any such books,
documents, papers, and records. The standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by the EPA and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement shall be made available for audit, examination, excerpion, and transcription by the staff of the TWDB within a reasonable time after a request from the TWDB. The City understands and agrees that the EPA’s Regional Administrator may, after a thirty day written notice, review any records the Regional Administrator deems necessary to determine compliance with all requirements concerning the Principal Forgiveness Funds provided under this Agreement.

7.04. UPDATING INFORMATION. The City shall provide the TWDB with updated information, reports, statements and certifications as requested by the Executive Administrator relating to the financial condition of the City or the Project and the use of Principal Forgiveness Funds. The City shall promptly notify the TWDB of any material change in the activities, prospects or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, obligations and agreements under this Principal Forgiveness Agreement.

7.05. FORCE MAJEURE. Unless otherwise provided, neither the City nor the TWDB nor any agency of the State shall be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such Force Majeure or otherwise waive this right as a defense.

7.06. NON-ASSIGNABILITY. The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the TWDB.

7.07. ENTIRE AGREEMENT AND AMENDMENT. This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.01 do not require an amendment to this Agreement unless a change to the Project Schedule, EXHIBIT E or the Project Budget, EXHIBIT F, results in a different project completion date or total budget amount.

7.08. NO WAIVER. The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement shall not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

7.09. NO DEBT CREATED. Each Party agrees and understands that, by this Agreement, the State, acting through the TWDB, is not lending its credit or in any manner creating a debt on behalf
of the State. To the extent that the City is not securing the Obligations with ad valorem taxes, each Party agrees and understands that, pursuant to this Agreement, the City is not lending its credit or in any other manner creating a debt on behalf of the City.

7.10. LAW AND VENUE. The validity, operation, and performance of this Agreement shall be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the planning, acquisition, and design of the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Hays County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB shall be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

7.11. NOTICES. All notices, notifications, or requests required or permitted by this Agreement shall be in writing and shall be transmitted by personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received by the Party to whom notice is sent.

Texas Water Development Board
Attn: Executive Administrator
Physical Address:
1700 N. Congress Ave., 6th Floor
Austin, Texas 78701-1496
Mailing Address:
P.O. Box 13231
Austin, Texas 78711-3231

City of San Marcos
Attn: <<ENTITY CONTACT>>
Physical Address:
<<ENTITY ADDRESS>>
Mailing Address: <<ENTITY ADDRESS>>

7.12. TERM. This Agreement is effective on the date signed by the Executive Administrator. The Agreement shall expire upon the successful completion of the Project and Final Accounting in accordance with Section 5.05 of this Agreement.

TEXAS WATER DEVELOPMENT BOARD

Jeff Walker
Executive Administrator

______________________________  ______________________________
Date  Date

CITY OF SAN MARCOS

<<RESPONSIBLE OFFICIAL>>  <<TITLE>>

______________________________  ______________________________

TWDB Commitment No. <<LNNNNNNN>>
Page 13 of X
EXHIBIT A
TWDB Resolution No. 17-011
EXHIBIT B
City of San Marcos’s Resolution
EXHIBIT C
List of Federal Laws and Authorities (Cross-Cutters)

The basic rules for complying with cross-cutting federal authorities are set-out in the CWSRF regulations at 40 C.F.R. § 35.3145 and in the DWSRF regulations at 40 C.F.R. § 35.3575. A list of and link to these authorities is provided below and also available from the Environmental Protection Agency (EPA) at: http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm. A handbook on the applicability of the cross-cutting federal authorities is available from EPA at http://www.epa.gov/owm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/CrosscutterHandbook.pdf.

Environmental Authorities
• Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
• Clean Air Act, Pub. L. 84-159, as amended
• Coastal Barrier Resources Act, Pub. L. 97-348
• Coastal Zone Management Act, Pub. L. 92-583, as amended
• Endangered Species Act, Pub. L. 93-205, as amended
• Environmental Justice, Executive Order 12898
• Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
• Protection of Wetlands, Executive Order 11990
• Farmland Protection Policy Act, Pub. L. 97-98
• Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
• National Historic Preservation Act of 1966, PL 89-665, as amended
• Safe Drinking Water Act, Pub. L. 93-523, as amended
• Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities
• Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
• Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
• Procurement Requirements for Architectural and Engineering Services under 40 U.S.C. § 1101 and Section 602 of the Clean Water Act
• Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
• Debarment and Suspension, Executive Order 12549

Social Policy Authorities
• Age Discrimination Act of 1975, Pub. L. 94-135
• Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 (2)
• Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
• Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
• The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
• Equal Employment Opportunity, Executive Order 11246
• Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
• Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
• Anti-Lobbying Provisions (40 CFR Part 30) [applies only to capitalization grant recipients]

The Civil Rights Act and related anti-discrimination statutes apply to all the operations of the SRF program.
EXHIBIT D
Davis-Bacon Contract and Subcontract Provisions

(a) GENERAL CONTRACT AND SUBCONTRACT PROVISIONS.

