Regular Meeting Agenda - Final-Amended
City Council

Tuesday, May 15, 2018  6:00 PM  City Council Chambers

630 E. Hopkins

I. Call To Order

II. Roll Call

III. Invocation

IV. Pledges Of Allegiance - United States And Texas

V. 30 Minute Citizen Comment Period

PRESENTATIONS

1. Receive a presentation regarding the Transportation Master Plan, and provide direction to the City Manager.

CONSENT AGENDA

2. Consider approval, by motion, of the following meeting Minutes:
   A) May 1, 2018 - Work Session Minutes
   B) May 1, 2018 - Regular Meeting Minutes

3. Consider approval of Ordinance 2018-11, on the second of two readings, amending the Design Manual for the Installation of Network Node Support Poles authorized by Ordinance 2017-56 to establish a daily penalty of $500 for failure to relocate improperly placed equipment; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

4. Consider approval of Ordinance 2018-12, on the second of two readings, amending Chapter 14, Buildings and Building Regulations, of the City Code to implement recent legislation prohibiting the City from collecting fees from members of certain trades before they are authorized to practice their trades in the City; providing for an effective date.

5. Consider approval of Ordinance 2018-13, on the second of two readings, adopting fees to be charged by the City for various city services, including changes to some existing fees and the addition of new fees; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.
6. Consider approval of Ordinance 2018-14, on the second of two readings, amending Section 2.041 of the San Marcos City Code to update the frequency of Regular Meetings per month; including procedural provisions; and declaring an effective date.

7. Consider approval of Resolution 2018-71R, approving the award of an Engineering Services Contract to Walker Partners, LLC. for the Red Sky Water Improvements Project to replace the current of two inch waterline along Horace Howard Dr. with an eight inch waterline for the estimated purchase amount of $199,998.00, contingent upon the provision of sufficient insurance; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the city and declaring an effective date.

8. Consider approval of Resolution 2018-72R, approving a Developer Participation Agreement with Highpointe Trace, LLC providing for the City to participate in the cost of a regional wastewater lift station to serve the area along Posey Road from Hunter Road to Old Bastrop Highway in the amount of $1,247,216.00; authorizing the City Manager to execute said agreement; and declaring an effective date.

9. Consider approval of Resolution 2018-73R, granting an easement to Bluebonnet Electric Cooperative, Inc. for the installation of electric utility facilities to loop electrical service for the Cottonwood Creek Subdivision; authorizing the City Manager to execute said easement on behalf of the city; and declaring an effective date.

10. Consider approval of Resolution 2018-80R, approving an expenditure of $45,000 from the Permanent Art Fund for the purchase of a Texas Wild Rice Sculpture as recommended by the Arts Commission; and declaring an effective date.

11. Consider approval of Resolution 2018-74R, approving the award of a contract to TRC Engineers, Inc. for the execution of the Electric Utility Pole Attachment Survey Project (IFB 218-232) for the estimated purchase amount of $93,039.02 is approved; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the city and declaring an effective date.

12. Consider approval, by motion, of Change in Service No. 3 with Kimley Horn and Associates for Engineering Services related to providing design and construction phase services for the Sessom Creek Wastewater Replacement from N.LBJ to Canyon Road Project in a not to exceed amount of $232,555.00.

13. Consider approval, by motion, of Change Order # 3 with Rocking Q Construction LLC, in the amount of $170,941.30, for the upsizing of the IH-35 bore casing from 24” to 36”, replace internally restrained pipe joints with external restraints, and overlay Durango Street in connection with the Reclaimed Water Expansion Project.

14. Consider approval, by motion, of the updated 2018 City Council Meeting Calendar, officially setting the Regular Meeting dates for 2018 per San Marcos City Code Section 2.041.

PUBLIC HEARINGS
15. Receive a staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2018-15, amending the Official Zoning Map of the City by rezoning a 59.734 acre, more or less, tract of land in the La Cima Subdivision, located west of the intersection of Old Ranch Road 12 and Wonder World Drive, from “FD” Future Development District to “SF-4.5” Single-Family District; and including procedural provisions; and consider approval of Ordinance 2018-15, on the first of two readings.

16. Receive a staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-75R, approving a second amended and restated Development Agreement with Lazy Oaks Ranch, LP and its partial assignees in connection with the La Cima Development near the intersection of Old Ranch Road 12 and Wonder World Drive that, among other things, adds approximately 394 acres of land to the project area, adds 400 dwelling units, and allows up to 720 multi-family units, but not purpose built student housing, within up to 30 acres of the project area; authorizing the City Manager to execute the agreement on behalf of the City; and providing an effective date.

17. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-79R, approving a variance from the cut and fill requirements under Section 5.1.1.2 of the Land Development Code to allow fill of up to ten feet within a portion of the site for a new San Marcos Consolidated Independent School District Elementary School at Esplanade Parkway and William Moon Way in the Trace Subdivision; and declaring an effective date; and consider approval of Resolution 2018-79R.

NON-CONSENT AGENDA

18. Consider approval of Ordinance 2018-16, on first and final reading, authorizing the issuance and sale of $33,750,000 City of San Marcos, Texas, Combination Tax And Revenue Certificates of Obligation, Series 2018; providing for funding for (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2) constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the certificates.

19. Consider approval of Ordinance 2018-17, on first and final reading, authorizing the issuance of City of San Marcos, Texas General Obligation Bonds in an amount not to
exceed $28,000,000 for one or more of the purposes of providing funds for (i) constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs, (ii) constructing, improving, extending, expanding, upgrading and/or developing City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking infrastructure and (iii) paying the legal fees and other such costs incurred in connection therewith including the costs of issuing the Bonds; levying an ad valorem tax in support of the bonds; approving a paying agent/registrar agreement, an official statement, and a purchase agreement; establishing procedures for selling and delivery of one or more series of the bonds; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the bonds.

20. Consider approval of Resolution 2018-76R, approving the award of an Engineering Services Contract to MWM DesignGroup, Inc. for the Hills of Hays Neighborhood Drainage Improvements Project for the estimated purchase amount of $80,160.00, contingent upon the provision of sufficient insurance; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

21. Consider approval of Resolution 2018-77R, supporting the Cultural Arts District Application of the P2P Movement to be submitted to the Texas Commission on the Arts seeking designation of the Dunbar Cultural Arts District; declaring an effective date.

22. Consider approval of Resolution 2018-78R, approving a Lease Agreement with Becerra Corp. for the year to year lease of approximately 9,817 square feet of space at 201 South LBJ (the site of the former Dixie Cream Donut Shop); authorizing the City Manager to execute said lease; and declaring an effective date.

23. Hold discussion regarding City Council’s participation in the Cultural Arts District Designation efforts, and direction to the City Manager.

24. Discuss and consider appointments to the following Council Committees and the GSMP Board of Directors to fill a vacancy, and provide direction to Staff:
   a) Joint Partnership Committee of the City Council, Hays County Commissioners, and San Marcos Consolidated Independent School District Board of Trustees (2 Council Members)
   b) Transit Committee (3 Council Members)
   c) Workforce Housing Committee (3 Council Members)
   d) Rental Registration Council Committee (3 Council Members)
   e) Greater San Marcos Partnership (GSMP) Board of Directors (1 Council Member to fill vacancy)
   f) Student Housing Committee (1 Council Member to fill vacancy)

VI. Question and Answer Session with Press and Public.
VII. Adjournment.

VIII. ADDENDUM

The following Items were added following posting of the Agenda on May 7, 2018:

Item #19: Consider approval of Ordinance 2018-16, on first and final reading, authorizing the issuance and sale of $33,750,000 City of San Marcos, Texas, Combination Tax And Revenue Certificates of Obligation, Series 2018; providing for funding for (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2) constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the certificates.

Item #20: Consider approval of Ordinance 2018-17, on first and final reading, authorizing the issuance of City of San Marcos, Texas General Obligation Bonds in an amount not to exceed $28,000,000 for one or more of the purposes of providing funds for (i) constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs, (ii) constructing, improving, extending, expanding, upgrading and/or developing City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking infrastructure and (iii) paying the legal fees and other such costs incurred in connection therewith including the costs of issuing the Bonds; levying an ad valorem tax in support of the bonds; approving a paying agent/registrar agreement, an official statement, and a purchase agreement; establishing procedures for selling and delivery of one or more series of the bonds; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the bonds.

Item #24: f) Student Housing Committee (1 Council Member to fill vacancy)

The following Item was removed:

Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Local Government Code Section §551.087 - Economic
Development: to receive an update and deliberate regarding Project World Series.

ADDENDUM POSTED ON WEDNESDAY, MAY 9, 2018 AT 8:30AM

JAMIE LEE CASE, CITY CLERK

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov
File #: ID#18-276, Version: 1

AGENDA CAPTION:
Receive a presentation regarding the Transportation Master Plan, and provide direction to the City Manager.
Meeting date: May 15, 2018

Department: Engineering and CIP

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

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

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

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☒ Land Use - High Density Mixed Use Dev. & Infrastructure in the Activity Nodes & Intensity Zones (supporting walkability and integrated transit corridors)
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☒ Transportation - Safe, Well coordinated transportation system implemented in an environmentally sensitive manner
☐ Not Applicable

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
**Background Information:**
To keep pace with the growing community and transportation needs, the City has updated 2004 Transportation Master Plan. This Transportation Master Plan considered socioeconomic data and information from the City’s Comprehensive Plan “Vision San Marcos: A River Runs through Us”. The improvements identified in this plan will help to enhance transportation safety, minimize congestion, preserve local character, and protect the rivers and the San Marcos environment.

Following transportation master plan goals were established:

- Implement cross-sections that preserve character and encourage economic development
- Build a safe, efficient multimodal system that accesses key land uses
- Expand bicycle lanes and trails
- Build a connected, safe, and accessible pedestrian network
- Plan for transit to serve downtown and intensity zones
- Expand the greenways systems
- Maximize efficiency through best practices

Throughout the planning process for the Transportation Master Plan, City staff worked to keep the public informed and involved. Engaging the public and community stakeholders helped to clarify the project vision and provided opportunities for meaningful input and involvement by the community. Comments received at community events were compiled and considered for incorporation into this plan.

Seven thoroughfare types are proposed for the transportation master plan including highways, boulevards, avenues and streets. Proposed thoroughfare plan builds a multimodal transportation network that is safe, efficient and provides direct access to key land uses.

Bike infrastructure and pedestrian network plan, proposed transit plan, and greenways master plan was developed as part of transportation master plan.

Funding isn’t immediately available to implement all the projects recommended in the Transportation Master Plan. Prioritization criteria were developed to identify projects that are most critical to the needs of the City; and a capital improvements plan was developed for the short, mid and long term horizons.

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

**Alternatives:**
NA

**Recommendation:**
Staff recommends adoption of Transportation Master Plan
Supports goals and objectives in the Comprehensive Plan: Vision San Marcos

A safe, well-coordinated transportation system implemented in an environmentally sensitive manner.

A multimodal transportation network to improve accessibility and mobility, minimize congestion and reduce pollution.
Transportation Master Plan Goals

- Implement cross-sections that preserve character and encourage economic development.
- Build a safe, efficient multimodal system that accesses key land uses.
- Expand bicycle lanes and trails.
- Build a connected, safe, and accessible pedestrian network.
- Plan for transit to serve downtown and intensity zones.
- Expand the greenways system.
- Maximize efficiency through best practices.
Community Engagement

- Rhythm of the Street
  - July 26, 2014
- Code SMTX Workshops
  - August 2015
- Greenways Workshop
  - August 3, 2016
- TMP Open House
  - Nov. 9, 2016
- Multiple Council Briefings
  - October 18, 2017

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City of San Marcos
www.sanmarcostx.gov/transportation
## Complete Streets Cross Sections

<table>
<thead>
<tr>
<th>Landscaped medians</th>
<th>Low-impact drainage facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tighter travel lanes</td>
<td>Road diet for neighborhood streets</td>
</tr>
<tr>
<td>Street trees</td>
<td>Pervious pavement options</td>
</tr>
<tr>
<td>Curbside parking along residential streets</td>
<td>Multi-modal accommodation</td>
</tr>
</tbody>
</table>
Boulevard

Boulevards are multi-lane divided roads with landscaped medians. They provide sidewalks and protected or off-street bicycle facilities.

Four-lane Boulevard with No Parking and One-way Cycle Track (BV 110-50)
Avenue

Avenues are multi-lane undivided roads with three or more lanes. They have protected bicycle and pedestrian facilities and roadside trees spaced at regular intervals.
Commercial Street

Commercial streets front commercial uses. They are characterized by wide sidewalks and on-street parking.
Residential Street

Residential streets are two lane roads serving residential neighborhoods. They are places where people can enjoy their community.

Two-Lane Residential Queuing (RS 52-30A)
Thoroughfare Plan

- Utilize as a guideline to establish right-of-way needs for future and enhanced roadways
- Establish final alignments and cross sections during the preliminary engineering process
- Maintain flexibility for successful implementation of all major roadways

2035 Proposed Thoroughfare Plan

Enhanced Facility
- Boulevard
- Avenue
- Parkway
- Street

Proposed Facility
- Boulevard
- Avenue
- Parkway
- Street
- Conservation Corridor
Bicycle Plan

- Complete gaps in the network
- Phase and construct protected bike lanes along high volume streets
- Incorporate complete street strategies to facilitate the development of new bicycle facilities
- Bicycle Friendly Community designation

**Enhanced Facility**
- Protected Bike Lanes
- Buffered Bike Lanes
- Shared Use Path
- Sharrows
- Wide Shoulders

**Proposed Facility**
- Protected Bike Lanes
- Buffered Bike Lanes
- Shared Use Path
- Sharrows
- Wide Shoulders

2035 Bicycle Plan
Transit Vision

- Develop a transit system to connect activity centers
- Integrated seamless transit partnership between the City and Texas State
- Become Direct Recipient for transit funds
Greenways Plan

- Build a minimum unobstructed width of 8’
- Provide easements for off-street greenways
- Utilize a variety of materials for greenways infrastructure construction
Best Practices

- Travel Demand Management
- Rideshare Programs
- Way-Finding System Improvements
- Access Management
- Intelligent Transportation Systems

City of San Marcos

www.sanmarcostx.gov/transportation
Thoroughfare Plan Prioritization

Projects Considerations:
Safety and mobility
Connectivity
Environment
Construction costs and impacts
Adopted plans and policies
Next Steps

• Approval of the Transportation Master Plan
• Implement projects according to Transportation Plan prioritization & need
• Identify potential funding sources
• Obtain operation and maintenance responsibilities for TxDOT roadways
Thank you!
### Funding Sources

**Available to the City**

- Property tax (general obligation bonds and certificates of obligation)
- Cost-participation with local and state partners (e.g., Hays County, Developers, TxDOT)
- Chapter 380/Chapter 381 Economic Development Agreements
- Tax Increment Reinvestment Zones (TIRZs) and Tax Increment Finance Districts (TIFs)
- Public-Private Partnerships
- Development Impact Fees
- Transportation Reinvestment Zone (TRZs)

**Additional Potential Sources**

- TxDOT funding programs
- State Infrastructure Bank (SIB) loans
- CAMPO funding programs
- Grant funding opportunities (e.g., TIGER, FASTLANE)
- TIFIA loan/credit program
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CAPITAL IMPROVEMENTS PLAN
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The City of San Marcos and Hays County are experiencing significant growth, and San Marcos is among the fastest growing cities in the nation.

To keep pace with the growing community and transportation needs, the City has developed this Update to its 2004 Transportation Master Plan. By reviewing policies, development rules, and the existing transportation network, this Update will help the City prepare and prioritize for the future.

This Transportation Master Plan considers new socioeconomic data and information from the City of San Marcos 2013 Comprehensive Plan “Vision San Marcos: A River Runs Through Us”.

The improvements identified in this plan will help to enhance transportation safety, minimize congestion, preserve local character, and protect the rivers and the San Marcos environment.

In December 2013, San Marcos was named #9 on Business Insider’s list of the “10 Most Exciting Small Cities in America.”
TRANSPORTATION PLANNING AND LAND USE
Transportation planning is the preparation of plans, policies, funding, and project identification to facilitate development of a successful transportation system. The Transportation Master Plan influences land use and community planning, and plays an important role in the City of San Marcos Vision.

This Transportation Master Plan is guided by the City’s Comprehensive Plan, Preferred Scenario Map and community input.

This Plan seeks to implement the policies of the Comprehensive Plan by framing a future transportation network focused on multimodal mobility, connectivity and accessibility, implemented in an environmentally sensitive manner.

The coordination of land use and transportation planning is essential to smart growth and sustainable development within the City of San Marcos.
TRANSPORTATION GOALS
The Transportation Master Plan guides the development of transportation infrastructure in the City of San Marcos.

At the beginning of the planning process, City plans and policies were reviewed to identify related transportation goals and objectives. This Transportation Master Plan considered each of these goals and objectives throughout the planning process.

The City of San Marcos’ Comprehensive Plan, “Vision San Marcos: A River Runs Through Us”, envisions a more integrated transportation network that supports all types of users and modes.

It embraces the concept of “Complete Streets” - the approach to planning streets that are designed, operated, and maintained to enable safe, convenient and comfortable travel and access for users of all ages and abilities.

### TRANSPORTATION MASTER PLAN GOALS

- Implement roadway cross-sections that preserve the character of neighborhoods while encouraging appropriately located economic development.
- Build a multimodal transportation network that is safe, efficient and provides direct access to key land uses.
- Increase bicycle use by expanding safe, convenient and fun bicycle lanes and trails throughout the City.
- Continue to build a well-connected pedestrian network with an emphasis on safety and accessibility.
- Plan for a transit network to serve downtown and key intensity zones by the year 2035.
- Expand the Greenways system to provide opportunities for recreation and economic development, and to encourage increased mode shift.
- Use national best practices to maximize transportation efficiency.

### COMPREHENSIVE PLAN VISION GOALS

- A connected network of efficient, safe and convenient multimodal transportation options while protecting the environment.
- A safe, well-coordinated transportation system implemented in an environmentally sensitive manner.
- A multimodal transportation network to improve accessibility and mobility, minimize congestion and reduce pollution.

To achieve the vision of a more comprehensive and integrated transportation network that is multimodal, compact, and sustainable, these goals are defined as part of the Transportation Master Plan.
An important first step in developing an effective transportation plan is to document existing conditions in the study area. There are many factors to consider when planning for future demand on a community’s transportation network.

Understanding how the existing infrastructure operates and how it is used helps planners shape a system that will best serve the community it supports.

Data about the community is also gathered to better build a transportation network that supports the needs of the people using it.

Understanding the demographics, existing transportation network, and environmental constraints of a community helps to define how the transportation network is being used, and to plan for change.
DEMOGRAPHICS

San Marcos’ central position along IH 35 between San Antonio and Austin makes it an ideal location for industry. The City enjoys access to major transportation facilities, with proximity to international and regional airports.

The City also offers business incentives and support for small businesses and entrepreneurs such as local and state resources, Energy Efficiency Reward Programs, Workforce Development Assistance, tax credits, rebates and bonds. A continual source of new talent from the region’s higher educational facilities, including Texas State University, Austin Community College, and other career training programs work in industries ranging from education, retail and government, to manufacturing, aviation and corporate operations.

The City of San Marcos has been ranked by the Census Bureau as one of the fastest growing cities in the U.S.

- **POPULATION**
  
  Over the past fifteen years, the City’s population has grown by 31%.
  
  The Capital Area Metropolitan Planning Organization predicts that the population of San Marcos will reach 90,500 by 2025, a 37% increase in growth since 2015.
  
  If current growth trends continue, by 2035, the population of San Marcos will reach 130,200 - a 96% increase since 2015.

- **EMPLOYMENT**
  
  Employment projections indicate that the labor force will increase by 37% in 2025 and by up to 77% in 2035 from 2015.
  
  This robust growth is expected to place a heavy demand on City’s infrastructure including water, sewer, energy and transportation.
Population Growth

Employment Growth

Source: Growth data for population and employment obtained from the Capital Area Metropolitan Planning Organization
LAND USE

The City’s existing land uses include a mixture of single and multi-family residential, commercial, industrial and institutional uses including Texas State University and multiple City Parks.

The City’s downtown core is home to the historic Hays County Courthouse, as well as many local businesses including professional offices, retail, restaurants and bars.

Bounded by historic residential neighborhoods and the San Marcos River, downtown San Marcos has maintained a ‘small town’ feel, and has become a popular destination within the community.

Growth in the small town has spurred a need for more intensive urban planning. Developers have been collaborating with the City of San Marcos to build master-planned communities such as La Cima, Trace and Kissing Tree.
ROADWAY NETWORK AND TRAFFIC OPERATIONS

Functional classifications of roadways are designed to describe the hierarchical arrangement and interaction within a transportation network. These classifications may change over time, as the function of a roadway changes to serve different land uses or demand on other transportation facility changes.

2004 FUNCTIONAL CLASSIFICATIONS

The City of San Marcos’ 2004 Transportation Master Plan classified the roadway network into four categories. The 2004 Functional Classifications Map shows the previous distribution of roadway types.

2004 classifications of roadway facilities

- Freeways
- Arterial Streets
- Collector Streets
- Local Streets
MAJOR ROADWAYS

Several roadways serve as major connecting facilities in San Marcos.

- **IH-35** is the only freeway that services San Marcos and nearby communities. It is accessed by grade separated interchanges with frontage roads on both sides.

- **SH 80** serves the east side of San Marcos and connects to RR 12, via Hopkins Street, through downtown.

- **SH 123**, a four-lane facility, originates in Seguin and becomes Guadalupe Street west of IH 35 as it approaches downtown.

- **SH 21** begins at SH 80 on the east side of San Marcos and runs northeast toward Bastrop County.

- **Loop 82**, also known as Aquarena Springs Drive, begins at IH 35 and runs through San Marcos where it intersects with IH 35 again as CM Allen Parkway.

- **RR 12 (Wonder World Drive)** connects the City of Wimberley and IH 35 on the south side of San Marcos.
TRAFFIC VOLUMES

Long-range transportation plans are developed based on current and projected traffic volumes on the major streets and intersections of interest.

Traffic volumes are used to identify problem areas and analyze how the transportation system may be improved. Detailed traffic volume information is provided in the Appendix.

To help identify current issues affecting streets in San Marcos, daily traffic volumes were collected on several major corridors. These counts served as a base to determine where issues such as safety and roadway deficiencies need to be addressed.

Traffic counts are collected along major roadways to determine where problems may exist in the network.
ROADWAY CAPACITY

When planning for new roadways, they are designed large enough to carry the number of vehicles predicted to use the facility through a specific build year, often 30 or 40 years in the future.

Using simulation software, planners compare roadway demand (number of vehicles on the road) with roadway supply (carrying capacity). If a roadway begins to approach or reaches its fully carrying capacity, congestion occurs.

Volume-to-capacity (V/C) ratio measures congestion levels on a roadway. When the V/C ratio begins to reach 100% of the roadway capacity, level of service for the facility degrades.

V/C and level of service for the City’s existing transportation network show the facilities where traffic improvements should be considered.

Legend
Level of Service (V/C)

- LOS A (0 - 60%)
- LOS B (61 - 70%)
- LOS C (71 - 80%)
- LOS D (81 - 90%)
- LOS E (91-100%)
- LOS F (over 90%)

*RR 12 under construction in 2010. Level-of-service is projected.
Twenty-two intersections were identified for detailed analysis, 19 of which are signalized. Turning movement counts were collected during the AM and PM travel peaks.
**INTERSECTION OPERATIONS**

The standard measure used to evaluate vehicular traffic conditions at intersections is known as level of service (LOS). LOS measures the effect a number of factors can have on operating conditions at an intersection.

Factors that can affect intersection LOS include:
- Speed
- Volume of traffic and freedom to maneuver
- Geometric features
- Traffic interruptions
- Safety
- Driving comfort and convenience

LOS helped to determine where safety and roadway deficiencies need to be addressed within the transportation network. Improvements to several intersections were identified as short-term enhancements that could have an immediate impact on mobility within the City of San Marcos. Traffic analysis results are included in the Appendix.

These improvements are identified as short-term projects on the Capital Improvements Projects list.

<table>
<thead>
<tr>
<th>YEAR 2015 LEVEL OF SERVICE</th>
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<tbody>
<tr>
<td>SIGNALIZED</td>
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<tr>
<td></td>
</tr>
<tr>
<td><strong>Aquarena Springs Drive @</strong></td>
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<tr>
<td>Thorpe Lane</td>
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<td></td>
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<tr>
<td>Charles Austin Drive</td>
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<td>Sessom Drive</td>
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<tr>
<td>IH 35</td>
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</tbody>
</table>
| **McCarty Lane @ Hunter Road**
| University Drive @ CM Allen Parkway |
| Loop 80 @ Clarewood Drive   |
| Old RR 12 @ Holland Street  |
| N. LBJ and Sessom Street @  |
|                             |
| **UN SIGNALIZED**           |
| Hopkins Street @ North Street |
| McCarty Lane @ IH 35¹       |
| SH 21 @ SH 80               |

¹A signal has been installed since the 2015 analysis was performed.
TRAFFIC GENERATORS

A traffic generator is a land use that creates vehicular trips including homes, schools, offices, or a movie theater. There are several key traffic generators which create a sufficient number of trips to have unique impacts on traffic patterns in the City of San Marcos.

They include:

1. Tanger and Premium Outlet Centers
2. Central Texas Medical Center
3. Hays County Government Offices
4. Wonder World Park
5. Texas State University
6. City of San Marcos Government Offices
7. Bobcat Stadium
8. Aquarena Center
9. San Marcos Downtown Square
10. San Marcos Regional Airport
11. San Marcos High School
12. Bowie Elementary School
13. Mendez Elementary School
14. Hernandez Elementary School
15. Bonham Prekindergarten School
16. Owen Goodnight Middle School
17. DeZavala Elementary School
18. Doris Miller Middle School
19. Travis Elementary
20. Crockett Elementary
Since 2011, between 640 and 860 automobile crashes have been reported each year in San Marcos.

In that same timeframe, 61 bicycle crashes and 100 pedestrian-involved crashes have been reported.

CRASH DATA

Crash history for the City of San Marcos was obtained from TxDOT. All crashes that occurred on I-35 were excluded.

Aquarena Springs and Loop 82 have seen the most crashes with approximately 1,390 crashes between 2011 and 2016. This accounts for over 30% of the total crashes reported during this time frame.

Crash data is included in the Appendix.
REPORTED CRASHES PER YEAR

Source: TxDOT Crash Record Information System (CRIS)
MULTIMODAL TRANSPORTATION

Multimodal transportation is the movement of people and goods through multiple modes including passenger vehicles, bus, rail, pedestrians, and bicycles. While passenger vehicles dominate transportation in the City of San Marcos, there are increasing opportunities for multimodal travel.

TRANSIT

Existing local transit service in San Marcos includes Capital Area Rural Transportation System (CARTS) and Bobcat Shuttle service offered by Texas State University. The City of San Marcos Intermodal Station, south of downtown, acts as a hub for transit services ranging from the local and regional CARTS routes to national intercity transit services offered by Amtrak and Greyhound.

CARTS operates seven municipal bus service routes throughout San Marcos. Two are Interurban Coach routes between San Marcos and Austin operating on weekdays. A county bus provides complementary transit services for disabled users living in or visiting the City of San Marcos.

Bobcat Shuttle operates eleven routes. Three of these routes operate on campus, while the remaining eight operate off campus.
According to the Comprehensive Plan, from 2008 to 2010, 5.3 percent of San Marcos’ workforce walked or used a bicycle to get to work or school.
BICYCLE FACILITIES

The City of San Marcos is committed to encouraging bicycle use by building safe, convenient and connected bicycle lanes and trails for riders of all ages and abilities.

The City is working to increase connectivity of the existing bicycle and trail system between its parks, recreational amenities, downtown, Texas State University, businesses and residential areas.

In November 2017, the Texas Transportation Commission approved $2.8 million in grant funding for bicycle and pedestrian facilities. Projects will include a two-mile shared-use path from Hopkins Street Bridge to IH 35.

San Marcos currently establishes bicycle routes by considering:

<table>
<thead>
<tr>
<th>Traffic density</th>
<th>On-road bicycle facilities</th>
<th>Change in elevation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadway conditions</td>
<td>Connectivity</td>
<td>Citizen feedback</td>
</tr>
</tbody>
</table>

Legend
- Shared-Use Path
- Easy
- Intermediate
- Difficult
- Future Bike and Ped CIP

Source: City of San Marcos
PEDESTRIAN FACILITIES

Sidewalks are essential to the transportation network. They provide pedestrians with safe, dedicated walkways and encourage pedestrian mobility.

Wide intersections and high speed traffic make walking unpleasant and sometimes unsafe, discouraging non-motorized traffic.

The current sidewalk network in the City of San Marcos has missing links in critical areas. Many sections are poorly maintained. Broken segments in the adjacent sidewalk map represent gaps in the network.

The City pro-actively implemented a sidewalk maintenance program in 2016 to improve sidewalks throughout the City.

The Federal Highway Administration estimates that pedestrian-related crashes are twice as likely to occur when there are no sidewalks.
The existing trails in San Marcos are commonly used for hiking and recreational biking. They are not as suitable for commuter cycling.
GREENWAYS AND TRAILS FACILITIES

Community priorities identified in the Comprehensive Plan included providing more trails and natural areas.

The 2010 Parks, Recreation & Open Space Master Plan lays out a vision for the City’s recreational assets: “Create a unified parks and recreation system that serves the entire San Marcos community, supports tourism efforts and remains a good steward to the river and surrounding environment.” The Plan is currently undergoing an update.

The 2012 Hays County Parks, Open Space, and Natural Areas Master Plan recommends an increase in both the number and length of its trails, as well as enabling access for hiking and biking.

The San Marcos Greenbelt Alliance has developed a vision for a future system of trails that connect natural areas and neighborhoods within the City with a “Loop and Check” map.
RAIL FACILITIES

Union Pacific Railroad operates two segments of railroad freight lines within the City of San Marcos.

These include a north-south line that parallels IH 35 and an east-west line that diverges near the City’s center.

Union Pacific Railroad operates two freight lines through the City.
MAP 11: 2018 ENVIRONMENTAL FEATURES

Legend

City Features
- City Limits
- River/Creek
- Open Space
- Existing Parkland
- Texas State University
- Railroad
- Existing Trail
- Major Creek

Environmental Features
- Edwards Aquifer Contributing Zone
- Edwards Aquifer Contributing Zone within the Transition Zone
- Edwards Aquifer Recharge Zone
- Edwards Aquifer Transition Zone

Source: City of San Marcos
ENVIRONMENTAL

The City of San Marcos is home to many key natural resources. The San Marcos and Blanco Rivers, their tributary creeks, and the Edwards Aquifer run throughout much of the City. Abundant natural resources create a diverse wildlife habitat. Native birds, salamanders, aquatic life and other species also live in these areas.

Several parks and historical features offer additional character and depth to the City.

Caution and careful planning are needed when evaluating infrastructure improvements so that impacts to environmental features can be avoided or minimized.

Flooding and low water crossings must also be taken into account when considering environmental constraints and impacts. The unique water features, combined with steep topography, contribute to San Marcos being particularly susceptible to flooding. Major floods have occurred several times in the past 100 years, with the most recent in 2017.
COMMUNITY ENGAGEMENT

BE PART OF THE DIALOGUE
Throughout the planning process for the Transportation Master Plan, City staff worked to keep the public informed and involved.

Engaging the public and community stakeholders helped to clarify the project vision and provided opportunities for meaningful input and involvement by the community.

Comments received at community events were compiled and considered for incorporation into this Plan.
RHYTHM OF THE STREET

On July 26th, 2014, the City of San Marcos held a kick-off event for both the Code SMTX and Transportation Master Plan Processes. ‘Rhythm of the Street’ was a CNU award winning tactical urbanism event that temporarily transformed LBJ Drive to a two-way “Complete Street” with bicycle lanes, parklets, and sidewalk cafes.

The goal of the event was to solicit community input for the Transportation Master Plan and to demonstrate how a city block could be better utilized to serve community needs. Participants were surveyed to determine their wants and needs for transportation options in San Marcos. Participants surveyed as part of the Rhythm of the Street event currently utilized a variety of transportation modes to travel around town. Complete survey results are included in the Appendix.

RHYTHM OF THE STREET SURVEY:

HOW DO YOU PRIMARILY GET AROUND TOWN?

<table>
<thead>
<tr>
<th>Mode</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drive</td>
<td>74</td>
</tr>
<tr>
<td>Walk, Jog</td>
<td>34</td>
</tr>
<tr>
<td>Bike</td>
<td>27</td>
</tr>
<tr>
<td>Transit</td>
<td>5</td>
</tr>
<tr>
<td>Carpool</td>
<td>3</td>
</tr>
</tbody>
</table>

IF YOU PRIMARILY DRIVE, WHICH OTHER MODES WOULD YOU CONSIDER IF IT WERE SAFE?

<table>
<thead>
<tr>
<th>Mode</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continue to Drive</td>
<td>12</td>
</tr>
<tr>
<td>Walk, Jog</td>
<td>48</td>
</tr>
<tr>
<td>Bike</td>
<td>48</td>
</tr>
<tr>
<td>Transit</td>
<td>33</td>
</tr>
<tr>
<td>Carpool</td>
<td>6</td>
</tr>
<tr>
<td>I already use other modes</td>
<td>8</td>
</tr>
</tbody>
</table>
More than half of the participants indicated they would consider walking and cycling as an alternative to driving single occupancy vehicles.
CODE SMTX ZONING FOR CHARACTER WORKSHOPS

The Transportation Master Plan team participated in the Code SMTX Zoning for Character Workshops in August of 2015. During these workshops, the City of San Marcos worked with property owners and residents to explore the regulatory framework proposed for the six San Marcos Intensity Zones established in the Comprehensive Plan. Roadway transformations within the Intensity Zones were highlighted to show the impacts of a well-planned, multimodal network.

2015 TRANSPORTATION MASTER PLAN SURVEY:
PLEASE SELECT UP TO THREE STREET INFRASTRUCTURE IMPROVEMENTS THAT YOU FEEL ARE THE MOST IMPORTANT FOR THE CITY’S FUTURE.

<table>
<thead>
<tr>
<th>Improvement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadway pavement improvements/maintenance</td>
<td>108</td>
</tr>
<tr>
<td>Bicycle lanes</td>
<td>90</td>
</tr>
<tr>
<td>Street trees and landscaping</td>
<td>64</td>
</tr>
<tr>
<td>Trail/path improvements</td>
<td>59</td>
</tr>
<tr>
<td>On-street parking in the Central Business District</td>
<td>59</td>
</tr>
<tr>
<td>Wider sidewalks</td>
<td>54</td>
</tr>
<tr>
<td>High visibility crosswalks</td>
<td>45</td>
</tr>
<tr>
<td>Additional roads</td>
<td>36</td>
</tr>
<tr>
<td>Curb ramps</td>
<td>10</td>
</tr>
</tbody>
</table>
2015 TRANSPORTATION MASTER PLAN SURVEY:

IN WHAT LOCATION(S) SHOULD THE CITY PRIORITIZE ITS EFFORTS TO IMPROVE STREET INFRASTRUCTURE? SELECT UP TO FOUR.

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>High volume vehicle streets or corridors</td>
<td>135</td>
</tr>
<tr>
<td>High volume bicycle/pedestrian streets or corridors</td>
<td>107</td>
</tr>
<tr>
<td>Around Texas State Campus</td>
<td>73</td>
</tr>
<tr>
<td>Transit stops and routes</td>
<td>69</td>
</tr>
<tr>
<td>At or near highway interchanges</td>
<td>69</td>
</tr>
<tr>
<td>Residential neighborhoods</td>
<td>69</td>
</tr>
<tr>
<td>Near schools</td>
<td>49</td>
</tr>
<tr>
<td>Outlet malls</td>
<td>9</td>
</tr>
</tbody>
</table>

2015 TRANSPORTATION MASTER PLAN SURVEY:

HOW WOULD YOU DIVIDE THE YEARLY TRANSPORTATION BUDGET FOR THE CITY OF SAN MARCOS?

- Walking: 22%
- Transit: 26%
- Biking: 23%
- Autos: 29%
GREENWAYS OUTREACH

In the summer of 2016, a Greenways and Trails survey was made available online to San Marcos residents at the onset of the Greenways planning process. This survey asked a variety of questions about current and anticipated trails and greenways usage.

Respondents indicated that connectivity to parks, open space, and the San Marcos River are key to a successful greenways system. Survey results for the greenways system are included in the Appendix.

The largest impediments to usage of existing trails were identified as a lack of nearby connections and the lack of available facilities.
With the results of the Greenways Survey, a Greenways Workshop was conducted. Attendees included local stakeholders such as City of San Marcos staff, Texas State University staff, and San Marcos Greenbelt Alliance members.

The outcome of the meeting was a Greenways Plan built upon recent successes that incorporated stakeholder desires.

Attendees reviewed maps of existing and potential trails and greenways alignments to identify needed connections and desired trail routes.
TRANSPORTATION MASTER PLAN PUBLIC OPEN HOUSE

On November 9, 2016 the City of San Marcos hosted an Open House for the community to learn about the updates to their Transportation Master Plan. The open house featured exhibits of the Transportation Master Plan goals and vision, policy recommendations, the 2035 Thoroughfare Plan, the 2035 Bicycle Network, the 2035 Greenways Plan and other components of the master plan. Attendees were also able to view proposed cross-sections for City streets, different types of bicycle facilities, and options for trails and greenways.

A handout was prepared with the goal of gathering specific feedback regarding bicycle facilities and trails, proposed roadway cross-sections, the proposed 2035 Thoroughfare Plan, and the prioritization of new roadways and greenways. A comment card and survey was also provided for citizens to provide open-ended feedback. Complete survey results for the Open House are included in the Appendix.

Comments received during the Open House were compiled and incorporated into the planning process.

2016 TRANSPORTATION MASTER PLAN SURVEY:
WHAT ENHANCEMENTS TO EXISTING ROADWAYS WOULD YOU LIKE TO SEE COMPLETED IN THE NEXT TEN YEARS?

- Build bicycle lanes.
- Build sidewalks.
- Increase existing street capacity.
- Remove train delays.
- Traffic signal timing and synchronization.
- Connect Intensity Zones.
A goal of the Comprehensive Plan and the Transportation Master Plan is to obtain a “Bicycle Friendly Community” designation.

2016 TRANSPORTATION MASTER PLAN SURVEY: WHAT TYPE OF BICYCLE FACILITY WOULD YOU PREFER?

![Bar chart showing number of responses for different types of bicycle facilities]

- None: 2
- Sharrows: 12
- Bicycle Lanes: 19
- Off-Street Trails: 25
- Protected Bicycle Lanes: 26
ADDITIONAL OUTREACH

City Council was briefed multiple times throughout the development process of the Transportation Master Plan.

A workshop was held on March 1, 2016 to involve Council members and obtain direct feedback regarding cross-sections, policies and recommendations for the mid-, short- and long term improvements throughout the transportation network.

Stakeholder outreach was also an important part of the planning process. City officials met with local businesses, conducted a survey and held “Think Tank” sessions to help inform the development of the Thoroughfare Plan and other recommendations for the City.
An Open House for the Transportation Master Plan was also held October 18, 2017. The objective was to provide information on council direction, and discuss proposed plans and the list of critical intersections that required improvements.

The short-term (10 year) Capital Improvement Plan list and associated cost estimates, mid- and long-term improvements identified under the Transportation Master Plan were also discussed.

Participants were able to provide feedback on proposed projects, identify any missing projects and leave comments. Summaries and feedback from the Open House are included in the Appendix.
FUTURE SCENARIO
To help determine future traffic needs of San Marcos, the Transportation Master Plan analyzed base year conditions and future transportation scenarios for short-, mid-, and long-term improvements.

The 2035 Future Scenario considers connectivity between key intensity zones. Developed for the City’s Comprehensive Plan, the zones are envisioned as well-planned areas and encourage mode-shift.

A conceptual transit network that provides trips between key intensity zones has been developed as part of the future transportation scenario.

This chapter describes the assumptions that have been built in to the 2035 Future Scenario for this Transportation Master Plan.

Short-, mid-, and long term improvements were developed to be implemented through 2035.
TRANSPORTATION MODELING

The Capital Area Metropolitan Planning Organization (CAMPO) oversees the transportation planning process for Central Texas, including Hays County. CAMPO maintains a travel demand model used for transportation planning throughout the region. The model analyzes the operations of the existing transportation system and predicts operations of a future transportation system with and without improvements. This methodology was also used to develop the Transportation Master Plan.

EXISTING CONDITIONS MODEL

An update to a subset of CAMPO’s travel demand model was developed for the City of San Marcos. The model update reflected observed 2015 travel and infrastructure conditions. Growth rates such as population and development were then applied to the updated 2015 model to analyze changing travel conditions for the 2025 and 2035 Future Scenarios. The model simulates travel on nearly every roadway within the City limits. Outputs of the model provide detailed information about the operations of the transportation system in San Marcos.

MODEL OUTPUTS

The model outputs data for traffic volumes, travel speeds, volume-to-capacity ratios, vehicle miles traveled, and vehicle hours traveled on the roadway links.
The 2015 travel demand model demonstrates enough short trips in the network that a shift to alternate modes, such as walking and cycling, is obtainable. With appropriate infrastructure investments to make these types of trips safer and more convenient, trip conversions from single occupant vehicles could be achieved.

The importance of transit in the City’s future transportation plan becomes more evident when analyzing the travel demand model results. As growth and development continue, the number of trips between the intensity zones is expected to increase. The zones can easily be connected with key transit routes, while enhanced pedestrian and bicycle facilities within each intensity zone could encourage mode shift.

When alternate transportation choices are safer and more convenient for users, more short trips can be captured through mode shift and removed from roadway demand.

The 2035 Future Scenario supports a connected, multimodal network that supports more short trips by walking or cycling.

- Trips made are less than one mile: 14%
- Trips made are less than five miles: 80%
FUTURE SCENARIO MODELS

Demographic and land use inputs and future year network assumptions provided by the City of San Marcos were used in the travel demand model for two forecast years (2025 and 2035) and the 2015 base year.

Major assumptions of the future year network model include:

- A 15% multimodal reduction for shifts from automobile to active transportation modes (bicycle and pedestrian)
- A conceptual transit framework to serve trips between intensity zones identified in the Comprehensive Plan

Future scenario models helped determine the impacts of future growth on transportation operations in the roadway network and to identify short-term and long-term improvements to meet future demands.
CRITICAL INTERSECTION OPERATIONS

To project future levels-of-service for intersection operations in 2035, growth and development assumptions were used to predict the traffic operating conditions in San Marcos.

A No Build scenario was analyzed for the Future Year 2035. The No Build scenario demonstrates reduced level of service throughout the network if no improvements are made.

Traffic analysis results are included in the Appendix.

Legend
Signalized (Seconds of Delay per Vehicle)
- Less than 35 seconds
- Between 35 and 55 seconds
- 55 seconds or more

Unsignalized (Seconds of Delay per Vehicle)
- Less than 25 seconds
- Between 25 and 35 seconds
- 35 seconds or more

2035 NO BUILD LEVEL OF SERVICE

<table>
<thead>
<tr>
<th>SIGNALIZED</th>
<th>AM Peak</th>
<th>PM Peak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aquarena Springs Drive @ Thorpe Lane</td>
<td>E</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>Charles Austin Drive</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>Sessom Drive</td>
<td>F</td>
</tr>
<tr>
<td>Staples Street (FM 621)</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>Broadway Street</td>
<td>F</td>
<td>D</td>
</tr>
<tr>
<td>Old Bastrop Highway</td>
<td>F</td>
<td>E</td>
</tr>
<tr>
<td>FM 110</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>Bishop Street</td>
<td>C</td>
<td>F</td>
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<tr>
<td>Moore Street</td>
<td>D</td>
<td>F</td>
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<tr>
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<tr>
<td>Guadalupe Street</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>Leah Avenue</td>
<td>D</td>
<td>D</td>
</tr>
<tr>
<td>Sadler Drive</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>IH 35</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>McCarty Lane IH 35 SB Frontage</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>Hunter Road</td>
<td>D</td>
<td>D</td>
</tr>
<tr>
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<td>B</td>
<td>D</td>
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<td>Loop 80 Clarewood Drive</td>
<td>A</td>
<td>F</td>
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<td>E</td>
<td>D</td>
</tr>
<tr>
<td>Old RR 12 @ Holland Street</td>
<td>E</td>
<td>F</td>
</tr>
<tr>
<td>N LBJ @ Sessom Street</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

UNIGNALIZED

Hopkins @ North Street | A | A |
The 2035 Build scenario depicts the level of service for intersection operations with recommended improvements.