The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1 and the Water Resources Reform and Development Act of 2014, the following clauses:

(1) Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.


(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for
fringe benefits where appropriate), documentation of the action taken and the request, including the local wage
determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit
the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S.
Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The
Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification
request within 30 days of receipt and so advise the State award official or will notify the State award official within
the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives,
and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for
fringe benefits, where appropriate), the award official shall refer the request and the local wage determination,
including the views of all interested parties and the recommendation of the State award official, to the Administrator
for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or
an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the
contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or
(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first
day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe
benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage
determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of
the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe
benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the
contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require
the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding

The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the
Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal
contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing
wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may
be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the
contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any
laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or
part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant,
or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee
of funds until such violations have ceased.

(3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and
preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such
records shall contain the name, address, and social security number of each such worker, his or her correct
classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe
benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and
weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found
under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably
anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the
contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the
plan or program is financially responsible, and that the plan or program has been communicated in writing to the
laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing
such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees
(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements
The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


b. CONTRACT PROVISIONS FOR CONTRACTS IN EXCESS OF $100,000

Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.
In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages

The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) MAINTENANCE OF RECORDS

In addition to the clauses contained in Section (a), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) COMPLIANCE VERIFICATION

(1) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
(2) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor’s submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S. Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

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The provision that read “At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor’s submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract” was issued a waiver in EPA Class Deviation memo dated November 16, 2012.
EXHIBIT E
Project Schedule
EXHIBIT F
Project Budget
EXHIBIT G
Escrow Agreement
February 1, 2017

The Honorable Daniel Guerrero, Mayor
City of San Marcos
630 E, Hopkins
San Marcos, TX, 78666

Re: City of San Marcos
    TWDB Project No. 73748 Closing Requirements
    Clean Water State Revolving Fund Financial Commitment
    $1,000,000 loan and $961,821 principal forgiveness

Dear Mr. Guerrero:


The loan will be evidenced by TWDB's purchase of your bonds. You may be required to execute a financing agreement that will be provided under separate cover. Utilizing the outline provided below, create a schedule for closing the loan and receiving funds. Required closing documents and TWDB team contact information are listed on the next page. Prior to submitting draft documents, please provide to your TWDB financial analyst the dates for your bond ordinance adoption and preferred closing date.

<table>
<thead>
<tr>
<th>Documentation or Event</th>
<th>Deadline (business days)</th>
<th>Due To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bond ordinance, draft</td>
<td>30 days prior to adoption date</td>
<td>TWDB Attorney</td>
</tr>
<tr>
<td>2. Interest rates for bond ordinance *</td>
<td>5 days prior to adoption date</td>
<td>Borrower</td>
</tr>
</tbody>
</table>

**Bond ordinance adoption**

| 3. Budget for the release of funds at closing ** | 18 days prior to closing date | TWDB Engineering Reviewer    |
| 4. Escrow Release Authorization                | 13 days prior to closing date | Borrower                     |
| 5. Final closing documents (see below)         | 8 days prior to closing date | TWDB Financial Analyst       |

*C*Interest rates expire forty-five (45) days after your adoption date.

**If required, a template for an outlay report and instructions will be provided.

Our Mission
To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

Board Members
Bech Bruun, Chairman | Kathleen Jackson, Board Member | Peter Lake, Board Member
Jeff Walker, Executive Administrator
The Honorable Daniel Guerrero, Mayor
City of San Marcos
February 1, 2017
Page 2

**Required final closing documents:**

- Attorney General Opinion
- Comptroller’s Certificate
- Debt Service Schedule
- Escrow Agreement, executed
- Financial Advisor’s Closing Instructions
- Paying Agent Agreement, executed
- Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement
- Vendor Identification Form
- Principal Forgiveness Agreement, executed
- Outlay Report, approved

Our team looks forward to working with you to make this a successful project. Please include the project number listed above when sending correspondence related to this project. If you have any questions or seek additional information, you may contact any of the team members or me at Dain.Larsen@twdb.texas.org or 512/463-1618. Team members contact information:

Issa McDaniel, Project Manager, 512/463-1706  
Hector Estrada, Financial Analyst, 512/463-7959  
Lauren Dill, Environmental Reviewer, 512/475-1501  
Alexis Lorick, Attorney, 512/463-2776