Recommended improvements were developed to ease the impact of the transportation growth on the roadway network. Improvements to these intersections were identified as short-term enhancements that could have an immediate impact on mobility within the City of San Marcos.

These improvements are shown on the Capital Improvements Projects list.

The Build model improves operations over No Build models by providing network and intersection improvements. Projected levels of service are within a desired range for a 20 year horizon.

### 2035 BUILD LEVEL OF SERVICE

<table>
<thead>
<tr>
<th>SIGNALIZED</th>
<th>AM Peak</th>
<th>PM Peak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aquarena Springs Drive @</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thorpe Lane</td>
<td>C</td>
<td>F</td>
</tr>
<tr>
<td>Charles Austin Drive</td>
<td>C</td>
<td>D</td>
</tr>
<tr>
<td>Sessom Drive</td>
<td>E</td>
<td>E</td>
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<tr>
<td>SH 123 @</td>
<td></td>
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<tr>
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<tr>
<td>Hopkins Street @</td>
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</tr>
<tr>
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</tr>
<tr>
<td>IH 35 SB Frontage</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>Hunter Road</td>
<td>D</td>
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<td>D</td>
</tr>
<tr>
<td>N LBJ @ Sessom Street</td>
<td>C</td>
<td>D</td>
</tr>
</tbody>
</table>

**Legend**

**Signalized (Seconds of Delay per Vehicle)**
- ● Less than 35 seconds
- ● Between 35 and 55 seconds
- ● 55 seconds or more

**Unsignalized (Seconds of Delay per Vehicle)**
- ● Less than 25 seconds
- ● Between 25 and 35 seconds
- ● 35 seconds or more
TRANSPORTATION AND LAND USE CONSTRAINTS

COMPREHENSIVE PLAN INTENSITY ZONES

The Comprehensive Plan Preferred Scenario Map created Intensity Zones to accommodate the City’s future growth. Intensity Zones are defined as areas of change where the intent is to develop or redevelop. They are envisioned as well-planned areas where short trips meet daily needs, reducing the need to drive.

The zones are built on a walkable, complete community concept and include open spaces and trails. A key goal of this Transportation Master Plan is to develop a connected transportation system that provides route options throughout the City. The City of San Marcos envisions a high capacity transit service that could provide enhanced connectivity between the intensity zones, connecting users to a robust system of bicycle and pedestrian facilities throughout each zone.

ZONING FOR CHARACTER

Character based zoning proposed in Code SMTX coordinates street design with adjacent development, by paying careful attention to the configuration, number and dimension of travel lanes, on-street parking, street landscaping, sidewalk widths, and bicycle infrastructure.

The Transportation Master Plan provides updated cross-sections designed around these character zones. These cross-sections will be used to guide street design as growth and development occur, helping to ensure that the character of neighborhoods and communities are protected and evolve in a thoughtful and planned manner.
MAP 13: 2018 PREFERRED SCENARIO MAP

Legend
City Features
- City Limits
- River/Creek
- Open Space
- Existing Parkland
- Texas State University
- Railroad
- Existing Trail
- Major Creek

Development Zones
- High Intensity Zone
- Medium Intensity Zone
- Low Intensity Zone
- Employment Area

Source: City of San Marcos
Filling the gaps in the sidewalk and bicycle infrastructure will make a safer, more connected network for walking and biking and could encourage a modal shift from auto to active modes.
BICYCLE AND PEDESTRIAN INFRASTRUCTURE GAPS

Providing for walking and bicycling has the potential to reduce auto dependency, mitigate traffic congestion and contribute to improved air quality and community health.

The 2035 Future Scenario model indicates that approximately 14 percent of trips are less than one mile long. These trips are ideal opportunities for walking. Likewise, 80 percent of the trips are less than five miles long and have potential to become bicycle trips.

A well-designed multimodal network that is safe, efficient and provides direct access to key land uses could potentially convert short trips to an active mode such as walking or bicycling.

The current pedestrian and bicycle networks in the City of San Marcos have missing links in critical areas. Where they exist, many sections of sidewalks are poorly maintained. The City of San Marcos maintains an inventory of sidewalks including missing sidewalk segments and planned sidewalks segments.

Beginning in 2016 the City implemented a sidewalk maintenance program to replace and construct gaps in infrastructure. This program replaces over 10,500 linear feet of sidewalk each year.

Progress should continue towards construction of these sidewalks outside the Transportation Master Plan projects.
COMPLETE STREETS & CONTEXT SENSITIVE DESIGN

Smart Growth America defines Complete Streets as ‘streets for everyone’. They are designed to enable safe access for people of all ages and abilities, for all modes of travel, and to respond to the communities they serve. A complete street in an urban community, such as San Marcos, will look different from a complete street in a suburban community.

Active travel (i.e., bicycle and pedestrian mobility) has been growing in popularity, although many communities lack the infrastructure to make active travel enjoyable. San Marcos envisions a connected network of efficient, safe and convenient multimodal transportation options that will create a more comfortable pedestrian and bicycle environment.

GOAL

Implement roadway cross-sections that preserve the character of neighborhoods while encouraging appropriately located economic development.

OBJECTIVE

- Design roadways in consideration of land use context, creating environments that are supportive of adjacent land uses.

RECOMMENDATIONS

- Roadway pavement greater than 40 feet wide be avoided when possible, as they create difficult pedestrian crossing conditions.
- Where roadways have a speed limit of 35 mph or greater, landscaped medians are encouraged to provide separation between lanes of opposing direction.
- On local residential streets where traffic volumes are minimal, allow for “queuing” streets with roadway widths of 30 feet and parking on both sides.
- Street trees should be planted within the required seven-foot landscape strip to provide shade and a clear and safe separation between the pedestrian and vehicular realms.
- Curbside parking is encouraged along residential streets, commercial streets, boulevards and avenues where land uses front the street.
- Use of rain gardens, bio-filtration swales and other low-impact drainage facilities are encouraged within medians and landscape areas and along the curb edge to intercept and naturally treat urban run-off.
GREEN STREETS

Green streets look to preserve environmental stability. Drainage and stormwater runoff can have negative impacts to the environment. Polluted runoff, erosion and sedimentation are unwanted impacts on surrounding areas. Optimal stormwater management introduces strategies to retain, treat or eliminate runoff at the source.

Cost-effective green infrastructure and improving water quality complement Complete Streets policies. To maintain a healthy policy of Green Streets, the City of San Marcos should implement Green Streets best practices when possible.

The City of San Marcos is also in the process of creating a stormwater management plan to help keep garbage, debris and pollution out of the San Marcos River.

GOAL

Identify green solutions and policy recommendations that can be considered for public and private development projects including Low Impact Development strategies.

OBJECTIVES

- Reduce urban run-off from impervious surfaces such as roads and parking lots.
- Implement landscape standards that contribute to street beautification in a cost-effective and environmentally efficient manner.

RECOMMENDATIONS

- Minimize impervious pavement use and opt for pervious asphalt and concrete, or permeable pavers.
- Consider a road diet where conditions are suitable to help reduce roadway widths and impermeable cover.
- Instead of impermeable concrete sidewalks, consider reinforced gravel pacing where surfaces will not compromise bicycle and pedestrian mobility and safety.
- Implement landscaping elements that help reduce stormwater runoff, such as street trees, bioswales, planters and rain gardens. Traffic calming elements provide potential sites for these types of landscaping elements.
- Introduce xeriscaping with native plants to reduce water consumption and the need to irrigate.
- Encourage alternate modes where trips are less than one mile. Walking and bicycling for short trips can help to reduce CO2 emissions, adding to the environmental benefits of Complete Streets.
THOROUGHFARE PLAN

San Marcos roadways should be designed and enhanced with Complete Streets policies in mind as the community develops and grows. The Transportation Master Plan recommends new cross-sections (shown in the Appendix) based on these policies. They have been applied to the future Thoroughfare Plan based on several criteria, including type of facility, traffic volumes and speeds. The new cross-sections provide recommended treatments for both new streets as well as for the retrofit of existing ones.

GOAL

Build a multimodal transportation network that is safe, efficient and provides direct access to key land uses.

OBJECTIVES

- Preserve and balance the use of right-of-way for all modes of travel.
- Utilize roadway types that create a comfortable pedestrian and bicycle environment, accommodating vehicular traffic in an efficient but calm manner.
- Provide greenways for both recreation and transportation needs with bicycle and pedestrian linkages.
- Implement a transit system that connects key areas of the City to provide the greatest potential to reduce vehicle miles traveled.
- Provide facilities for pedestrian and bicycle through the network.
  Convert 5% of trips less than one mile to walk trips.
  Convert 10% of trips less than five miles to bicycle trips.

RECOMMENDATIONS

- Utilize the Thoroughfare Plan as a guideline on right-of-way needs for future and enhanced roadways within the City of San Marcos.
- Implement cross-sections to enhance safety and operations of all modes within the transportation network.
- Establish final alignments and cross-sections during the Preliminary Engineering process.
- Maintain flexibility for successful implementation of all roadways within the Transportation Master Plan.
SEVEN THOROUGHFARE TYPES ARE PROPOSED FOR THE TRANSPORTATION MASTER PLAN.

Highways
are freeways and parkways with limited access including frontage roads along IH 35, as well as parkways at the periphery of the City.

Boulevards
include 4 and 6-lane roads with left-turn lanes at intersections. They have raised and landscaped medians, sidewalks, and protected bicycle facilities.

Avenues
are 3 to 4-lane roadways. They do not have raised medians, but do have protected bicycle and pedestrian facilities and roadside trees spaced at regular intervals.

Commercial Streets
are 2-lane roadways fronting commercial uses. They are characterized by wide sidewalks and on-street parking.

Residential Streets
are 2-lane roads serving residential neighborhoods outside of a commercial district.

Roads
are built in the least intensive and rural parts of the community. They lack curbs and sidewalks.

Alleys
are narrow roadways providing access or service at rear of residential or commercial properties.

Design speeds promote safety and improve a driver’s ability to maneuver and react to changes in the driving environment.
MAP 14: PROPOSED 2035 THOROUGHFARE PLAN

Legend
City Features
- City Limits
- River/Creek
- Texas State University
- Railroad
- Existing Trail
- Major Creek

Development Zones
- High Intensity Zone
- Medium Intensity Zone
- Low Intensity Zone
- Employment Area

ThorOUGHFARE Plan
Enhanced Facility
- Boulevard
- Avenue
- Parkway
- Street

Proposed Facility
- Boulevard
- Avenue
- Parkway
- Street
- Conservation Corridor

Source: City of San Marcos
Concept for Parkway Cross-Section

Concept for Boulevard Cross-Section
Cross-Sections for the Transportation Master Plan were designed to support Complete Streets.
PROPOSED BICYCLE NETWORK

The Transportation Master Plan gives equal priority to the safe and efficient movement of pedestrians and bicyclists, and has identified multiple pedestrian and bicycle facility types for integration with the thoroughfare types.

The Bicycle Plan Map is reflective of the roadway facilities identified in the Thoroughfare Plan for the Future 2035 Build Scenario. Interim bicycle facilities should be considered as progress is made towards implementation of the Thoroughfare Plan. Desirable bicycle facilities are defined below.

Types of Bicycle Facilities

<table>
<thead>
<tr>
<th>Protected Bicycle Lane</th>
<th>Buffered Bicycle Lane</th>
<th>Shared-Use Path</th>
<th>Sharrow</th>
</tr>
</thead>
<tbody>
<tr>
<td>A protected bicycle lane can be one or two-way within the roadway, and is separated from automobile traffic by a physical barrier.</td>
<td>Buffered bicycle lanes are on-street lanes with a wider, painted striped buffer to separate it from automobile traffic.</td>
<td>A shared-use path is an off-street pedestrian trail that is shared with bicycles.</td>
<td>Sharrows are designated lanes within the roadway that are shared with both automobile traffic and bicycles.</td>
</tr>
</tbody>
</table>

Other options for bicycle facilities are available if right-of-way or other constraints prohibit installation of the desired facility.

- Bicycle lanes are dedicated, striped on-street facilities, but do not have a buffer from motorized traffic.
- Wider roadways may also be striped to have wide shoulders that function as bicycle facilities.

The City of San Marcos has developed a Greenways Master Plan that also introduces bicycle facilities to the network. These facilities will be off-street paths used by cyclists and pedestrians.
City Features
City Limits/Areas of Stability
River/Creek
Open Space
Existing Parkland
Existing Trails
Texas State University
Railroad
High Intensity Zone
Medium Intensity Zone
Low Intensity Zone
Employment Center

Enhanced Facility
Protected Bike Lanes
Buffered Bike Lanes
Shared Use Path
Sharrows
Wide Shoulders

Proposed Facility
Protected Bike Lanes
Buffered Bike Lanes
Shared Use Path
Sharrows
Wide Shoulders
PROPOSED PEDESTRIAN NETWORK

A safe and connected pedestrian network promotes healthier communities and an enhanced quality of life. A well-connected pedestrian network also encourages more walking as a means for shorter trips. The City of San Marcos is dedicated to providing a pedestrian network that is safe and accessible to everyone.

TYPES OF PEDESTRIAN FACILITIES

- **Shared-Use Paths**
  - are off-street pedestrian trails that are shared with bicycles.

- **A Pedestrian Trail**
  - is an off-street trail for the exclusive use of pedestrians.

- **Sidewalks**
  - are off-street walkways typically fronted with buildings or front yards.

GOAL

Build a well-connected, safe, accessible and continuous pedestrian network throughout the City of San Marcos.

OBJECTIVE

Convert trips less than one mile to walking trips.

RECOMMENDATIONS

- Maintain the existing inventory of sidewalks including missing and planned segments.
- Continue construction of missing sidewalks segments outside the Transportation Master Plan projects.
- Provide sidewalks along both sides of all thoroughfare types.
- Build sidewalks widths to serve the type of facility they support.
- Utilize shared-use paths along major thoroughfares as designated in the Thoroughfare Plan.
- Provide medians where pedestrian crossing distances exceed 40 feet as a protected pedestrian refuge in the center of the roadway.
- Where right-of-way is limited, building set back from the property line should be adequate to provide for wider pedestrian areas.
PROPOSED TRANSIT NETWORK

A well-designed transit system that connects key areas of the City has the greatest potential to reduce vehicle miles traveled. In May 2014 the City of San Marcos completed a five-year transit plan to make recommendations for restructured and expanded system route service throughout the area.

Building on this expansion, the Transportation Master Plan analyzed a conceptual transit framework for the 2035 Future Scenario designed to serve trips between intensity zones identified in the Comprehensive Plan.

The intensity zones included were Downtown, Midtown, Triangle, South End, Medical District, Star Park, East Village, Paso Robles, and Centerpoint. These centers are expected to grow and place more demand on the surrounding network.

The conceptual transit framework was developed to serve areas with higher trips. A proposed service plan suggests five routes emanating from the intensity zones and serving downtown directly and three circulator routes to distribute passengers close to their destinations.

Assuming five percent of trips are made using transit, these proposed transit routes have the potential to divert about 4,200 daily trips from automobiles between these intensity zones. In addition, the proposed transit framework will help capture additional non-intensity zone related trips.
The proposed transit framework will help capture additional non-intensity zone related trips.
GREENWAYS MASTER PLAN

Greenways are travel ways for pedestrians and cyclists that can serve as major transportation connections throughout cities. Greenways are built alongside roadways, through parks, or other green spaces. Benefits from greenways include transportation, recreation and fitness. They also help preserve the environment.

GOAL
Expand existing trails and bicycle routes into a robust greenways network.

OBJECTIVES
- Support the Transportation Master Plan Goal of converting short trips to walk and bicycle trips.
- Provide opportunities for recreation and access to nature and wildlife by connecting greenways to parks and open space.
- Support tourism and economic development through greenways connected to Activity Centers.

RECOMMENDATIONS
- Greenways should have a minimum unobstructed width of 8 feet, although 12 feet is preferred.
- Easements for off-street greenways are recommended to be 30 feet to 80 feet in width to accommodate maintenance, vegetative buffers and shoulders.
- Utilize a variety of materials for greenways construction depending on location and use.

Multi-Use Greenway
Unimproved and/or nature trails are not considered greenways, though connectivity to existing trails provides a better integrated network.

Several types of greenways are proposed for use within the City.

### Types of Greenways Facilities

<table>
<thead>
<tr>
<th>Multi-Use Greenways</th>
<th>Split-Use Greenways</th>
<th>Shared-Use Path</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-use greenways are shared off-street facilities for bicycles and pedestrians typically provided through parks and green spaces.</td>
<td>Split-use greenways are off-street facilities that separate paths for bicycles and pedestrians. In urban areas where high potential for pedestrian and bicycle conflicts exists, these facilities are implemented to improve safety.</td>
<td>A shared-use path is an off-street pedestrian trail that is shared with bicycles. These are often located along one side of a roadway facility.</td>
</tr>
</tbody>
</table>

**Split-Use Greenway**

**Shared-Use Path**
SEVERAL MATERIALS ARE APPROPRIATE FOR THE CONSTRUCTION OF GREENWAYS.

Decomposed Granite can be used in environmentally sensitive areas where permeability is important and a natural look is desired.

Decomposed granite requires ongoing re-leveling due to compaction, erosion, and wash-outs from rain and flooding.

Stabilizers should be considered where erosion is most likely to occur.

Crushed Limestone is a locally-sourced, cost effective alternative to decomposed granite.

Crushed limestone also requires ongoing re-leveling due to compaction, erosion, and wash-outs from rain and flooding.

Asphalt provides a smooth surface with lower installation costs than concrete, but is prone to uneven settlement.

Concrete is a long-lasting surface appropriate in flood-prone areas or on steep slopes.

It is best suited for bicycle and wheelchair traffic.

Concrete requires minimal maintenance.
BEST PRACTICES

Implementing best practices that are shown to help improve safety and enhance connectivity for all modes, reduce congestion and manage travel demand can help to create a well planned, effective transportation network.

The following section discusses Best Practices the City of San Marcos can incorporate in their planning and design process for the transportation network.

GOAL

Incorporate national best practices in the planning and design process.

OBJECTIVE

Maximize transportation efficiency throughout the network and to key land uses.

RECOMMENDATIONS

- Utilize travel demand management to improve the overall efficiency of the travel network.
- Expand way-finding systems implement dynamic message signs to reduce congestion by providing routing information to major destinations.
- Utilize access management techniques to develop safer streets and a more attractive transportation network.
- Implement intelligent transportation system technologies to manage traffic demands.
- Promote ridesharing to reduce vehicular trips on the transportation network.
TRAVEL DEMAND MANAGEMENT

Travel Demand Management (TDM) refers to a set of strategies or policies designed to improve the overall efficiency of a travel network. TDM looks at moving people and goods, rather than focusing on the number of motor vehicles in the network. For example, reducing the number of single-occupant vehicles, or increasing ridership on transit both reduce the number of vehicles in the travel network, and therefore also reduces demand.

GOAL

Develop a set of Travel Demand Management policies to improve the efficiency of the transportation network.

OBJECTIVE

Improve the transportation network at a lower cost than high dollar infrastructure improvements.

RECOMMENDATIONS

- Encourage carpools or vanpools through City sponsored programs.
- Promote Employer Commuter Choice Programs that expand options for employees on how to reach and accomplish their work, such as public or active transportation, telecommuting, or alternate work hours.
- Provide real-time traveler information through a smart phone app or City website to provide an informed choice for users on how and when to travel.
WAY-FINDING / POINTS OF INTEREST

Way-finding refers to a system of visual information that helps people navigate through their surroundings. Way-finding systems can include signage, maps, symbols, color-coding, and typographic elements.

Way-finding systems should include information for pedestrians, cyclists and motorists. Each of these travel modes experience separate challenges navigating through the transportation network, and an inclusive, effective system can help to simplify their routes.

A strategic theme and careful planning will provide insight into understanding the built environment and help to define where way-finding information is most needed.

GOAL

Invest in way-finding systems that can provide useful information to visitors and residents.

OBJECTIVE

Minimize navigation challenges for all modes and reduce congestion.

RECOMMENDATIONS

- Inventory the current wayfinding system and evaluate opportunities for expansion.
- Utilize dynamic message sign technologies to supplement the wayfinding system.
- Strategically place signs to provide valuable route information and help to reduce circulation congestion by communicating the most direct routes to parking facilities.
ACCESS MANAGEMENT

Cities implement access management programs to limit and consolidate access along roadways. Too many access points, such as driveways in close proximity to each other, can cause congestion and a higher potential for conflicts and crashes.

Successful access management programs balance access to businesses, institutions and residences with roadway safety and mobility. This results in safer streets and a more attractive transportation network.

GOAL

Establish an access management policy that controls access along roadways and manages placement of driveways and other access points.

OBJECTIVE

Improve safety, reduce vehicular conflicts and congestion.

RECOMMENDATIONS

- Limit direct access to major roadways. Frequent property access is more congruous with local streets.
- Encourage joint access driveways to reduce access points on boulevards and parkways.
- Provide medians to control access and avoid center left-turn lanes that create multiple conflict points.
- Plan for spacing of signalized intersections to help provide efficient movement of traffic at the desired speeds.
- Preserve the functional areas of intersections. The functional area extends beyond the physical intersection area. On the approach to intersections, drivers will be maneuvering, braking, lane changing or turning. To support the safe operation of the intersection, driveways and entrances to roadways should not be located within the functional area.
- Limit the number of conflict points and separate areas of conflict, for example, separate left-turn movements from through traffic when possible.
INTELLIGENT TRANSPORTATION SYSTEMS

Intelligent transportation systems are advanced applications that provide modern-day services to travelers and transportation. ITS systems allow users to be more informed of existing traffic conditions, and to make more selective use of transport networks. Cities can utilize ITS to help manage traffic demand during peak hours, special events and during emergencies.

GOAL

Utilize ITS to build a responsive, adaptive and informative transportation network.

OBJECTIVE

Provide travelers with information to make informed choices along travel routes.

RECOMMENDATIONS

- Develop a smart phone application for the City of San Marcos to provide real-time information for transit agencies such as CARTS and the Bobcat Shuttle system to improve communications to riders regarding bus arrival times. Crash locations and construction updates through the app could also help users make informed travel decisions.
- Upgrade the Traffic Management Center with fiber connection to traffic signals and consider vehicle detection technologies, Bluetooth readers and adaptive traffic control systems to improve the network’s response to real-time traffic conditions.
- Implement full-color matrix variable message signs as a resource to communicate real-time traffic conditions to travelers.
- Consider variable speed limits that adjust in response to road congestion or travel conditions.
RIDESHARE PROGRAMS

Rideshare programs are a common and cost effective travel mode. Ridesharing can be a viable option for commuters traveling to a common destination or for non-drivers. Carpooling or vanpooling can also be an effective alternative to manage congestion during peak hours or special events.

Ridesharing helps to reduce congestion, crash risk and pollution emissions. It can also help to reduce costs involved with roadway and parking facilities. These types of programs can be implemented by individual employers as part of a trip reduction incentive program, by a campus trip management program, a transit agency, or by a regional transportation agency.

GOAL

Expand rideshare programs as a transportation alternative, especially for non-drivers or where commuters may be traveling to a common destination.

OBJECTIVE

Increase cost effective travel choices for commuters, reduce congestion and parking demands.

RECOMMENDATIONS

- Implement ridesharing as part of a comprehensive Travel Demand Management Program.
- Involve transportation agencies, businesses and employees in planning Rideshare Programs.
- Provide incentives to attract and retain rideshare users.
CAPITAL IMPROVEMENTS PLAN
PROJECT PRIORITIZATION

Funding isn’t immediately available to implement all the projects recommended in this Plan. Prioritization criteria were developed to identify projects that are most critical to the needs of San Marcos. Project sheets for Capital Improvement Plan projects are included in the Appendix.

Implementation of projects in the Thoroughfare Plan, Bicycle Plan and Greenways Plan will occur over the next 20+ years.

To categorize projects into a prioritization list, the 2035 Thoroughfare Plan, 2035 Bicycle Plan and 2035 Greenways Plan were evaluated for several factors and weighted using the evaluation criteria.
FUNDING PLAN, SOURCES AND STRATEGIES

The implementation of the Thoroughfare, Bicycle and Greenways Plans should consider the funding sources to be used and the agencies responsible for their construction, maintenance, and operations.

A prioritization process was developed to implement projects based on most critical needs of San Marcos.

Short-, mid-, and long-term projects are presented in the Appendix.

RECOMMENDATIONS

- Evaluate multiple funding sources for implementation of the Thoroughfare Plan, Bicycle Plan and Greenways Plan.
- The City of San Marcos should assume the maintenance and operation of key TxDOT roadways to implement the Master Plan vision.

GOAL

Proactive coordination with partner agencies to develop an integrated transportation network.

OBJECTIVES

- Consider new opportunities for funding of the transportation system.
- Make the most of interagency partnerships to achieve the transportation plan vision.
Enhanced Facilities are existing roadways that have been identified for improvement through the Transportation Master Master Plan.
CAPITAL IMPROVEMENTS PROJECT LIST

A Capital Improvements Project (CIP) list was developed from the short-term projects recommended through the project prioritization. The intersection analysis was reviewed to include projects that will have an immediate, notable impact on transportation operations within the City of San Marcos.

TYPES OF FUNDING SOURCES

CURRENTLY AVAILABLE TO THE CITY

- Property tax (general obligation bonds and certificates of obligation)
- Cost-participation with local and state partners (e.g., Hays County, Developers, TxDOT)
- 4A and 4B Economic/Community Development Corporations
- Chapter 380/Chapter 381 Economic Development Agreements
- Tax Increment Reinvestment Zones (TIRZs) and Tax Increment Finance Districts (TIFs)
- Public-Private Partnerships
- Development Impact Fees
- Transportation Reinvestment Zone (TRZs)

ADDITIONAL POTENTIAL SOURCES

- TxDOT funding programs
- State Infrastructure Bank (SIB) loans
- CAMPO funding programs
- Grant funding opportunities (e.g., TIGER, FASTLANE)
- TIFIA loan/credit program
THOROUGHFARE PLAN

Funding and financing of the short-term, mid-term and long-term improvements identified in the Thoroughfare Plan will require the combination of existing sustainable sources and the identification of new sustainable sources.

Sustainable sources of funding are expected to be available at a certain or predictable level.

The City should position improvements for competitive funding opportunities throughout the planning and implementation timeframe.

BICYCLE AND GREENWAYS PLANS

Funding and financing for bicycles, greenways and trail projects could be accomplished through similar sources, either solely or in combination or partnership with other agencies.

PROJECT OWNERSHIP

TxDOT has actively been working with local governments to remove roadways from the State Highway System. Recent legislation and changes in the Transportation Code have made it easier for TxDOT to transfer state assets (right-of-way and roadways) to local governments.

Removing a roadway from the System accrues benefits to TxDOT by reducing long-term maintenance obligations. Local governments, while accepting the maintenance of the roadway, accrue benefits by having local control over the roadway operations, driveway locations, signage, landscaping, etc.
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
   A) May 1, 2018 - Work Session Minutes
   B) May 1, 2018 - Regular Meeting Minutes

Meeting date: 5/15/2018

Department: City Clerk

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

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.
Background Information:
The following minutes are attached for review:
   A) May 1, 2018 - Work Session Minutes
   B) May 1, 2018 - Regular Meeting Minutes

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

Alternatives:

Recommendation: Approve Minutes as attached
I. Call To Order

With a quorum present, the work session meeting of the San Marcos City Council was called to order by Mayor Thomaides at 3:30 p.m. Tuesday, May 1, 2018 in the Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Council Member Derrick arrived after roll call at 3:40pm

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

PRESENTATIONS

1. Receive a Staff Presentation regarding the Texas Commission on the Arts Cultural District Designation Program, and provide direction to the City Manager.

   Bert Lumbreras, City Manager, introduced the work session items.

   Drew Wells, Assistant Director of Community Services – Parks and Recreation, provided the Council with an overview of the presentation regarding the Texas Commission on the Arts and Cultural District Designation Program. Mr. Wells explained that House Bill 2208 authorized the Cultural District Designation in 2005, allowing the Texas Commission on the Arts to designate cultural districts in Texas. The intent is to designate special zones in cities and Texas communities that harness the power of cultural resources to stimulate economic development and community revitalization.

   Mr. Wells explained who can apply for this designation which include: Established Arts Organizations, Local Art Agencies, Government Local Arts Agencies, Established Minority Arts Organizations, Government Agencies or Departments, and College Arts Institutions. Interested applicants submit a Letter of Intent to Apply by January 30th of each year and that applications are due on June 15th. Applications are reviewed by a panel and evaluated based upon the following criteria: Artistic Quality, Capability and Impact.
Mr. Wells reviewed the goals, benefits and challenges to organizing Cultural Districts. Mr. Wells explained that the City is not obligated to provide funds, and the City is not obligated to provide wayfinding signage. The Cultural District Designation does not include any regulatory control over existing codes, land-use, or historical district regulations.

Mr. Wells reviewed Goal 3 of the Parks, Public Spaces and Facilities - A vibrant central arts district and robust arts and cultural educational opportunities for everyone. He provided that the objectives include:
* Create funding mechanism(s) for the area designated as the Central Arts District
* Establish an Arts District Development Task Force to identify the location for, and implement the creation of, the Central Arts District
* Develop Art in Public Places Program, identify areas of the city that could be used for murals/ public art displays.

Jim Bob McMillan, Deputy Director of Texas Commission on the Arts, spoke about the Cultural Districts within the State. He stated smaller and midsize communities typically have one Cultural District. He explained this particular request is to emphasize a certain area and the history of the City.

Dr. Shatay Ashford explained her options for the Dunbar Cultural District that she and the P2P Movement are wishing to create. She stated that this project was birthed initially by the First Baptist Church restoration project. Their hope is for the building to serve as a community resource center.

Mr. McMillan provided that Cultural District designations are typically a springboard for grants for restoration projects within the district, and that many cities have received funding after receiving a cultural district designation.

Mr. Joe Ptak provided an overview of the San Marcos Cultural District group and that the group is made up of a variety of people, and that they have been meeting regularly. The conversation has been around having a large cultural district. He explained that conversations have since led to three different cultural districts.

Following discussion, Council consensus was to bring a Resolution of support for the Dunbar Cultural District application to the next agenda. Staff will also place a discussion item regarding the creation/appointment of a Council
Committee related to the creation of cultural districts within the City of San Marcos.

2. Hold discussion regarding the Fiscal Year 2018 CIP and issuance of debt for the approved projects, and provide direction to the City Manager.

Heather Hurlbert, Director of Finance, provided the Council with a presentation reviewing the fiscal year 2018 CIP and the issuance of debt. She reviewed approved CIP projects, the anticipated debt issuance, the approved 2018 CIP Facility related projects in the General Fund, and critical projects. Council discussed budgeting for maintenance and upkeep and not issuing debt to cover those critical infrastructure needs.

Ms. Hurlbert reviewed funding options, and provided that Staff recommended using Best Buy funds for part of the critical needs and only issuing the bonds for $710,500 instead of $1,025,000. Council provided consensus to go no more than 10 years on the bond term.

Council also provided consensus to review the CIP in more detail during the budget process. Discussion was held regarding the how the historic survey will be funded. Staff indicated that it will be funded through a different source.

No additional direction was provided.

EXECUTIVE SESSION

3. Executive Session item in accordance with Local Government Code Section §551.071 - Consultation With Attorney - to receive legal advice regarding claims and pending litigation questioning the validity of Ordinance No. 2008-16 that annexed a 563.199 tract of land commonly known as the Hillert Tract into the City of San Marcos including litigation threatened by the City of Martindale, Texas and Mr. Gerald Lee Bennett; and the pending lawsuit filed on April 18, 2018 styled: The Mayan At San Marcos, LLC, vs. City of San Marcos, Cause No. 18-0958-CV-A, in the 25th Judicial District Court of Guadalupe County, Texas.

A motion was made by Council Member Hughson, seconded by Mayor Pro Tem Prewitt, to enter into Executive Session at 4:50pm. The motion carried by the following vote:

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

Against: 0

III. Adjournment.
The City Council reconvened into Open Session at 5:50 p.m. Mayor Thomaides then adjourned the Work Session meeting of the San Marcos City Council at 5:50 p.m.

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

With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Thomaides at 6:00 p.m. Tuesday, May 1, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

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

III. Invocation

A moment of silence was observed.

IV. Pledges Of Allegiance - United States And Texas

Aurelia Garza, a 2nd grade student at San Marcos Texas Preparatory School, led the assembly in the pledges of allegiance.

EXECUTIVE SESSION

1. Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Local Government Code Section §551.071 - Consultation With Attorney - to receive legal advice regarding claims and pending litigation questioning the validity of Ordinance No. 2008-16 that annexed a 563.199 tract of land commonly known as the Hillert Tract into the City of San Marcos including litigation threatened by the City of Martindale, Texas and Mr. Gerald Lee Bennett; and the pending lawsuit filed on April 18, 2018 styled: The Mayan At San Marcos, LLC, vs. City of San Marcos, Cause No. 18-0958-CV-A, in the 25th Judicial District Court of Guadalupe County, Texas.

Council met in Executive Session to receive legal advice and direction was provided to the City Attorney.

V. 30 Minute Citizen Comment Period

Kaiti Anderson, 2907 Mountain High, spoke in opposition to item # 18 regarding the lease of property located at 201 South LBJ. Ms. Anderson stated she is the property owner of the Dixie Cream lot. She asked that Council table
Elena Duran, 1133 Lago Vista, thanked the Mayor and Council Member Derrick for attending their Neighborhood Meeting recently. She shared a story regarding the construction of her backyard pool. In 2002 they started saving money to build this pool and in 2012 the pool was constructed. The construction company they had install the pool was required to take a course and Ms. Duran paid for this and pulled and paid for all the permits associated with this as well. She recieved a letter this year, stating they are required to have a backflow preventer on the pool. Why weren't we told this in 2012? She went on to state that when you owe money to the City, the entire amount should be paid, not a settled amount. It is the duty of the Council to spend our money wisely. If regular citizens have to pay, then everyone should receive the same treatment.

Roland Saucedo, 211 Ebony, expressed his appreciation for Council's time and service. Special thank you to Collette, Abigail, and Shannon for helping him with his neighborhood outreach. The neighborhood felt the small area plans is best for their neighborhood and not a Character Study which is too expensive. We are trying to build trust and restore faith within the community, the Council and Staff.

PRESENTATIONS

2. Receive a Staff presentation of the City of San Marcos Stormwater Master Plan, and provide direction to Staff.

Laurie Moyer, Director of Engineering and CIP introduced Tom Mounds. Mr. Mounds provided a brief presentation on the Stormwater Master Plan which outlined population growth, water quality, flooding, and sustainability.

Council expressed their appreciation for the hard work that has been put into the Stormwater Master Plan.

CONSENT AGENDA

A motion was made by Council Member Mihalkanin, seconded by Deputy Mayor Pro Tem Gregson, to approve the Consent agenda with the exception of items # 6, 9, and 10 which were pulled and considered separately. The motion carried by the following vote:

For: 7 - Mayor Pro Tem Prewitt, Council Member Gonzales, Deputy Mayor Pro Tem Gregson, Council Member Derrick, Council Member Hughson, Mayor Thomaides and Council Member Mihalkanin
3. Consider approval, by motion, of the following meeting Minutes:
   A) March 20, 2018 - Work Session Meeting Minutes
   B) March 26, 2018 - Code SMTX Special Meeting Minutes
   C) April 3, 2018 - Work Session Meeting Minutes
   D) April 17, 2018 - Work Session Meeting Minutes
   E) April 17, 2018 - Regular Meeting Minutes

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

5. Consider approval of Resolution 2018-62R, approving the recommendation of the San Marcos Commission on Children and Youth to allocate $50,285 in 2017-2018 Fiscal Year funding for 14 youth programs that contribute to implementation of the Youth Master Plan; authorizing the City Manager to take such actions as are necessary to enable such allocation of funds; and declaring an effective date.

6. Consider approval of Resolution 2018-63R, approving the award of a term contract to Integrated Generator Systems, Inc., for generator maintenance, repair services and parts (IFB 218-210) in the amount not to exceed amount of $140,000 and authorizing the 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 Deputy Mayor Pro Tem Gregson, seconded by Council Member Gonzales, to approve Resolution 2018-63R. The motion carried by the following vote:

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

   Against: 0

7. Consider approval of Resolution 2018-64R, approving the award of a contract for project site rehabilitation, underdrain piping replacement, and new landscaping for the Hutchison Street Biofiltration Pond Improvements Project (IFB 218-153) for the total purchase amount of $99,888.00 from M2 Federal, Inc.; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City and declaring an effective date.

8. Consider approval of Resolution 2018-65R, approving an amendment of the current Meet and Confer Agreement between the San Marcos Professional Firefighters Association Local #3963 and City of San Marcos to provide for the establishment of the Fire Marshal’s Office within the Fire Department and authorize the Fire Chief to hire a Fire Marshal from outside the Department’s classified service; and declaring an effective
9. Consider approval of Resolution 2018-66R, approving Change Order No.1 to the contract with Deloitte and Touche to perform additional consulting services related to the preparation, reconciliation and submission of projects for FEMA Public Assistance Grants and increasing the total amount of the project by $55,000.00; ratifying the City’s execution of the original contract and the increase in dollar amount; and declaring an effective date.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-66R. The motion carried by the following vote:

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

Against: 0

10. Consider approval of Resolution 2018-67R, approving the Stormwater Master Plan; and declaring an effective date.

A motion was made by Council Member Mihalkanin, seconded by Deputy Mayor Pro Tem Gregson, to approve Resolution 2018-67R. The motion carried by the following vote:

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

Against: 0

PUBLIC HEARINGS

11. Receive a staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-69R, approving Substantial Amendment No. 6 to the Community Development Block Grant-Disaster Recovery (“CDBG-DR”) Action Plan to include the Reconstruction On City-Owned Property (“RCOP”) Program to enable qualified residents affected by the 2015 floods to construct new homes on city-owned lots; approving the allocation of CDBG-DR funds to projects and activities under the RCOP program; authorizing the City Manager or his designee to act as the official representative of the City in matters related to the CDBG-DR program and action plan; and declaring an effective date; and consider approval of Resolution 2018-69R.

Stacy Brown, provided a brief presentation regarding a substantial amendment regarding Reconstruction on City Owned Property.

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

Roland Saucedo spoke in support of this and stated its a very good idea. He
said there are people in the audience that are in support of this as well. This is for someone that does not own their land and is unable to rebuild.

There being no further comments the Mayor closed the PH at 6:35 p.m.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Mayor Pro Tem Prewitt, to approve Resolution 2018-69R. The motion carried by the following vote:

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

Against: 0

NON-CONSENT AGENDA

12. Consider approval of Ordinance 2018-11, on the first of two readings, amending the Design Manual for the Installation of Network Node Support Poles authorized by Ordinance 2017-56 to establish a daily penalty of $500 for failure to relocate improperly placed equipment; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

A motion was made by Council Member Hughson, seconded by Deputy Mayor Pro Tem Gregson, to approve Ordinance 2018-11, on the first of two readings. The motion carried by the following vote:

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

Against: 0

13. Consider approval of Ordinance 2018-12, on the first of two readings, amending Chapter 14, Buildings and Building Regulations, of the City Code to implement recent legislation prohibiting the City from collecting fees from members of certain trades before they are authorized to practice their trades in the City; providing for an effective date.

A motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Gonzales, to approve Ordinance 2018-12, on the first of two readings. The motion carried by the following vote:

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

Against: 0

14. Consider approval of Ordinance 2018-13, on the first of two readings, adopting fees to be charged by the City for various city services, including changes to some existing fees
and the addition of new fees; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

Mayor Pro Tem Prewitt stated that during the discussion about CodeSMTX and Regulating Plans that council wanted to make sure that it was accessible for anybody in the City of San Marcos to do these Regulating Plans and stated her concerns about the fee.

Council Member Hughson suggested creating a new fee line, not using the same fees as a concept plan. Shannon Mattingly stated they would address this and perhaps base it on acrage instead.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Gonzales, to approve Ordinance 2018-13, on the first of two readings. The motion carried by the following vote:

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

Against: 0

15. Consider approval of Ordinance 2018-14, on the first of two readings, amending Section 2.041 of the San Marcos City Code to update the frequency of Regular Meetings per month; including procedural provisions; and declaring an effective date.

Main Motion: A motion was made by Council Member Hughson, seconded by Council Member Derrick, to approve Ordinance 2018-14, on the first of two readings.

Motion to Amend: a motion was made by Council Member Hughson, seconded by Deputy Mayor Pro Tem Gregson, to amend the language or Ordinance 2018-14 to read as follows: Regular meetings of City Council shall be held at 6:00 p.m. on the first and third Tuesdays of the month with the exception of the following: when the first Tuesday in November is also a uniform election date the meeting will be held on the first Wednesday of that month, and with the exception of the first regular meeting in October which is held on the first Monday of that month, or any date approved as a regular meeting date by City Council at a posted meeting. The motion carried by the following vote:

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

Against: 0

Main Motion: to approve Ordinance 2018-14, on the first of two readings, as
amended. The motion carried by the following vote:

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

Against: 0

16. Consider approval of Resolution 2018-70R, approving the allocation of five City-owned residential lots to be made available for qualified residents affected by the 2015 floods to construct new homes under the Housing and Urban Development Community Development Block Grant-Disaster Recovery-Reconstruction on City-owned property (“RCOP”) Program; authorizing the City Manager or his designee to act as the official representative of the City in matters related to the RCOP program; and declaring an effective date.

A motion was made by Council Member Derrick, seconded by Council Member Gonzales, to approve Resolution 2018-70R. The motion carried by the following vote:

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

Against: 0

17. Consider approval of Resolution 2018-61R, approving an Action Plan that outlines further measures to be taken to implement or enhance the purposes and objectives of the newly adopted San Marcos Development Code (“Code SMTX”) and associated changes to the City’s Comprehensive Plan; authorizing City Staff to undertake such efforts as are necessary to implement such measures; and declaring an effective date.

Main Motion: a motion was made by Mayor Pro Tem Prewitt, seconded by Council Member Derrick, to approve Resolution 2018-61R.

Motion to Amend: a motion was made by Council Member Hughson, seconded by Council Member Mihalkanin, to amend Resolution 2018-61R by adding the creation of a Council Committee to review the Rental Registration program and requirements. The motion carried by the following vote:

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

Against: 1 - Deputy Mayor Pro Tem Gregson

For the record: Council Member Hughson did not recommend that we spend $300,000 on Neighborhood Character Studies.

Main Motion: to approve Resolution 2018-61R, as amended. The motion carried by the following vote:
18. Consider approval, by motion, of the following matters pertaining to the lease of property located at 201 South LBJ (the site of the former Dixie Cream Donut Shop):
   a) Approving the acceptance of an amount in settlement of rent due under an existing lease of real property located at 201 South LBJ.
   b) Approving the termination of the existing lease
   c) Approving a new Lease Agreement of the property with Suenos & Rezo, LLC for the operation of a frozen yogurt shop and authorizing the City Manager to execute the Lease Agreement.

Council Member Hughson made a motion, seconded by Council Member Gonzales to enter into Executive Session under Texas Government Code Section 551.072, deliberation regarding real property, to conduct deliberations concerning the lease of City owned real property at 201 South LBJ and under the authority of Section 551.074, personnel matters, to discuss the duties of the City Manager regarding negotiations pertaining to the lease of City owned real property at 201 South LBJ. The motion carried by the following vote:

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

Against: 0

Council reconvened into Regular Session at 10:40 p.m.