Sincerely,

[Signature]

Dain Larsen
Team Manager/ Central Region

DL/HE/dur

Enclosure

cc via email:  Heather Hurlbert, Finance Director  
Laurie A. Moyer, Director of Engineering  
Carol Polumbo, Bond Counsel  
Jared Miller, City Manager
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$1,961,821 TO THE CITY OF SAN MARCOS
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$1,000,000 CITY OF SAN MARCOS, TEXAS WATER AND WASTEWATER SYSTEM
REVENUE BONDS,
PROPOSED SERIES 2017B
AND
$961,821 IN PRINCIPAL FORGIVENESS
(17-011)

WHEREAS, the City of San Marcos (City) has filed an application for financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, and design of certain wastewater system improvements identified as a flood mitigation project in Project No. 73748; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB’s proposed purchase of $1,000,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Proposed Series 2017B (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of $961,821, all as is more specifically set forth in the application and in recommendations of the TWDB’s staff; and

WHEREAS, the City has offered a pledge of net revenues of the City’s water and wastewater system as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB’s pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;

2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as well as state law, in accordance with Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB’s rules; and

4. that the City meets the definition of “Disadvantaged Community” in 31 TAC § 375.1(23) and is therefore eligible for principal forgiveness through the CWSRF.
NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of San Marcos for financial assistance in the amount of $1,961,821 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of $1,000,000 City of San Marcos, Texas Water and Wastewater System Revenue Bonds, Proposed Series 2017B and the execution of a Principal Forgiveness Agreement in the amount of $961,821. This commitment will expire on July 31, 2017.

Such commitment is conditioned as follows:

**Standard Conditions**

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 375;

4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;

5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount
necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;

7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) deposit into a reserve fund;

9. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

10. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

11. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

12. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;

13. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be
reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

**Conditions Related To Tax-Exempt Status**

16. the City’s bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the City’s bond counsel opinion must also state that the Obligations are not “private activity bonds.” Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become “private activity bonds” within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:

a. proceeds of the TWDB’s Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;

b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and

c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10
percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

20. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:

a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;

c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB’s Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;

d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;

21. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;

22. the Obligations must provide that the City will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;

23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City’s reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
24. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

25. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

27. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor’s implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of $2,000 the contracts clauses as provided by the TWDB;

28. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;

29. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;

30. the Obligations and Principal Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

31. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 et seq. related to maintaining project accounts containing
financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

32. the City shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

33. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;

34. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

35. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

36. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 et seq. and 33 U.S.C. § 1382(b)(14).

Pledge Conditions for the Loan

37. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;

38. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
39. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if:

(a) the City is not then in default as to any covenant, condition, or obligation prescribed in an ordinance authorizing the issuance of outstanding parity obligations;

(b) the proposed additional revenue obligations have been approved by the Texas Attorney General;

(c) each of the respective funds created and dedicated to the payment, security, and benefit of the additional revenue obligations contains the amount of money then required to be on deposit therein;

(d) the City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed additional revenue obligations, or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed additional revenue obligations is adopted, the “net revenues” of the System (after operations and maintenance is considered, but not deducting depreciation or expenditures, which under standard accounting practices are classed as capital expenditures) are equal to at least 1.20 times the combined average annual principal and interest requirements on all outstanding revenue obligations to be outstanding after the issuance of the proposed parity revenue obligations. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator. In making a determination of such net revenues, the CPA may take into consideration a change in the rates and charges for services and facilities afforded by the City’s systems that became effective at least sixty (60) days prior the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues text, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as be in in effect for the entire period covered by the certificate or report, and;

(e) the additional revenue obligations are made to mature on February 15 or August 15, either or both, of each year in which they are scheduled to mature.

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

40. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
41. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 26th day of January, 2017.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATE SIGNED: 1-26-17

ATTEST:

Jeff Walker
Executive Administrator
AGENDA CAPTION:
Discuss and consider an appointment to fill vacancies on the Zoning Board of Adjustments, and provide direction to Staff.

Meeting date: May 2, 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:
There are currently two alternate positions that are vacant on the Zoning Board of Adjustments. To remain consistent with term expiration dates, one member will serve until February 28, 2018 and one will serve until February 28, 2019.

Applications have been provided to you.
AGENDA CAPTION:
Discuss and consider an appointment to fill a vacancy on Senior Citizen Advisory Board, and provide direction to Staff.

Meeting date: May 2, 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:
Caitlyn McGinty recently resigned due to a location change. Staff is seeking a replacement to fill this vacancy. The term is set to expire February 28, 2019.

Applications have been provided separately.