A motion was made by Council Member Derrick, seconded by Council Member Mihalkanin, to approve item 18 a) waiving all rent due from the current and former lessees of 201 S LBJ Drive for the years 2013 through 2016; accept the sum of $2063.21 in payment of rent under the lease for 2017; and direct staff to bring back on a future agenda a lease with Ruben Becerra for rental of 201 S LBJ Drive at a lease rate for 2018 in the total sum of $3,446.68 with rent to be paid as follows:

1. A payment of $861.67 within 10 days of the execution of the new lease; and three equal payments of the same amount each due on the first of the month of each month thereafter.
2. For any extension beyond the initial one year term, the annual rent shall be paid in full on February 1st of the year, subject to a 3% annual rent increase and subject to the City’s right to redetermine the annual rent upon notice to lessee.
3. Prior to the City’s execution of the lease, Mr. Becerra shall provide a signed
acknowledgement from the lessee of the building of the provisions of the Becerra lease regarding disposition of the building upon termination of the ground lease.

4. All other lease terms shall be substantially the same as the terms of the lease of 201 South LBJ Drive partially assigned to the city by Union Pacific Railroad in December of 2013. The motion carried by the following vote:

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

A motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to postpone section b) Approving the termination of the existing lease. The motion carried by the following vote:

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

A motion was made by Council Member Mihalkanin, seconded by Council Member Derrick, to postpone item c) Approving a new Lease Agreement of the property with Suenos & Rezo, LLC for the operation of a frozen yogurt shop and authorizing the City Manager to execute the Lease Agreement. The motion carried by the following vote:

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

19. Discuss and consider appointments to fill vacancies the Cemetery Commission and the San Marcos Commission on Children and Youth and provide direction to Staff.

   Michelle Donnelly was nominated by Council Member Hughson for consideration to serve on the Cemetery Commission.

   Following a roll call vote she was unanimously approved for appointment to the Cemetery Commission.

   Christian Duran was appointed to serve as the GSMP Representative on the San Marcos Commission on Children and Youth.

VI. Question and Answer Session with Press and Public.

VII. Adjournment.

Mayor Thomaides adjourned the Regular Meeting of the San Marcos City
AGENDA CAPTION:
Consider approval of Ordinance 2018-11, on the second of two readings, amending the Design Manual for the Installation of Network Node Support Poles authorized by Ordinance 2017-56 to establish a daily penalty of $500 for failure to relocate improperly placed equipment; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.
Meeting date: May 1, 2018 - 1st Reading
May 15, 2018 - 2nd Reading

Department: Public Services

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

Fiscal Note:
Prior Council Action: November 8, 2017

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

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

Council approved Ordinance 2017-56 on November 8, 2017. This ordinance enacted the requirements of SB1004 which was effective September 1, 2017 and defined what cities can and cannot require related to the placement of small cell networks in public right-of-way. MuniCode contacted the City to inform the City Clerk that the Design Manual needed to be amended to provide for a daily penalty when a Network Provider fails to relocate equipment that is improperly placed. This ordinance establishes a $500 daily penalty.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Click or tap here to enter text.

AGENDA CAPTION:
Meeting date: May 1, 2018 - 1st Reading
May 15, 2018 - 2nd Reading

Department: Public Services/Tom Taggart

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

CITY COUNCIL GOAL: Improve and Maintain City Infrastructure
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AMENDING SECTION FOUR OF THE DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODE SUPPORT POLES AUTHORIZED BY ORDINANCE 2017-56 TO ESTABLISH A DAILY PENALTY OF $500 FOR FAILURE TO RELOCATE IMPROPERLY PLACED EQUIPMENT; REPEALING ALL ORDINANCES IN CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

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

SECTION 1. Section 4(B)(4)(b) of the City of San Marcos Design Manual for the Installation of Network Nodes and Node Support Poles authorized by Ordinance 2017-56 is hereby amended to read as follows:

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days’ notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of $500 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider’s contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

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

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

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

CONSIDERED AND APPROVED on first reading on May 1, 2018.

CONSIDERED, APPROVED, AND ADOPTED on second reading on May 15, 2018.
John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney
ORDINANCE NO. 2017-56

AN ORDINANCE OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES TO ADD A NEW ARTICLE 7 TO PROVIDE A FRAMEWORK FOR THE DEPLOYMENT OF NETWORK NODES AND NODE SUPPORT POLES IN THE RIGHT-OF-WAY BY NETWORK PROVIDERS IN ACCORDANCE WITH SENATE BILL 1004 CODIFIED AS TEXAS LOCAL GOVERNMENT CODE CHAPTER 284; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City of San Marcos ("City") is charged with maintaining control of and access to the public rights-of-way to protect the health, safety and welfare of its citizens and visitors.

2. The Texas Legislature recently enacted Senate Bill 1004 codified as Chapter 284 of the Texas Local Government Code ("Chapter 284") which grants wireless network providers access to city right-of-way and the authority to construct, install, and operate network nodes (small cell antennas and related equipment) on municipally owned utility poles, city light poles, and city traffic signal poles, as well as their own poles, for the purpose of supporting network nodes.

3. The newly enacted Chapter 284 also regulates the type of information a municipality may require as part of the permitting process, establishes a fee structure, and sets deadlines that municipalities must follow as part of the permitting process.

4. It is the City Council's desire to exercise the maximum authority preserved to local governments following the creation of Chapter 284 by adopting a Design Manual for the installation and construction of network nodes and node support poles in the City's right-of-way.

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

SECTION 1. Chapter 74 of the City Code titled Streets and Sidewalks is amended by adding a new Article 7 titled Network Nodes, Node Support Poles, and Related Facilities in the Public Right-of-Way as follows:

Sec. 74.209 Definitions.

In this article:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
Applicable codes means the uniform building, fire, electrical, plumbing, and mechanical codes adopted by the city and adopted by a recognized national code organization and any local amendments to those codes.

Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a right-of-way on or adjacent to a pole.

Design district means an area that is zoned, or otherwise designated by the code, and for which the city maintains and enforces unique design and aesthetic standards.

Designated area means an area of the city designated as a historic district or a design district where the city may require reasonable design or concealment measures for new network nodes or new node support poles.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility as defined by Section 11.003 of the Texas Utilities Code and located in a public right-of-way.

Municipal park means an area that is zoned or otherwise designated by the code as a public park for the purpose of recreational activity.

Network Node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: 1) equipment associated with wireless communications, including, but not limited to, distributed antenna systems (DAS) and small cells; 2) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and 3) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. The term does not include: 1) an electric generator; 2) a pole; or 3) a macro tower as defined by Section 284.002 of the Texas Local Government Code.

Network Provider means: 1) a wireless service provider, or 2) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: a) network nodes; or b) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Right-of-way means property that is publicly owned or upon which a governmental entity has an express or implied property interest held for a public purpose. Examples of such public purpose
include, by way of example and not limitation highways, streets, sidewalks, drainage facilities, sewerage and water facilities.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by the city and located in a right-of-way, including 1) a pole that supports traffic control functions; 2) a structure for signage; 3) a pole that supports lighting, other than a decorative pole; and 4) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Utility pole means a pole that provides 1) electric distribution with a voltage rating of not more than 34.5 kolovolts; or 2) services of a telecommunications provider as defined in Section 51.002 of the Texas Utilities Code.

Wireless facilities means network nodes, node support poles, and related equipment.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Sec. 74.210 Purpose.

(a) The purpose of this article is to facilitate the use of public right-of-way for network node deployments in accordance with Chapter 284 of the Texas Local Government Code.

(b) A network provider may use the public right-of-way in the following circumstances upon receipt of a valid permit demonstrating compliance with the city design manual:

(1) construct, modify, maintain, operate, relocate and remove a network node or node support pole;

(2) modify or replace a utility pole or node support pole; and

(3) collocate on a pole, subject to an agreement with the city.

(c) A network provider may use the public right-of-way in the following circumstances upon receipt of a valid permit demonstrating compliance with the city design manual:

(1) Install its own transport facilities; or

(2) Obtain transport service from a person that is paying fees to the city to occupy the right-of-way.

Sec. 74.211 Design manual.

(a) The City hereby adopts the Design Manual by the City of San Marcos, Texas for the Installation of Network Nodes and Node Support Poles ("Design Manual") which sets forth additional installation and construction requirements for wireless service facilities created to support network providers. Any amendments to the city wireless services design manual shall be adopted by the city council pursuant to an ordinance.
(b) A person shall comply with the wireless services design manual as a condition of approval of any application, permit, or other approval required by this article.

Sec. 74.212 Designations; concealment requirement.

(a) Design Districts. For the purposes of this article, the city herein designates the following areas as design districts:

(1) The area known as the Central Business Area.

(2) Areas zoned T5 and T5-D.

(3) The area of the Victory Gardens Subdivision where decorative light poles have been installed; specifically, Patton Street from the Interstate Highway 35 frontage road to Roosevelt Street, on Roosevelt Street from Patton Street to Guadalupe Street, and on Wavell Street from Patton Street toward the eastern dead-end in front of the HEB Park.

(b) Municipal Parks. For the purposes of this article, the city herein designates any land zoned as a municipal park for the purposes of recreational activity as a designated area.

(c) Historic Districts. For the purposes of this article, the city herein designates any area that is designated as a historic district pursuant to local, state or federal law as a historic district as a designated area.

(d) Liberal construction. Designations provided by this section shall be liberally construed. Additional areas may be designated at any time.

(e) Concealment. Concealment of network nodes and node support poles shall be required by the city in design districts and in historic districts pursuant to Chapter 284.105 of the Texas Local Government Code.

(1) It is the city’s preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

(2) The network node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the city’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Sec. 74.213 Additional Permit Application Requirements.

(a) Permit Application. A permit issued pursuant to this article is required to install a micro network node, network node, a node support pole, or a transport facility in the right-of-way and must be approved prior to excavation. The permit process to be followed is the same as the process
outlined in Section 74.154 of the City Code. In addition to the requirements set forth in this chapter and the city design manual, an application for a permit pursuant to this article shall include the following:

(1) Detailed drawings, with calculations to show conformity to the limitations contained in Chapter 284, the city design manual including, but not limited to, descriptions of any required enclosures, the size of the network nodes, pole height, and visibility.

(2) An analysis showing that the proposed wireless facility will not cause any interference with city public safety radio system or traffic signal light system.

(3) A description of the proposed location, including whether such location will be within or adjacent to any of the following:

a. A residential development;
b. A designated municipal park;
c. A designated design district;
d. A designated historic district; or
e. An area that has undergrounding requirements.

(4) A proposal to conceal or camouflage the network node, node support pole, related equipment, or any portion thereof, if applicable;

(5) City pole identification information, if applicable;

(6) Written consent from owners of non-city owned infrastructure; and

(7) A certificate that the network node complies with all application regulations of the Federal Communications Commission.

(b) Consolidated Permits. A network provider submitting an application to install or collocate multiple network nodes may file a consolidated permit application for not more than thirty (30) network nodes.

(c) Application Process Timeline. Not later than the 30th day after the date the city receives an application for a permit for a network node or node support pole, or the 10th day after the date the city receives an application for a permit for a transport facility, the city shall determine whether the application is complete and notify the applicant of that determination.

(d) Application Fee. The city may charge an application fee as authorized by Section 284.156 of the Texas Local Government Code. The application fee is in addition to the annual public right-of-way rate which is currently set at $250 per network node.
Sec. 74.214 Installation and Inspections.

(a) A network provider shall, at its own cost and expense, install the network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner in accordance with this article. All work done in connection with the installation, operation, maintenance, repair, modification, or replacement of the network node, network node facilities, node support poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the city, state and federal government.

(b) The City may perform visual inspections of any network node, network node, node support pole or related ground equipment located in the right-of-way as deemed appropriate without notice. If the inspection requires physical contact with the network node, node support poles or related ground equipment, the city shall provide written notice to the network provider within five business days of the planned inspection. The network provider may have a representative present during the inspection.

(c) After completion of the work within the right-of-way, the network provider shall provide to the city copies of maps and construction records of the permitted facilities as they are actually constructed in the right-of-way and shall provide additional copies of the maps and records to the city upon request.

Sec. 74.215 Collocation.

A network provider shall collocate network nodes on poles pursuant to an agreement with the City.

Sec. 74.216 Replacement, Maintenance and Repair.

(a) A network provider shall provide the city with ten days advance written notice of the following activities in the right-of-way:

1. Routine maintenance that does not require excavation or the closing of sidewalks or vehicular lanes;

2. Replacement or upgrading a network node or pole with a network node or pole that is substantially similar in size or smaller and that does not require excavation or the closing of sidewalks or vehicular lanes; and

3. The installation, placement, maintenance, operation, or replacement of network nodes that are strung on cables between existing poles or node support poles in compliance with the National Electrical Safety Code.

(b) A network provider shall comply with the requirements of this chapter and all other applicable codes and ordinances, when installing, replacing, maintaining, repairing, upgrading, removing, relocating or operating network nodes, network node facilities, node support poles and related ground equipment.
Sec. 74.217 Relocation.

Except as provided in state and federal law, a network provider shall relocate or adjust network nodes in a public right-of-way, as determined by the city, within ninety days and without cost to the city.

Sec. 74.218 Ownership.

No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the right-of-way by a network provider will become, or be considered by the city as being affixed to or a part of, the right-of-way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by the network provider on the right-of-way will be and remain the property of the network provider and may be removed by the network provider at any time, provided the network provider shall notify the City Manager prior to any work in the right-of-way.

Sec. 74.219 Signage.

(a) A network provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the network node facility that is visible to the public. Signage required under this section shall not exceed 4” x 6”, unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

(b) Except as required by any local, state or federal law or by the utility pole owner, the network provider shall not post any other signage or advertising on the micro network node, network node, node support pole, service pole or utility pole.

Sec. 74.220 Indemnity.

To the extent authorized by law, the network provider shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found to be caused, or other harm for which recovery of damages is sought that is found to be caused by the negligent act, error, or omission of the user of the right-of-way, any agent, officer, director, representative, employee, directors, or representatives, while installing, repairing, or maintaining facilities in a right-of-way.

Sec. 74.221 Graffiti Abatement.

As soon as practical, but not later than fourteen (14) calendar days from the date the network provider receives notice, the network provider shall remove all graffiti on any of its micro network node, network node, node support pole, and related ground equipment located in the right-of-way. The foregoing shall not relieve the network provider from complying with any City graffiti or visual blight ordinance or regulation.
Sec. 74.222 Restoration.

The network provider shall repair any damage to the right-of-way, or any facilities located within the right-of-way, and the property of any third party resulting from the network provider’s removal or relocation activities within ten calendar days following the date of such removal or relocation, at the service provider’s sole cost and expense, including restoration of the right-of-way and such property to substantially the same condition as it was immediately before the date the network provider was granted a permit for the applicable location or did the work at such location (even if the network provider did not first obtain a permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

Sec. 74.223 Network Provider’s Responsibility.

The network provider shall be responsible and liable for the acts and omissions of its employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, and subcontractors in connection with the installation of any micro network node, network node, node support pole and related ground equipment, as if such acts or omissions were the network provider’s acts or omissions.

SECTION 2. The City Council hereby approves the Design Manual of the City of San Marcos for the Installation of Network Nodes and Node Support Poles pursuant to Chapter 284 of the Texas Local Government Code which is attached hereto as Exhibit A.

SECTION 3. 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 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 will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on October 17, 2017.

PASSED, APPROVED AND ADOPTED on second reading on November 8, 2017.

John Thomaides
Mayor
Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney
City of San Marcos
Design Manual
for the
Installation of Network Nodes and Node Support Poles
pursuant to Tex. Loc. Gov. Code, Chapter 284.
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SECTION 1. PURPOSE AND APPLICABILITY.

The City of San Marcos ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.


As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.²

*Abandon* and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.
Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means:
(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
(B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of San Marcos, Texas or its lawful successor.

City Manager shall mean City Manager or designee


Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or disaster or emergency means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of “Network Node.”

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.
Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.


Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:
   (i) equipment associated with wireless communications;
   (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
   (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:
   (i) an electric generator;
   (ii) a pole; or
   (iii) a macro tower.
Network provider means:
(A) a wireless service provider; or
(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
   (i) network nodes; or
   (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:
(A) a private easement; or
(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Public right-of-way management ordinance means an ordinance that complies with Chapter 284, Subchapter C.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:
(A) a pole that supports traffic control functions;
(B) a structure for signage;
(C) a pole that supports lighting, other than a decorative pole; and
(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell shall be included as a type of “Network Node.”

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-
way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground Requirement Area shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:
(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
(B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. Municipal Parks and Residential Areas. In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way
without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities. Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. Historic District and Design Districts. In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. Historic Landmarks. A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (see, for example, and not limited to §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.
4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

**B. Least preferable locations.**

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

   1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

**C. Most preferable locations**

1. **Industrial areas** if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. **Highway Rights-of-Way** areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. **Retail and Commercial areas** if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

**D. Designated Areas.**

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. Currently designated **Historic Districts** are:
(a) Historic District Number 1 is the area referred to as Belvin Street Historic District.
(b) Historic District Number 2 is the area referred to as the Downtown Historic District.
(c) Historic District Number 3 is the area referred to as the San Antonio Street Historic District.
(d) Historic District Number 4 is the area referred to as the Lindsey-Rogers Historic District.
(e) Historic District Number 5 is the area referred to as the Burleson Historic District.
(f) Historic District Number 6 is the area referred to as the Dunbar Historic District.
(g) Historic District Number 7 is the area referred to as the Hopkins Street Historic District.

3. Currently designated Design District areas are:

(a) Design District Number 1 is the area referred to as the Central Business Area.
(b) Design District Number 2 are the areas zoned T5 and T5-D.

4. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

E. Exceptions

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. Existing telephone between existing utility poles. Micro Network Nodes shall only be lashed on existing telephone between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.
2. *Existing Utility Service (secondary) Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment. Installation cannot hinder or impede the ability to ascend pole for repair or maintenance work on existing facilities.

3. *Municipal Service Poles:*
   a. *Non-decorative street lights* with a height of more than 20 feet.
   b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).
   c. *Street signage* shall be a low priority use for attachment of a Network Node.
   d. *Other municipal primary pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

**SECTION 4. GUIDELINES ON PLACEMENT.**

**A. Generally.**

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the municipality’s publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).
6. obstruct or hinder the ability to ascend or do maintenance work on the structure.
7. violate the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

**B. General Requirements and Information:**

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro
Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.³

2. State and Federal Rights-of-way permit. If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. Confirmation of non-interference with City Safety Communication or SCADA Networks.

   a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

   b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider’s proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City’s public safety radio infrastructure.

4. Improperly Located Network Node facilities, Node Support Poles and related ground equipment:

   a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

   b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days’ notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of $XXXXX per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider’s contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

B. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions,
that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider’s permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Tess must be called so that the area can be flagged for underground utilities.

C. Network Node facilities placement:

1. Right-of-Way: Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. Height above ground. Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. Protrusions. In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. Limit on number of Network Nodes per Site. There shall be no more than one Network Node on any one Pole.


1. New Node Support Poles Spacing. New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. Height of Node Support Poles or modified Utility Pole. In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

   (1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

   (2) 55 feet above ground level.

E. Ground Equipment.

1. Ground Equipment near street corners and intersections: Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to
minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. Ground Equipment near Municipal Parks. For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager and Parks Director in writing.

3. Minimize Ground equipment density:

   In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City’s designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

4. Water, Sewer and Storm Drainage Lines:

   Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

   a. Underground utilities and service connections must be identified prior to excavation. “Dig Alert,” “One Call,” or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.

   b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.

   c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe to avoid future damage.

   d. Existing Water Lines: No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.

   e. Existing Sewer Lines: No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
f. Existing Storm Drainage Lines: No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. Blocking streets, roads, alleys or lanes:

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

F. Municipal Service Poles:

1. In accordance with Agreement: Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. Required industry standard pole load analysis: Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108. All installations must comply with the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

3. Height of attachments: All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. Installations on Traffic Signals: Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:
   
   i. Be encased in a separate conduit than the traffic light electronics;
   
   ii. Have a separate electric power connection than the traffic signal structure; and

   iii. Have a separate access point than the traffic signal structure; and

5. Installations on Street signage: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

   i. Be encased in a separate conduit than any City signage electronics;
ii. Have a separate electric power connection than the signage structure; and,

iii. Have a separate access point than the signage structure.

6. **Restoration of City facilities and private property:** The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

**SECTION 5. GENERAL AESTHETIC REQUIREMENTS**

**A. Concealment.**

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City’s preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

**B. New Node Support Pole Spacing.**

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

**C. Minimize Ground Equipment Concentration.**

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City’s designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.
D. Allowed Colors.

Colors in Historic Districts and Design Districts must be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes or policies, except to the extent not consistent with Chapter 284.

Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

SECTION 6. ELECTRICAL SUPPLY

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

1. Insurance, bonding and security deposits shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov’t Code.

SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR

A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.
2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.

1. Removal and Relocation of Network Provider’s Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

4. Network Provider shall, at the City Manager’s direction, remove or relocate the same at Network Provider’s sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling public’s use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider’s receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider’s sole cost and expense, without further notice to Network Provider.

C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.
1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider’s sole cost and expense in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider’s sole cost and expense.

4. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City’s actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. INSTALLATION.

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and
workmanlike manner in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider’s work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States (“Laws”).

B. INSPECTIONS.

1. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related
ground equipment removed or abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

1. As Built Maps and Records. Network Provider’s as built maps and records shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. Courtesy and Proper Performance. Courtesy and Proper Performance of Network provider’s personnel, and contractors shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. DRUG POLICY. Drug policy of Network provider’s personnel, and contractors in the rights-of-way shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider’s employees, contractors, subcontractors, sub-Network Provider’s, or vendors while on City rights-of-way is prohibited.

4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE. The City has appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article.

5. OWNERSHIP. Ownership of Network Node and related equipment shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the
Micro Network Node, Network Node, Node Support Pole and related ground equipment
constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and
remain the property of Network Provider and may be removed by Network Provider at any time,
provided the Network Provider shall notify the City Manager prior to any work in the Right-of-
Way.

6. Tree Maintenance. Tree maintenance shall be in strict accordance with the City’s
rights-of-way management ordinance, and other applicable ordinances, except to the extent not
consistent with Chapter 284.

Network Provider, its contractors, and agents shall obtain written permission from the City
Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node
Support Pole, to prevent branches of such trees from contacting attached Micro Network Node,
Network Node, or Node Support Pole. When directed by the City Manager, Network Provider
shall trim under the supervision and direction of the Parks Director. The City shall not be liable
for any damages, injuries, or claims arising from Network Provider’s actions under this section.

7. Signage. Signage shall be in strict accordance with the City’s rights-of-way
management ordinance, and other applicable ordinances, codes and policies, except to the extent
not consistent with Chapter 284.

Network Provider shall post its name, location identifying information, and emergency
telephone number in an area on the cabinet of the Network Node facility that is visible to the
general public. Signage required under this section shall not exceed 4” x 6”, unless otherwise required by
law (e.g. RF ground notification signs) or the City Manager.

Except as required by law or by the Utility Pole owner, Network Provider shall not post
any other signage or advertising on the Micro Network Node, Network Node, Node Support
Pole, Service pole or Utility Pole.

8. Graffiti Abatement. Graffiti abatement shall be in strict accordance with the City’s
rights-of-way management ordinance, and other applicable ordinances, codes and policies,
except to the extent not consistent with Chapter 284.

As soon as practical, but not later than fourteen (14) calendar days from the date Network
Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro
Network Node, Network Node, Node Support Pole, and related ground equipment located in the
Right of Way. The foregoing shall not relieve the Network Provider from complying with any City
graffiti or visual blight ordinance or regulation.

9. Restoration.

Network Provider shall restore and repair of the rights-of-way from any damage to the
Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third
party resulting from Network Provider’s removal or relocation activities (or any other of
Network Provider’s activities hereunder) in strict accordance with the City’s rights-of-way
management ordinance, and other applicable ordinances, except to the extent not consistent with
Chapter 284.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located
within the Right-of-Way, and the property of any third party resulting from Network Provider’s
removal or relocation activities (or any other of Network Provider’s activities hereunder) within
10 calendar days following the date of such removal or relocation, at Network Provider’s sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

10. Network provider’s responsibility.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider’s employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider’s and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider’s acts or omissions in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider’s employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider’s and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider’s acts or omissions.

SECTION 12-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City’s Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

1 Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

2 The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives
electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:
   (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a
       recognized national code organization; and
   (B) local amendments to those codes to the extent not inconsistent with this
       chapter.
(3) "Collocate" and "collocation" mean the installation, mounting, maintenance,
    modification, operation, or replacement of network nodes in a public right-of-way on or adjacent
    to a pole.
(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic
    purposes and on which no appurtenances or attachments, other than specially designed
    informational or directional signage or temporary holiday or special event attachments, have
    been placed or are permitted to be placed according to nondiscriminatory municipal codes.
(5) "Design district" means an area that is zoned, or otherwise designated by municipal
    code, and for which the city maintains and enforces unique design and aesthetic standards on a
    uniform and nondiscriminatory basis.
(6) "Historic district" means an area that is zoned or otherwise designated as a historic
district under municipal, state, or federal law.
(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.
(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the
    height parameters prescribed by Section 284.103 and that supports or is capable of supporting
    antennas.
(9) "Micro network node" means a network node that is not larger in dimension than 24
    inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if
    any, not longer than 11 inches.
(10) "Municipally owned utility pole" means a utility pole owned or operated by a
    municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public
    right-of-way.
(11) "Municipal park" means an area that is zoned or otherwise designated by municipal
    code as a public park for the purpose of recreational activity.
(12) "Network node" means equipment at a fixed location that enables wireless
    communications between user equipment and a communications network. The term:
        (A) includes:
            (i) equipment associated with wireless communications;
            (ii) a radio transceiver, an antenna, a battery-only backup power supply,
                and comparable equipment, regardless of technological configuration; and
            (iii) coaxial or fiber-optic cable that is immediately adjacent to and
                directly associated with a particular collocation; and
        (B) does not include:
            (i) an electric generator;
            (ii) a pole; or
            (iii) a macro tower.
(13) "Network provider" means:
        (A) a wireless service provider; or
        (B) a person that does not provide wireless services and that is not an electric
utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or
(ii) node support poles or any other structure that supports or is capable of
supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary
purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or
collocation on a service pole required from a municipality before a network provider may
perform an action or initiate, continue, or complete a project over which the municipality has
police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or
utility pole.

(17) "Private easement" means an easement or other real property right that is only for
the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway,
highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality
has an interest. The term does not include:

(A) a private easement; or
(B) the airwaves above a public right-of-way with regard to wireless
telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies
with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network
provider to a municipality related to the construction, maintenance, or operation of network
nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or
operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;
(B) a structure for signage;
(C) a pole that supports lighting, other than a decorative pole; and
(D) a pole or similar structure owned or operated by a municipality and
supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-
of-way, extending with a physical line from a network node directly to the network, for the
purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
(B) services of a telecommunications provider, as defined by Section 51.002,
Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless
spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the
public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the
public.
standards.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
   (A) must be located inside an enclosure of not more than six cubic feet in volume;
   (B) may not exceed a height of three feet above the existing structure or pole; and
   (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
   (A) must fit within an imaginary enclosure of not more than six cubic feet;
   (B) may not exceed a height of three feet above the existing structure or pole; and
   (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
(3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
   (A) be more than 28 cubic feet in volume; or
   (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
(4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
(5) pole-mounted enclosures may not be taller than five feet.
(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):
   (1) electric meters;
   (2) concealment elements;
   (3) telecommunications demarcation boxes;
   (4) grounding equipment;
   (5) power transfer switches;
   (6) cut-off switches; and
   (7) vertical cable runs for the connection of power and other services.
(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.
City of San Marcos

Design Manual

for the

Installation of Network Nodes and Node Support Poles

pursuant to Tex. Loc. Gov. Code, Chapter 284.
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SECTION 1. PURPOSE AND APPLICABILITY.

The City of San Marcos (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.


As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.  

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.
Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means:
(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
(B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of San Marcos, Texas or its lawful successor.

City Manager shall mean City Manager or designee


Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or disaster or emergency means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of “Network Node.”

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.
Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.


Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:
   (i) equipment associated with wireless communications;
   (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
   (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:
   (i) an electric generator;
   (ii) a pole; or
   (iii) a macro tower.
**Network provider** means:
(A) a wireless service provider; or
(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
   (i) network nodes; or
   (ii) node support poles or any other structure that supports or is capable of supporting a network node.

**Node support pole** means a pole installed by a network provider for the primary purpose of supporting a network node.

**Permit** means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

**Pole** means a service pole, municipally owned utility pole, node support pole, or utility pole.

**Private easement** means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

**Provider** has the same meaning as “Network Provider.”

**Public right-of-way** means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:
(A) a private easement; or
(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

**Public right-of-way management ordinance** means an ordinance that complies with Chapter 284, Subchapter C.

**Service pole** means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:
(A) a pole that supports traffic control functions;
(B) a structure for signage;
(C) a pole that supports lighting, other than a decorative pole; and
(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

**Small cell** shall be included as a type of “Network Node.”

**Street** means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-
way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground Requirement Area shall mean an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:
  (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
  (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

  A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

    1. Municipal Parks and Residential Areas. In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way
without the City's discretionary, nondiscriminatory, and written consent if the public right-of-
way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide of paved street surface, being the area measured as the
shortest distance between the inside of the curb to the inside of the opposite curb, or the area
measured as the shortest distance between the two parallel edges of the paved roadway for
vehicular travel where there is no curb; and

(2) adjacent to single-family residential lots or other multifamily residences or
undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a
Network Node or Node Support Pole in a public right-of-way described above shall comply with
private deed restrictions and other private restrictions in the area that apply to those facilities.
Each permit application shall disclose if it is within a Municipal Park and Residential
Areas as described above.

2. **Historic District and Design Districts.** In accordance with Chapter 284, Sec. 284.105,
a Network Provider must obtain advance written approval from the City before collocating
Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in
an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design
Districts with Decorative Poles or in a Historic District, the City shall require reasonable design
or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request
for installations in a Design District with Decorative Poles or in a Historic District, must be
accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage
measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground
equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the
aesthetics in Design Districts or in an Historic District.

2.3. Network Provider shall comply with and observe all applicable City, State, and
federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative
Poles or in an area of the City zoned or otherwise designated as a Design District or Historic
District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network
Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark
recognized by the City, state or federal government (*see, for example, and not limited to*
§442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the
submission of the permit. It is recommended that each permit application disclose if it is with
300 feet of such a structure.
4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

   4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

   4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

B. **Least preferable locations.**

   1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

      1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

   2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design District or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. **Most preferable locations**

   1. **Industrial areas** if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

   2. **Highway Rights-of-Way** areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

   3. **Retail and Commercial areas** if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. **Designated Areas.**

   1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

   2. Currently designated **Historic Districts** are:
(a) Historic District Number 1 is the area referred to as Belvin Street Historic District.
(b) Historic District Number 2 is the area referred to as the Downtown Historic District.
(c) Historic District Number 3 is the area referred to as the San Antonio Street Historic District.
(d) Historic District Number 4 is the area referred to as the Lindsey-Rogers Historic District.
(e) Historic District Number 5 is the area referred to as the Burleson Historic District.
(f) Historic District Number 6 is the area referred to as the Dunbar Historic District.
(g) Historic District Number 7 is the area referred to as the Hopkins Street Historic District.

3. Currently designated *Design District* areas are:

(a) Design District Number 1 is the area referred to as the Central Business Area.
(b) Design District Number 2 are the areas zoned T5 and T5-D.

4. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

E. Exceptions

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone between existing utility poles*. Micro Network Nodes shall only be lashed on existing telephone between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.
2. *Existing Utility Service (secondary) Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment. Installation cannot hinder or impede the ability to ascend pole for repair or maintenance work on existing facilities.

3. *Municipal Service Poles*:
   a. *Non-decorative street lights* with a height of more than 20 feet.
   b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).
   c. *Street signage* shall be a low priority use for attachment of a Network Node.
   d. *Other municipal primary pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment*. Ground equipment should be minimal and the least intrusive.

**SECTION 4. GUIDELINES ON PLACEMENT.**

**A. Generally.**

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the municipality’s publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).
6. obstruct or hinder the ability to ascend or do maintenance work on the structure.
7. violate the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

**B. General Requirements and Information:**

1. *Size Limits*. Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro
Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.  

2. **State and Federal Rights-of-way permit.** If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government. 

3. **Confirmation of non-interference with City Safety Communication or SCADA Networks.**
   
   a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304. 

   b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider’s proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City’s public safety radio infrastructure.

4. **Improperly Located Network Node facilities, Node Support Poles and related ground equipment:**

   a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

   b. **Notice to Remove unauthorized facilities and relocate and penalty:** After 30 days’ notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of $XXXX per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider’s contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

**B. Underground Requirement Areas.**

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions,
that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider’s permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Tess must be called so that the area can be flagged for underground utilities.

C. Network Node facilities placement:

1. Right-of-Way: Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. Height above ground. Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. Protrusions. In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. Limit on number of Network Nodes per Site. There shall be no more than one Network Node on any one Pole.


1. New Node Support Poles Spacing. New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. Height of Node Support Poles or modified Utility Pole. In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

   (1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

   (2) 55 feet above ground level.

E. Ground Equipment.

1. Ground Equipment near street corners and intersections: Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to
minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. Ground Equipment near Municipal Parks. For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager and Parks Director in writing.

3. Minimize Ground equipment density:

   In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City’s designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

4. Water, Sewer and Storm Drainage Lines:

   Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

   a. Underground utilities and service connections must be identified prior to excavation. “Dig Alert,” “One Call,” or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.

   b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.

   c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe to avoid future damage.

   d. Existing Water Lines: No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.

   e. Existing Sewer Lines: No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
f. Existing Storm Drainage Lines: No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. Blocking streets, roads, alleys or lanes:

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

F. Municipal Service Poles:

1. In accordance with Agreement: Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. Required industry standard pole load analysis: Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108. All installations must comply with the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

3. Height of attachments: All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. Installations on Traffic Signals: Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

   i. Be encased in a separate conduit than the traffic light electronics;

   ii. Have a separate electric power connection than the traffic signal structure; and

   iii. Have a separate access point than the traffic signal structure; and

5. Installations on Street signage: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

   i. Be encased in a separate conduit than any City signage electronics;
ii. Have a separate electric power connection than the signage structure;
and,

iii. Have a separate access point than the signage structure.

6. Restoration of City facilities and private property: The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City’s preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City’s designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.
D. **Allowed Colors.**

Colors in Historic Districts and Design Districts must be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes or policies, except to the extent not consistent with Chapter 284.

Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

**SECTION 6. ELECTRICAL SUPPLY**

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

**SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.**

1. Insurance, bonding and security deposits shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov’t Code.

**SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR**

A. **REMOVAL OR RELOCATION BY NETWORK PROVIDER.**

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.
2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

**B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.**

1. Removal and Relocation of Network Provider’s Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

   1. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

   2. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

   3. Network Provider shall, at the City Manager’s direction, remove or relocate the same at Network Provider’s sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling publics use for travel and transportation.

   4. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider’s receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider’s sole cost and expense, without further notice to Network Provider.

   5. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

**C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.**
1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider’s sole cost and expense in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider’s sole cost and expense.

4. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City’s actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. INSTALLATION.

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and
workmanlike manner in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider’s work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States (“Laws”).

B. INSPECTIONS.

1. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

2. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related
ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

1. **As Built Maps and Records.** Network Provider’s as built maps and records shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

   Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. **Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider’s personnel, and contractors shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

   Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. **DRUG POLICY.** Drug policy of Network provider’s personnel, and contractors in the rights-of-way shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

   It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider’s employees, contractors, subcontractors, sub-Network Provider’s, or vendors while on City rights-of-way is prohibited.

4. **ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City has appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article.

5. **OWNERSHIP.** Ownership of Network Node and related equipment shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

   No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the
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Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

6. Tree Maintenance. Tree maintenance shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Network Provider’s actions under this section.

7. Signage. Signage shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4” x 6”, unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

Except as required by law or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

8. Graffiti Abatement. Graffiti abatement shall be in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

9. Restoration.

Network Provider shall restore and repair of the rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider’s removal or relocation activities (or any other of Network Provider’s activities hereunder) in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider’s removal or relocation activities (or any other of Network Provider’s activities hereunder) within
10 calendar days following the date of such removal or relocation, at Network Provider’s sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

10. Network provider’s responsibility.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider’s employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider’s and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider’s acts or omissions in strict accordance with the City’s rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider’s employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider’s and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider’s acts or omissions.

SECTION 12-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City’s Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

1 Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

2 The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives
electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:
(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:
(A) includes:
   (i) equipment associated with wireless communications;
   (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
   (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
(B) does not include:
   (i) an electric generator;
   (ii) a pole; or
   (iii) a macro tower.

(13) "Network provider" means:
(A) a wireless service provider; or
(B) a person that does not provide wireless services and that is not an electric
utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or
(ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or
(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;
(B) a structure for signage;
(C) a pole that supports lighting, other than a decorative pole; and
(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.
Sec. 284.002. DEFINITIONS (8) “Micro network node” means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
   (A) must be located inside an enclosure of not more than six cubic feet in volume;
   (B) may not exceed a height of three feet above the existing structure or pole; and
   (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna’s exposed elements:
   (A) must fit within an imaginary enclosure of not more than six cubic feet;
   (B) may not exceed a height of three feet above the existing structure or pole; and
   (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
   (A) be more than 28 cubic feet in volume; or
   (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;

(4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

(1) electric meters;
(2) concealment elements;
(3) telecommunications demarcation boxes;
(4) grounding equipment;
(5) power transfer switches;
(6) cut-off switches; and
(7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner’s construction standards.
AGENDA CAPTION:
Consider approval of Ordinance 2018-12, on the second of two readings, amending Chapter 14, Buildings and Building Regulations, of the City Code to implement recent legislation prohibiting the City from collecting fees from members of certain trades before they are authorized to practice their trades in the City; providing for an effective date.

Meeting date:  May 1, 2018 - 1st Reading
               May 15, 2018 - 2nd Reading

Department:  Planning and Development Services

Amount & Source of Funding
Funds Required:  n/a
Account Number:  n/a
Funds Available:  n/a
Account Name:  n/a

Fiscal Note:
Prior Council Action:  n/a

City Council Strategic Initiative:  n/a
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element(s):
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☒ Not Applicable
Master Plan:
Vision San Marcos - A River Runs Through Us

Background Information:
The State of Texas passed House Bill No. 3329 and it took effect September 1, 2017. This bill states that a municipality may not collect a permit fee, registration fee, administrative fee, or any other fee from an electrician who holds a license for work performed in the municipality. It then goes on to state that this does not prohibit a municipality from collecting a building permit fee. TML and BOAT (Building Official of Texas) have issued a recommendation and we are recommending that we follow that approach after speaking with Legal. That article is attached for reference. There are 4 sections of Chapter 14 that have been revised to reflect these changes.

Council Committee, Board/Commission Action:
n/a

Alternatives:
n/a

Recommendation:
Staff recommends approval of the ordinance changes as submitted with an effective date of May 15, 2018.
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, OF THE SAN MARCOS CITY CODE TO IMPLEMENT RECENT LEGISLATION PROHIBITING THE CITY FROM COLLECTING FEES FROM MEMBERS OF CERTAIN TRADES BEFORE THEY ARE AUTHORIZED TO PRACTICE THEIR TRADES IN THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

SECTION 1. Chapter 14, Buildings and Building Regulations, 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 14.077 (a) of the San Marcos City Code is amended as follows:

Sec. 14.077. Permits; licensing.

(a) A person applying for a Building (Mechanical) permit shall be:

(1) A licensed air conditioning and refrigerator contractor under state law, or

(2) Exempt under state law from the licensing requirement.

(b) A state licensed air conditioning and refrigeration contractor shall register with the City once a year and show proof of the state license and insurance before any work is performed within the City.

(c) If a building owner is claiming an exemption under state law because he is planning to do the work him or herself, then the owner shall provide an affidavit to the building official stating that he owns and occupies the building as his homestead.

SECTION 3. Section 14.103 (a) of the San Marcos City Code is amended as follows:

Sec. 14.103. Permits; licensing.
(a) A person applying for a Building (Plumbing) permit shall be:

(1) A licensed master plumber under state law, or

(2) Exempt from the state licensing law.

(b) A state licensed master plumber shall register with the city once a year and show proof of the license and insurance before any work is performed within the city or on pipes connected to the city's water or wastewater service; or

(c) If a building owner is claiming an exemption under state law because he is planning to do the work him or herself, then the owner shall provide an affidavit to the building official stating that he owns and presently occupies the building as his homestead.

SECTION 4. Section 14.370 (a) of the San Marcos City Code is amended as follows:

Sec. 14.370. Permits; licensing.

(a) A person applying for a Building (Electrical) permit shall be:

(1) A licensed electrical contractor under state law; or

(2) Exempt under state law from the licensing requirement.

(b) A state licensed electrical contractor shall register with the City once a year and show proof of the state license and insurance before any work is performed within the City.

(c) If a building owner is claiming an exemption under state law because he is planning to do the work him or herself, then the owner shall provide an affidavit to the building official stating that he owns and occupies the building as his homestead.

SECTION 5. Section 14.372 (a) of the San Marcos City Code is amended as follows:

Sec. 14.372. License required; exception.

(a) It is unlawful for any person to perform construction work subject to this article unless the person is licensed as a contractor or is
exempt under one of the following:

(1) A maintenance person may perform maintenance work only upon property owned by the person's employer. A maintenance person who performs work upon the property of more than one property owner is deemed to be performing work for the general public and shall be licensed as a city residential or general contractor.

(2) A property owner may perform construction work with the owner's own hands or use other persons to perform construction work in/on an existing residence owned and occupied by the owner as his homestead. Such other persons performing work for the property owner shall, however, be subject to applicable licensing requirements under state law. All work is subject to permit, inspection and approval in accordance with this chapter.

(3) An approved authorized single representative of a political subdivision. Each subdivision is authorized to submit one person to serve as general representative for projects under $8,000.00 for purposes of permitting. This exception does not authorize work outside the political subdivision unless the person holds a general contractors license under this section.

(4) A specialist contractor shall be required to register as a Specialist Contractor and may perform work for the general public within the specifications and limitations of the registration.

(5) A person licensed by the State of Texas as a trade contractor, including the mechanical, plumbing or electrical trades.

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 shall be effective upon its adoption on second reading.
PASSED AND APPROVED on first reading on May 1, 2018.

PASSED, APPROVED, AND ADOPTED on second reading on May 15, 2018.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case  Michael J. Cosentino
City Clerk  City Attorney
Post-Session Update: Electrician Registration

House Bill 3329, passed during the 2017 regular legislative session and effective on September 1, 2017, adds new Subsection (f) to Section 1305.201, Occupations Code, which provides as follows:

(f) A municipality or region may not collect a permit fee, registration fee, administrative fee, or any other fee from an electrician who holds a license issued under this chapter for work performed in the municipality or region. This subsection does not prohibit a municipality or region from collecting a building permit fee.

Some city officials were concerned that House Bill 3329 prohibits a city from requiring an electrician to pay for a building permit before doing electrical work in the city. The bill doesn't do that. To understand why, one must look to the rules of statutory construction. In construing a statute, a court's primary objective is to give effect to the legislature's intent as gleaned from the text. The Texas Supreme Court recently explained that in divining that intent:

[W]e further “presume the Legislature chose statutory language deliberately and purposefully.” We endeavor to interpret each word, phrase, and clause in a manner that gives meaning to them all. We accordingly read statutes as a whole so as to render no part inconsistent, superfluous, or devoid of meaning.

Moreover, the rules of statutory construction demand that when general words follow specific and particularized enumerations of powers, the general words are treated as limited and applied only to the same kind or class of powers as those expressly mentioned. This rule ensures that terms are not construed more broadly than the legislature intended. In addition, the meaning of particular words in a statute may be ascertained by reference to other words associated with them in the same statute.

Using these canons of construction here, we construe the general prohibition in 1305.201(f) (“A municipality or region may not collect a permit fee, registration fee, administrative fee, or any other fee from an electrician who holds a license issued under this chapter for work performed in the municipality or region”) in light of the specific fee authorization that remains in Section 1305.201: Subsection (f) expressly authorizes a city to continue to collect a building permit fee.

In other words, whatever fees the general prohibition may encompass, it does not include a building permit fee. To provide some guidance in that endeavor, the Building Officials of Texas (BOAT) has issued a recommended approach for permitting and registration under the bill, with the caveat that each city consult with legal counsel. The idea being that a unified approach is in cities' best interests. According to BOAT:

**Permit Fees**

The general consensus appears to be that cities can still charge for electrical permits as “building permits” under code. The term “building permit,” as opposed to “electrical permit,” is subject to interpretation by each jurisdiction, but a jurisdiction could change all the construction permit types to “building permits” with nomenclature, for example that could be:

- building permit (new single family residential) or (SFR)
- building permit (electrical) or (E)
- building permit (plumbing) or (P)

By changing the permit title, a city would be in conformance with subsection (f) of the bill because it would be issuing a building permit and it is not prohibited from collecting a building permit fee from an electrician.

**Contractor Registration Fees**

A city could register an electrical license free of charge verifying state license law requirements. A building permit fee for electrical work can offset administrative costs of enforcement verification.
How each city defines and charges for a building permit for electrical or other work should be decided by that individual city based on the advice of local legal counsel.

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Back to Legislative Update Index (/legis_updates.asp)
AGENDA CAPTION:
Consider approval of Ordinance 2018-13, on the second of two readings, adopting fees to be charged by the City for various city services, including changes to some existing fees and the addition of new fees; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

Meeting date:  May 1, 2018 - 1st Reading
               May 15, 2018 - 2nd Reading

Department:  Planning and Development Services

Amount & Source of Funding
Funds Required:  n/a
Account Number:  n/a
Funds Available:  n/a
Account Name:  n/a

Fiscal Note:
Prior Council Action:  n/a

City Council Strategic Initiative:
Choose an item.
Choose an item.
Choose an item.

Comprehensive Plan Element (s):
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☒ Not Applicable
Master Plan:
Vision San Marcos - A River Runs Through Us

Background Information:
The Planning and Development Services Department regularly reviews their fee schedule to ensure cost of service as well as customer service is maintained. Due to changes from House Bill No. 3329, the Newsrack ordinance 2017-70, the adoption of Code SMTX and the Small Cell 2017-56 ordinance staff recommends the following changes to the fee schedule.

Amendment of fees:
- Child Permit
- Multi-Family Child Permit
- Electrical Permit
- Mechanical Permit
- Plumbing Permit
- Mobile Home Permit
- Mobile Home Trade Permits
- Zoning Change
- Conditional Use Permit / SmartCode Warrant / Alt. Compliance
- Nonprofit Conditional Use / SmartCode Warrant / Alt. Compliance
- Concept Plan / Intensity Zone Regulating Plan
- Protected Trees Fee in Lieu
- Heritage Trees Fee in Lieu

Addition of fees:
- Newsrack Application Fee
- Newsrack Renewal Fee
- Small Cell Application Fee
- Small Cell Pole Application Fee
- Common Signage Plan

Deletion of fees:
File #: Ord. 2018-13(b), Version: 1

- Planned Development District
- Zoning Change to MF 12, 18, 24

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

n/a

**Alternatives:**

n/a

**Recommendation:**

Staff recommends approval of the fee schedule as submitted with all fees effective May 15, 2018.
At their meeting on Tuesday, May 1, 2018 City Council requested clarification on the proposed fee schedule update. Staff has made the following changes:

### Intensity Zone Regulating Plans vs. Existing Neighborhood Plans:

The Subdivision Review Fees page has not changed.

- **Concept Plan / Intensity Zone Regulating Plan** - $1,000 plus $50 / acre ($2,500 max)
  - This new fee is intended for use in Medium and High Intensity Zones on the Preferred Scenario Map.
  - Intensity Zone Regulating Plans are similar to Concept Plans in that they layout infrastructure for larger (20+ acre) greenfield developments. They are only required when there is a request for Planning Area District Zoning.

The Zoning Review Fees page has been updated for clarification

- **Zoning Change (Existing Neighborhood Regulating Plan Included)** - $1,000 plus $100 / acre ($3,000 max)
  - This addition clarifies that zoning change requests in existing neighborhoods will have a regulating plan reviewed at the same time as the zoning request and that no additional fee will be charged.

### Removal of references to Code SMTX:

Since the Code was adopted on April 17, all references to Code SMTX and all terminology which is no longer effective, such as SmartCode and PDD, has been completely removed.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, ADOPTING FEES TO BE CHARGED BY THE CITY FOR VARIOUS CITY SERVICES, INCLUDING CHANGES TO SOME EXISTING FEES AND THE ADDITION OF NEW FEES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

Pursuant to applicable provisions of State law and City ordinances, the City Council may establish fees to be charged for various City services.

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

SECTION 1. The City Council hereby adopts the fees to be charged for various City services as set forth in Exhibit “A,” attached hereto and made a part hereof for all purposes.

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 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed. To the extent the provisions of any ordinance provide for establishment of a fee or fees by resolution of the City Council, such provisions are superseded by this ordinance and the fees as adopted in this ordinance shall govern.

SECTION 5. After its passage, approval and adoption on second reading, this ordinance shall be effective.

PASSED AND APPROVED on first reading on May 1, 2018.

PASSED, APPROVED AND ADOPTED on second reading on May 15, 2018.

John Thomaides
Mayor

Attest: Approved:

Jamie Lee Case        Michael J. Cosentino
City Clerk           City Attorney
## Building Fees

### Building Permit and Inspection Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate of Occupancy (single tenant space)</td>
<td>$29.00</td>
</tr>
<tr>
<td>Certificate of Occupancy (entire building)</td>
<td>$29.00 per unit ($165.00 max)</td>
</tr>
</tbody>
</table>

### Building Permit - New Construction

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family residential</td>
<td>46 cents per square foot</td>
</tr>
<tr>
<td>All other categories of construction including shell building</td>
<td>66 cents per square foot</td>
</tr>
<tr>
<td>Multi-Family Fee</td>
<td>$6.00 per bedroom</td>
</tr>
<tr>
<td>Multi-Family Improvement Credit</td>
<td>$10.00 per bedroom credit (applied to permit)</td>
</tr>
<tr>
<td>Residential Storage Building (pre-built)</td>
<td>$29.00 flat fee</td>
</tr>
<tr>
<td>Residential Storage Building (built on site)</td>
<td>$56.00</td>
</tr>
</tbody>
</table>

### Building Permit - Remodeling, Repair and Alteration Permits

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additions to an existing building</td>
<td>Same as new construction - listed above</td>
</tr>
<tr>
<td>Interior Remodel Residential</td>
<td>1/2 of new residential construction fee for square footage of area being remodeled</td>
</tr>
<tr>
<td>Remodeling within an existing building and Tenant finish out (Commercial)</td>
<td>1/2 of new commercial construction fee for square footage of area being remodeled</td>
</tr>
<tr>
<td>Minimum fee for residential remodeling</td>
<td>$112.00</td>
</tr>
<tr>
<td>Minimum fee for all other remodeling</td>
<td>$223.00</td>
</tr>
</tbody>
</table>

### Trade Building Permit Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Child Permit (Any Building (Mechanical), Building (Electric), or Building (Plumbing) permit pulled under a GC)</td>
<td>$40.00 project registration fee</td>
</tr>
<tr>
<td>Building Child Permit - Multi-Family (Any Building (Mechanical), Building (Electric), or Building (Plumbing) permit pulled under a GC)</td>
<td>$23.00 per unit</td>
</tr>
<tr>
<td>Building (ELECTRICAL):</td>
<td></td>
</tr>
<tr>
<td>Residential: Addition of a single electrical branch circuit/fixture</td>
<td>$56.00</td>
</tr>
<tr>
<td>Residential: Addition of multiple electrical circuits/fixture circuits</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: Addition of a single electrical circuit/fixture</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: Addition of multiple electrical circuits/fixture circuits</td>
<td>$168.00</td>
</tr>
<tr>
<td>Building (MECHANICAL):</td>
<td></td>
</tr>
<tr>
<td>Residential: HVAC Replacement or addition of a single system</td>
<td>$56.00</td>
</tr>
<tr>
<td>Residential: HVAC Replacement or addition of multiple systems</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: HVAC Replacement or addition of a single system</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: HVAC Replacement or addition of multiple systems</td>
<td>$168.00</td>
</tr>
<tr>
<td>Building (PLUMBING):</td>
<td></td>
</tr>
<tr>
<td>Residential: Addition of a single plumbing branch drain/fixture</td>
<td>$56.00</td>
</tr>
<tr>
<td>Residential: Addition of multiple plumbing branch drain/fixtures</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: Addition of a single plumbing branch drain/fixture</td>
<td>$85.00</td>
</tr>
<tr>
<td>Commercial: Addition of multiple plumbing branch drain/fixtures</td>
<td>$168.00</td>
</tr>
</tbody>
</table>

*All multipliers should be rounded to the nearest whole number*
## Miscellaneous Fees

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demolition Permit - residential</td>
<td>$29.00</td>
</tr>
<tr>
<td>Demolition Permit - all other categories</td>
<td>$300.00</td>
</tr>
<tr>
<td>Demolition Permit - unsafe structure program</td>
<td>$0</td>
</tr>
<tr>
<td>Irrigation System</td>
<td>$18.00 per zone ($50min/$1,000 max)</td>
</tr>
<tr>
<td>Parking Lots (when constructed separately)</td>
<td>$5 cents per square foot ($100 minimum)</td>
</tr>
<tr>
<td>Decks, Patios, and Roofs</td>
<td>$7 cents per square foot ($25 minimum)</td>
</tr>
<tr>
<td>Swimming Pools</td>
<td>$112.00</td>
</tr>
<tr>
<td>Temporary Structures/Tents - up to 1,000 square feet</td>
<td>$29.00 (During Stage 2-5 Drought Status)</td>
</tr>
<tr>
<td>Temporary Structures/Tents - over 1,000 square feet</td>
<td>$56.00</td>
</tr>
<tr>
<td>Mobile Homes Building Permit</td>
<td>$56.00</td>
</tr>
<tr>
<td>Mobile Homes Trade Building Permits - electrical, plumbing, and mechanical in a mobile home park</td>
<td>$18.00 each</td>
</tr>
<tr>
<td>Moving Permits</td>
<td>$56.00</td>
</tr>
<tr>
<td>Foundation Permit</td>
<td>7 cents per square foot ($25 minimum)</td>
</tr>
<tr>
<td>Reinspection Fee (2nd and subsequent inspections)</td>
<td>Residential $55.00</td>
</tr>
<tr>
<td></td>
<td>Commercial $250</td>
</tr>
<tr>
<td></td>
<td>Multi-Family $300</td>
</tr>
<tr>
<td></td>
<td>Additional fee after 2nd Reinspection $100</td>
</tr>
<tr>
<td>Work begun without a permit</td>
<td>Double the normal fee ($200 minimum)</td>
</tr>
<tr>
<td>Application Deposit - non-refundable, paid up front and applied to permit balance</td>
<td>50% of permit fee - not to exceed $2,000</td>
</tr>
<tr>
<td>After Hours Inspection Fee</td>
<td>$100.00 per hr. (2 Hr minimum)</td>
</tr>
<tr>
<td>My Permit Now Technology Fee (applied to all permits)</td>
<td>$11.00</td>
</tr>
<tr>
<td>Resubmittal Fee (All Permit Types)</td>
<td>$280.00 each resubmittal after the second</td>
</tr>
<tr>
<td>Change of General Contractor for Approved Permit</td>
<td>Residential $25</td>
</tr>
<tr>
<td></td>
<td>Commercial $250</td>
</tr>
<tr>
<td></td>
<td>Multi-Family $500</td>
</tr>
<tr>
<td>Change of Trade Contractor for Approved Permit</td>
<td>Residential $25</td>
</tr>
<tr>
<td></td>
<td>Commercial $35</td>
</tr>
<tr>
<td></td>
<td>Multi-Family $100</td>
</tr>
<tr>
<td>Parklets, Sidewalk Café and Public Rights-of-Way Application Fee</td>
<td>$200.00</td>
</tr>
<tr>
<td>Parklet Annual Fee</td>
<td>$100.00</td>
</tr>
<tr>
<td>Sidewalk Café Annual Fee</td>
<td>$50 (&lt; 49 square feet)</td>
</tr>
<tr>
<td></td>
<td>$100 (50-99 square feet)</td>
</tr>
<tr>
<td></td>
<td>$200 (100-199 square feet)</td>
</tr>
<tr>
<td></td>
<td>$300 (200-299 square feet)</td>
</tr>
<tr>
<td></td>
<td>$400 (300-399 square feet)</td>
</tr>
<tr>
<td></td>
<td>$500 (400-499 square feet)</td>
</tr>
<tr>
<td></td>
<td>$600 (500-599 square feet)</td>
</tr>
<tr>
<td></td>
<td>$700 (600-699 square feet)</td>
</tr>
<tr>
<td></td>
<td>$800 (700-799 square feet)</td>
</tr>
<tr>
<td></td>
<td>$900 (800-899 square feet)</td>
</tr>
<tr>
<td></td>
<td>$1,000 (&lt; 900 square feet)</td>
</tr>
</tbody>
</table>

## Licensing & Renewal Fees

<table>
<thead>
<tr>
<th>License Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Contractor</td>
<td>$168.00 initial fee</td>
</tr>
<tr>
<td></td>
<td>$150.00 annual renewal fee</td>
</tr>
<tr>
<td>All other Trade &amp; Misc Licenses required by ordinance</td>
<td>$85.00 per year local registration fee</td>
</tr>
</tbody>
</table>

*All multipliers should be rounded to the nearest whole number*
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Watershed Protection Plan Phase I</td>
<td>$800.00</td>
</tr>
<tr>
<td>Watershed Protection Phase II (with or without Site Prep)</td>
<td>$1,200.00 plus $50.00 /acre ($3,000 max)</td>
</tr>
<tr>
<td>Public Improvement Construction Plans (PICP)</td>
<td></td>
</tr>
<tr>
<td>Subdivision Improvements including more than one type of infrastructure (includes the entire limits of construction)</td>
<td>$2,250.00 plus $50.00 /acre ($4,000 max)</td>
</tr>
<tr>
<td>Individual Transportation or Utility Infrastructure Extensions (not to exceed the fee for more than one type of infrastructure)</td>
<td>$1,117.00 plus $5 per linear ft of each improvement</td>
</tr>
<tr>
<td>Out of City Utility Extension</td>
<td>$750</td>
</tr>
<tr>
<td>Out of City Utility Connection</td>
<td>$0</td>
</tr>
<tr>
<td>Weekend &amp; After Hours Public Improvement Inspection</td>
<td>$100.00/hour, 4 hour minimum</td>
</tr>
<tr>
<td>Site Preparation (requires engineer) (does not include WPP review)</td>
<td>$1,700.00 plus $50.00 /acre</td>
</tr>
<tr>
<td>Small Site Preparation</td>
<td>$300.00</td>
</tr>
<tr>
<td>Permit to install on-site sewage disposal system</td>
<td>$178.00</td>
</tr>
<tr>
<td>Traffic Impact Analysis (TIA)</td>
<td>$750.00</td>
</tr>
<tr>
<td>TIA (Worksheet)</td>
<td>$112.00</td>
</tr>
<tr>
<td>LOMR or LOMR without approved CLOMR</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>LOMR (with approved CLOMR)</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Residential (Type I) Driveway or Sidewalk</td>
<td>$29.00</td>
</tr>
<tr>
<td>Commercial (Type II) Driveway or Sidewalk</td>
<td>$56.00</td>
</tr>
<tr>
<td>ROW Maintenance/ Improvement Permit</td>
<td>5% of project value ($55.00min/$2,200.00 max)</td>
</tr>
<tr>
<td>driveway/Sidewalk Permit</td>
<td></td>
</tr>
<tr>
<td>My Permit Now Technology Fee (applied to all permits)</td>
<td>$11.00</td>
</tr>
<tr>
<td>On-premise signs</td>
<td>$2.50 per square ft ($50 min)</td>
</tr>
<tr>
<td>Off-premise signs / billboards</td>
<td>$280.00</td>
</tr>
<tr>
<td>Common Sense Plan</td>
<td>$280.00</td>
</tr>
<tr>
<td>Fence permit Fee</td>
<td>$50.00</td>
</tr>
<tr>
<td>Resubmittal Fee (All Permit Types)</td>
<td>$280.00 each resubmittal after the second</td>
</tr>
<tr>
<td>Reinspection Fee (2nd and subsequent inspections)</td>
<td>Residential $55.00, Multi-Family $300.00, Additional fee after 2nd Reinspection $100.00</td>
</tr>
<tr>
<td>Fee-in-lieu</td>
<td></td>
</tr>
<tr>
<td>Sidewalk Fee-in-Lieu</td>
<td>$6.00 per square ft</td>
</tr>
<tr>
<td>Protected Trees Fee-in-Lieu</td>
<td>$153.00 per Caliper inch</td>
</tr>
<tr>
<td>Heritage Tree Fee-in-Lieu</td>
<td>$305.00 per Caliper inch</td>
</tr>
<tr>
<td>Code SMTX: Water Quality Fee-in-Lieu</td>
<td>$14,629 / acre ($0.34 / square foot)</td>
</tr>
<tr>
<td>Code SMTX: Detention Fee-in-Lieu</td>
<td>$7.35 / sq. ft (up to 7,000 sq. ft. impervious cover)</td>
</tr>
<tr>
<td>Code SMTX: Detention Fee-in-Lieu</td>
<td>$4.477 / sq. ft. (7,001-28,000 sq. ft. impervious cover)</td>
</tr>
<tr>
<td>Code SMTX: Parking Fee-in-Lieu (reduction from 0.75 to 0.50 / bedroom)</td>
<td>$5,000 / parking space</td>
</tr>
<tr>
<td>Code SMTX: Parking Fee-in-Lieu (reduction from 0.75 to 0.50 / bedroom)</td>
<td>$10,000 / parking space</td>
</tr>
<tr>
<td>Code SMTX: Parkland Development Fee</td>
<td>$400.00 / unit</td>
</tr>
<tr>
<td>Code SMTX: Parkland Fee-in-Lieu</td>
<td>$375.00 / single family unit</td>
</tr>
<tr>
<td>Code SMTX: Parkland Fee-in-Lieu</td>
<td>$300.901 / multi-family unit</td>
</tr>
<tr>
<td>ROW Use Fees</td>
<td></td>
</tr>
<tr>
<td>Short Term ROW Closure Neighborhood/Non-Profit (24 Hrs or Less)</td>
<td>$25.00 application fee</td>
</tr>
<tr>
<td>Short Term ROW Closure Commercial (24 Hrs or Less)</td>
<td>$50.00 application fee</td>
</tr>
<tr>
<td>Long Term ROW Closure Commercial</td>
<td>$100.00 application fee + $100.00 / week (per lane per block)</td>
</tr>
<tr>
<td>Newsrack Application Fee</td>
<td>$50 per location, per publication</td>
</tr>
<tr>
<td>Newsrack Renewal Fee (Every 3 years)</td>
<td>$50 per location, per publication</td>
</tr>
<tr>
<td>Small Cell Application Fee</td>
<td>$500 per 5 network nodes, $250 each additional network node</td>
</tr>
<tr>
<td>Small Cell Pole Application Fee</td>
<td>$1,000 per pole</td>
</tr>
<tr>
<td>Floodplain Fees</td>
<td></td>
</tr>
<tr>
<td>Floodplain permit application (Single Family)</td>
<td>$29.00</td>
</tr>
<tr>
<td>Floodplain permit application (Commercial)</td>
<td>$168.00</td>
</tr>
<tr>
<td>Single Family Infill - City Flood Analysis Fee</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Floodplain Development Flood Analysis Review Fee</td>
<td>$1,500.00 plus $50 / acre (for acreage within floodplain)</td>
</tr>
</tbody>
</table>

* All multipliers should be rounded to the nearest whole number
# Zoning Review Fees

## Rezoning Requests

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Zoning Change (Existing Neighborhood Regulating Plan included)</strong></td>
<td>$1,000.00 plus $100 /acre ($3,000 max)</td>
</tr>
<tr>
<td><strong>Zoning Variance / Special Exception / Change In Status</strong></td>
<td>$700.00</td>
</tr>
<tr>
<td>Renotification Fee</td>
<td>$85.00</td>
</tr>
<tr>
<td>Residential Compatibility Site Plat</td>
<td>$85.00</td>
</tr>
</tbody>
</table>

## Conditional Use Permits

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conditional Use Permit / Alt. Compliance (All Types)</strong></td>
<td>$750.00*</td>
</tr>
<tr>
<td><strong>Conditional Use Permit / (Renewal or Amendment)</strong></td>
<td>$400.00*</td>
</tr>
<tr>
<td>Renotification fee</td>
<td>$85.00</td>
</tr>
<tr>
<td>Permit revocation proceeding</td>
<td>$165.00 per permit</td>
</tr>
</tbody>
</table>

## City Master Plan Amendments

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment to Preferred Scenario Map</td>
<td>$1,000.00 plus $100 /acre ($3,500 max)</td>
</tr>
<tr>
<td>Amendment to text of Master Plan, Capital Improvements Plan, Transportation Plan</td>
<td>$300.00</td>
</tr>
</tbody>
</table>

## Other Fees

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>My Permit Now Technology Fee (applied to all permits)</td>
<td>$11.00</td>
</tr>
<tr>
<td>Application for a License to Encroach</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Resubmittal Fee (All Permit Types)</td>
<td>$280.00 each resubmittal after the second</td>
</tr>
<tr>
<td>Incentive Agreements (MUD, PID, TIRZ, etc.)</td>
<td>$15,000</td>
</tr>
<tr>
<td>Annexation</td>
<td>$1,117.00</td>
</tr>
<tr>
<td>Development Agreements / Other Agreements (Oversizing, TDR, etc.)</td>
<td>$2,000.00 plus $100 /acre ($5,000 max)</td>
</tr>
<tr>
<td>Street or alley abandonment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Certificate of Appropriateness</td>
<td>No fee at this time</td>
</tr>
<tr>
<td>Appeal, if residence is located within 400 ft of the subject property</td>
<td>$100.00</td>
</tr>
<tr>
<td>Appeal, all other instances</td>
<td>$600.00</td>
</tr>
<tr>
<td>Amendment to Development Agreement, PDD, Incentive Agreement, etc.</td>
<td>$2,000.00 plus $100 /acre ($5,000 max)</td>
</tr>
<tr>
<td>Zoning Verification Letter</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

*All multipliers should be rounded to the nearest whole number
## Subdivision Review Fees

For Plats Located Inside/Outside of the City Limits

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subdivision Minor Plat / Amending Plat</td>
<td>$500.00 plus $100 /acre ($1,000 max)</td>
</tr>
<tr>
<td>Concept Plan / Intensity Zone Regulating Plan</td>
<td>$1,000.00 plus $50 /acre ($2,500 max)</td>
</tr>
<tr>
<td>Preliminary Plat</td>
<td>$1,000.00 plus $50 /acre ($2,500 max)</td>
</tr>
<tr>
<td>Final Plat</td>
<td>$1,250.00 plus $100 /acre ($2,500 max)</td>
</tr>
<tr>
<td>Replat, not administrative</td>
<td>$1,000.00 plus $50 /acre ($2,500 max)</td>
</tr>
<tr>
<td>Vacation of Previously Recorded Plat</td>
<td>$168.00</td>
</tr>
<tr>
<td>Subdivision Variance Request</td>
<td>$700.00</td>
</tr>
<tr>
<td>Cluster Development Plan</td>
<td>$29.00 per acre ($100 min / $1,500 max)</td>
</tr>
</tbody>
</table>

**Other Subdivision Fees**

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>My Permit Now Technology Fee (applied to all permits)</td>
<td>$11.00</td>
</tr>
<tr>
<td>Park Fee decision</td>
<td>$153.00</td>
</tr>
<tr>
<td>Resubmittal Fee (All Permit Types)</td>
<td>$280.00 each resubmittal after the second</td>
</tr>
</tbody>
</table>

*All multipliers should be rounded to the nearest whole number.*
File #: Ord. 2018-14(b), Version: 1

AGENDA CAPTION:
Consider approval of Ordinance 2018-14, on the second of two readings, amending Section 2.041 of the San Marcos City Code to update the frequency of Regular Meetings per month; including procedural provisions; and declaring an effective date.
Meeting date: May 1, 2018 - 1st Reading
May 15, 2018 - 2nd Reading

Department: City Clerk’s Office

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

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Background Information:
On December 19, 2017 the City Council adopted Ordinance 2017-67 on second reading which approved the following:

1. Reduced the number of regular meetings from 24 per year to 22 per year as authorized by the voters in Proposition E of the 2017 Special Charter Election.
2. Changed the day of the first regular meeting in November from the first Monday to the first Wednesday of that month.
3. Changed the day for first regular meeting in October from the first Tuesday to the first Monday of that month to resolve a scheduling conflict with the National Night Out event.

Staff recently realized that the current language requires all regular meetings to be held on the first and third Tuesdays of the month, and does not allow for any other Tuesday (May 29, 2018 for example) to count as a regular meeting. In order to have a meeting held on any other day count as a regular meeting Section 2.041 needs to be amended.

Council Committee, Board/Commission Action:
N/A

Alternatives:
Click or tap here to enter text.

Recommendation:
Approve the attached Ordinance to allow for the May 29 meeting to count as a regular meeting.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SAN MARCOS, TEXAS, AMENDING SECTION 2.041
OF THE SAN MARCOS CITY CODE TO UPDATE THE
FREQUENCY OF REGULAR MEETINGS PER MONTH;
INCLUDING PROCEDURAL PROVISIONS; AND
DECLARING AN EFFECTIVE DATE.

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

SECTION 1. Section 2.041 of the San Marcos City Code is hereby amended to read as
follows:

Section 2.041. Time of Meetings.

In accordance with Section 3.09 of the City Charter, the city council shall hold
twenty-two regular meetings, at a minimum, each year. Regular meetings of city council shall be
held at 6:00 p.m. on the first and third Tuesdays of the month with the exception of the
following: when the first Tuesday regular meeting in November is also a uniform election date
the meeting will be which is held on the first Wednesday of that month, and with the exception
of the first regular meeting in October which is held on the first Monday of that month, or any
date approved as a regular meeting date by city council at a posted meeting.

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

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

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

CONSIDERED AND APPROVED on first reading on May 1, 2018.

CONSIDERED, APPROVED, AND ADOPTED on second reading on May 15, 2018.

John Thomaides
Mayor
Attest:          Approved:

Jamie Lee Case               Michael J. Cosentino
City Clerk                   City Attorney
AGENDA CAPTION:
Consider approval of Resolution 2018-71R, approving the award of an Engineering Services Contract to Walker Partners, LLC. for the Red Sky Water Improvements Project to replace the current of two inch waterline along Horace Howard Dr. with an eight inch waterline for the estimated purchase amount of $199,998.00, contingent upon the provision of sufficient insurance; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the city and declaring an effective date.

Meeting date: May 15, 2018

Department: Engineering and Capital Improvements

Amount & Source of Funding
Funds Required: $199,998.00
Account Number: C166
Funds Available: $200,000.00
Account Name: RED SKY WATER IMPROVEMENTS

Fiscal Note:
Prior Council Action: None

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

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

Background Information:
This professional engineering contract with Walker Partners, LLC covers the design and construction phase services for the replacement of 5,070 LF (approx.) of 2” water line along Horace Howard Dr. with an 8” water line. This is an area within the City's water CCN where the number of connections exceeds TCEQ requirements. This will also provide fire protection for the area.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends approval of this agreement.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF AN ENGINEERING SERVICES CONTRACT TO WALKER PARTNERS, LLC. FOR THE RED SKY WATER IMPROVEMENTS PROJECT TO REPLACE THE CURRENT OF TWO INCH WATERLINE ALONG HORACE HOWARD DR. WITH AN EIGHT INCH WATERLINE FOR THE ESTIMATED PURCHASE AMOUNT OF $199,998.00, CONTINGENT UPON THE PROVISION OF SUFFICIENT INSURANCE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASE DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of an engineering services contract to Walker Partners, LLC. for the Red Sky Water Improvements Project to replace the current of two inch waterline along Horace Howard Dr. with an eight inch waterline for the estimated amount of $199,998.00, contingent upon the provision of sufficient insurance, is approved.

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

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

ADOPTED this the 15th day of May 2018.

John Thomaides
Mayor

Attest:

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

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

The Owner: The City of San Marcos, Texas

and

The Professional Firm: Walker Partners, LLC

for

The Project: Red Sky Water Improvements

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

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM’S SERVICES

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

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional Firm agrees to use Professional Firm's best efforts, skill, judgment, and abilities so as to perform Professional Firm's Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.
Professional Firm agrees to perform Professional Firm's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

Professional Firm's Services shall be reasonably accurate and free from material errors or omissions. Professional Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Professional Firm without any additional cost or expense to Owner.

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

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

**ARTICLE 3**
**THE OWNER'S RESPONSIBILITIES**

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

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

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

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Firm's Services.
The Owner designates Shaun Condor, P.E., P.M.P., as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner’s representative is listed below:

Name: Shaun Condor, P.E., P.M.P.  
Title: Senior Engineer  
630 East Hopkins  
San Marcos, Texas 78666  
Ph. 512-393-8134  
E-mail: SCondor@sanmarcostx.gov

ARTICLE 4  
OWNERSHIP AND USE OF DOCUMENTS

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

ARTICLE 5  
DISPUTE RESOLUTION

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

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Professional Firm agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Professional Firm will share the mediator’s fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
ARTICLE 6
PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.
Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

1 Prior to commencing performance under this Agreement, Professional Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm’s services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm’s list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it. and;

2 Any payment made by the Owner to Professional Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Professional Firm’s use of any such subconsultant, subcontractor or agent of Professional Firm under this Agreement.

Limitation of Liability. In recognition of the relative risks and benefits of the Agreement to both the Owner and Professional Firm, to the fullest extent permitted under applicable law, Owner agrees that Professional Firm's total liability for any and all claims, losses, costs, damages, or expenses including, without limitation, reasonable attorneys' fees and costs, of any nature whatsoever, shall not exceed the Professional Firm's total fee under the Agreement. It is intended that this limitation of liability shall apply to any and all liability or cause of action, whether in contract, warranty, tort, or otherwise, however alleged or arising.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner may terminate the Agreement at any time upon 30-calendar days notice in writing to Professional Firm. Upon receipt of such notice, Professional Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Professional Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:
The parties may designate alternative persons or addresses for receipt of notices by written notice.

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

ARTICLE 8
REIMBURSABLE EXPENSES

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

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

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

Professional models and renderings if requested by the Owner.

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

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.
Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Professional Firm.

**ARTICLE 9
ADDITIONAL SERVICES**

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

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

**ARTICLE 10
PAYMENTS TO PROFESSIONAL FIRM**

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

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

Owner shall have the right to withhold from payments due Professional Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of Professional Firm to perform its obligations under this Agreement.
ARTICLE 11
PROFESSIONAL FIRM’S ACCOUNTING RECORDS

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

ARTICLE 12
INSURANCE

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

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

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

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

Upon request Professional Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in Exhibit 1.

ARTICLE 13
INDEMNITY

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

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

Service Fees: The maximum fee for Professional Firm’s Services shall not exceed One-Hundred Ninety-Nine Thousand, Nine-Hundred Ninety-Eight Dollars and Zero Cents ($199,988.00).

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

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

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

OWNER:  
THE CITY OF SAN MARCOS  

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

PROFESSIONAL FIRM:  
WALKER PARTNERS, LLC  

By: ____________________________
Name: John Lindner, P.E.
Title: Chief Operating Officer
Date: ____________________________

Exhibits:  
EXHIBIT 1 – Scope of Services and Deliverables  
EXHIBIT 2 – Authorization of Change in Service Form  
EXHIBIT 3 – Detailed Fee Schedule  
EXHIBIT 4 – Project Schedule
EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES

(See Next Page)
EXHIBIT 1
CITY OF SAN MARCOS
Red Sky Water Improvements
SCOPE OF SERVICES

Project Understanding

The work to be performed by Walker Partners, LLC. Walker Partners under this contract will consist of providing Preliminary Design (30%), Design Phase (90%, 99%, 100% Documents), Bid and Construction Phase Services for the Red Sky Water Improvements project. The project consists of the following improvements:

- General Description – the replacement of approximately 5,800 linear feet of 2” water main with an 8” water main along Horace Howard Dr., from Old Bastrop Hwy. to 330-feet southwest of the intersection with Primrose Way. All existing water meters will be relocated to the property/easement line, also.

Basic Scope of Services

Phase A – Preliminary Design Phase (30%)

1. Project Management and QA/QC: This task consists of effort associated with project administration, coordination with City staff, coordination and supervision of the project team, and quality management so that project milestones and deliverables meet schedule and budget constraints.

2. Meetings

   a. Project Kick-Off Meeting: One (1) project kick-off meeting has been budgeted for the Preliminary Design Phase. It is assumed that the meeting will be held prior to beginning 30% design. Walker Partners will attend meetings with City of San Marcos Staff to determine project constraints and needs as well as discuss design considerations.

   b. Utility Coordination Meeting: One utility coordination meeting has been budgeted for the Preliminary Design Phase. It is assumed that the meeting will be held after submittal of the 30% schematic, and that the meeting will be organized by the City. Walker Partners will attend the meeting with City of San Marcos Staff to confirm that utility conflicts are not anticipated and/or resolve all utility conflicts identified.

   c. Project Meeting: One project meeting has been budgeted for the Preliminary Design Phase, following each milestone submittal (30%).

3. Deliverables:

   a. Monthly Status Report: Walker Partners will provide a monthly status report, including a brief summary of work completed.

   b. 30% Schematic: Walker Partners will provide two (2) hard copies of 11” x 17” schematic plan sheets and one (1) pdf electronic copy. At a minimum, the cut sheets will contain the following:

      i. Project Layout Sheet: Walker Partners will provide a layout of the project with plan sheet references.

      ii. Water Line Plan Sheets: Estimated Number of Sheets – twelve (12).

1. Identify Utility Providers
EXHIBIT 1
CITY OF SAN MARCOS
Red Sky Water Improvements
SCOPE OF SERVICES

2. Determine Proposed Alignment(s)

3. Identify Utility Conflicts

4. Identify Easement/Land Acquisition Requirements

   iii. Description of Permit Requirements


   v. Engineer's Opinion of Probable Construction Costs (OPCC).

   vi. Construction Project Schedule: Walker Partners will develop a Construction Schedule for the project consisting of design, bid and construction phases. The schedule will be updated during design.

   vii. Design Checklist

c. 30% Comment Responses on City’s redlines.

Phase B – Design Phase (90/99/100%)

1. Project Management and QA/QC: This task consists of effort associated with project administration, coordination with City staff, coordination and supervision of the project team, and quality management so that project milestones and deliverables meet schedule and budget constraints.

2. Meetings

   a. Project Meetings: Three (3) project meetings have been budgeted for the Design Phase, following each milestone submittal (90/99/100%).

3. Public Meetings: One (1) public meeting has been budgeted which consists of preparing exhibits and attending the meeting.

4. Tasks

   a. Traffic Control: Walker Partners will identify traffic control requirements and provide standard traffic control details for construction of the improvements. A detailed traffic control plan is not part of this scope, but rather will be required as a submittal by the Contractor.

   b. Permitting

      i. Hays County Permit Application: Walker Partners will prepare a utility permit application for the City to submit to Hays County.

      ii. Enterprise Products Permit: Walker Partners will coordinate with Enterprise Products to obtain a letter of no objection from Enterprise Products to encroach on the pipeline right-of-way.

5. Deliverables:
a. Monthly Status Report: Walker Partners will provide a monthly status report, including a brief summary of work completed.

b. 60%: Submittal removed from scope.

c. 90%: Walker Partners will provide four (4) hard copies of 11” x 17” plan sets and one (1) pdf electronic copy. The plan set will also contain the following:
   i. Cover Sheet
   ii. General Notes: Estimated Number of Sheets – four (4).
   iii. Project Layout Sheet: Walker Partners will provide a layout of the project with plan sheet references.
   iv. Overall Quantity Sheet: Walker Partners will provide a quantity table that includes individual sheet quantities and the overall project quantities.
   v. Water Line Plan Sheets: Estimated Number of Sheets – twelve (12).
      1. Water Line Detail Sheets: Estimated Number of Sheets – four (4).
   vi. E&S Control and Tree Protection Plans: Estimated Number of Sheets – six (6).
      1. SWPPP – TXDOT Template: Estimated Number of Sheets – one (1).
      2. EPIC – TXDOT Template: Estimated Number of Sheets – one (1).
      3. E&S Control and Tree Protection Details: Estimated Number of Sheets – one (1).
   vii. Traffic Control Standard Details: Estimated Number of Sheets – three (3).
   viii. Engineer's OPCC.
   ix. Technical Specifications
   x. Construction Project Schedule.
   xi. Bid Form
   xii. Design Checklist

d. 90% Comment Responses on City’s redlines.

e. 99%: Walker Partners will provide four (4) hard copies of 11” x 17” plan sets and one (1) pdf electronic copy.
   i. Plans and specifications with all comments addressed.
   ii. Engineer's OPCC.
EXHIBIT 1
CITY OF SAN MARCOS
Red Sky Water Improvements
SCOPE OF SERVICES

iii. Construction Project Schedule.

iv. Bid Form

v. Design Checklist

f. 99% Comment Responses on City’s redlines.

g. Final 100%: Walker Partners will provide two (2) hard copies of 11” x 17” plan sets and one (1) pdf electronic copy. Upon approval by the City, two (2) hard copies of 11” x 17” plan sets, one (1) pdf copy, and one (1) CAD copy of the sealed plans will be provided.

i. Plan Set.

ii. Technical Specifications

iii. Engineer's OPCC.

iv. Construction Project Schedule.

v. Bid Form

vi. Design Checklist

Phase C – Bid Phase

1. Project Management: This task consists of routine communication with the City and other activities associated with managing the project.

2. Attend Pre-Bid Meeting: Walker Partners will assist the City in conducting pre-bid meeting and developing the agenda.

3. Answer Questions: Walker Partners will coordinate with the City for issuing responses for technical questions and requests for additional information from potential bidders.

4. Addenda: Walker Partners will prepare addenda required to clarify, correct or change the bid documents. One (1) addendum has been budgeted. Addenda will be provided in Adobe .pdf (searchable) format and sealed by responsible engineer(s). Addenda will be issued to bidders through the City’s Purchasing Department.

5. Bid Tabulation and Recommendation of Award: Walker Partners will assist the City in opening of bids, review all bids and evaluate them for responsiveness and bid amount. Walker Partners will also check references, by telephone, of the low bidder and second low bidder. Walker Partners will prepare a letter summarizing the review and evaluation and include recommendations for award of the contract for construction, or other action as may be appropriate. The City will make the final decision on the award of the contract for construction and the acceptance or rejection of all bids.

6. Deliverables: Walker Partners will incorporate addenda items in the Construction Plans; include addenda in the bound Project Manual; and issue a “Conformed” set of plans for construction.

   a. Bid Form: Walker Partners will provide the Bid Form in Word Document format.
b. Technical Specifications: Walker Partners will provide one (1) pdf electronic copy of the Technical Specifications.

c. Conformed Plans: Walker Partners will provide one (1) electronic copy of Construction Plans in pdf, one (1) CAD copy, and two (2) 22” x 34” plan set, three (3) 11” x 17” plan sets.

Phase D – Construction Phase

1. Project Management: This task consists of routine communication with the City; managing, manpower, budgets, and schedules; invoicing; and other activities associated with managing the project.

2. Attend Pre-Construction Conference: Walker Partners will attend a Pre-Construction Conference prior to commencement of work.

3. Submittal Review: Walker Partners will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which the Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Twenty-five (25) submittals have been assumed.

4. Response to Requests for Information/Modifications: Walker Partners will respond to reasonable and appropriate Contractor requests for information (RFI’s) and issue necessary clarifications and interpretations of the Contract Documents to the City as appropriate to the orderly completion of Contractor’s work. Two (2) RFI’s have been assumed.

5. Project Meetings and Site Visits: Five (5) on-site project meetings have been budgeted for the Construction Phase, once per month to review progress and pay applications with the City and Contractor. Two (2) site visits have been budgeted for the Construction Phase to meet between project meetings, as directed by the City.

   a. Pay Application Review: Based on the observations made during the monthly on-site project meetings and on review of applications for payment and accompanying supporting documentation from the City, Walker Partners will recommend Contractor be paid in writing on the City’s pay application form. Such recommendations of payment will be in writing and will constitute Walker Partners’ representation to Client, based on such observations and review, that, to the best of Walker Partners’ knowledge, information and belief, Contractor’s work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Walker Partners’ recommendations of payment will include determinations of quantities and classifications of Contractor’s work, based on observations made during monthly on-site project meetings and the City Inspector’s measurements of quantities provided with pay requests.

6. Review of Change Orders: Walker Partners may recommend Change Orders to Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. Two (2) Change Orders have been assumed.

7. Substantial Completion: Walker Partners will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor,
conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, Walker Partners considers the Work substantially complete, Walker Partners will notify Client and Contractor.

8. Final Notice of Acceptability of the Work: Walker Partners will not conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents. At the request of the City, Walker Partners may recommend, in writing, final payment to Contractor.

9. Deliverables: As noted above.

Phase E – Record Drawings

1. Record Drawings: Walker Partners will review the Contractor’s redline as-built drawings and incorporate deviations from the construction drawings as appropriate. Record drawing information for buried water line will be based solely on the provided marked-up drawings and appropriate field documentation received from the City. Walker Partners will deliver one (1) set of full size bond drawings, one (1) pdf electronic copy and one (1) CAD copy for review.

2. Deliverables: After review, Walker Partners will deliver two (2) sets of full size bond drawings, two (2) 11” x 17” plan sets, one (1) pdf electronic copy and one (1) CAD copy, with surface to grid conversion scale factor.

Supplemental Scope of Services

1. Topographic and Tree Survey: Walker Partners will prepare topographic and tree survey for the limits of the “Red Sky” scope inside public right-of-way/easements, as shown in the attached exhibit (Exhibit A), for the purpose of preparing Design Documents. Walker Partners will prepare an electronic map showing the following:

   a. Existing trees, size and type (at minimum caliper inches required by City CIP) – 24” and above caliper for Native Oaks, Elms, Madrone, and Pecan, Celtis Occidentalis (Hackberry), Juniperus Virginiana, Juniperus Ashei (Common Cedar), Chinaberry, mesquite and Ligustrum trees per San Marcos City Ordinances, Section 5.5.2.2-(g)(2).

   b. Shot at top of nut of water and gas valves. Water, Sewer, and Drainage maps will be required to be provided by City prior to survey.

   c. Identify all visible and above grade utilities, and manholes with invert elevations and tied to existing control points/ City bench marks (if any). Walker Partners will rely on the location of subsurface utilities as located and marked by one-call utility locators, City staff, and/or City’s subsurface utility engineer.

   d. Full topography at the intersections of Old Bastrop Highway and Dachstund Street.

2. Boundary Verification – Roadway Easement Location. No monuments were called to be set at the corners and angle points in the easement for Horace Howard Dr. Our survey department will need to locate the front corners of all the properties along Horace Howard Dr. to insure an accurate determination of the limits of the easement.

3. Boundary Survey: At the request of the City, Walker Partners will prepare legal description and exhibits for up to three (3) parcels determined by the City.
4. **Temporary Construction Easement Exhibits:** At the request of the City, Walke Partners will prepare temporary construction easement exhibits for up to eighteen (18) parcels determined by the City. Exhibits shall be 8.5” x 11” color pdf electronic copies. Exhibits will graphically show the limits of the easements on an aerial background with the length, width and area of the temporary construction easement. **Metes and bounds descriptions will not be provided for temporary construction easement exhibits.** The exhibit will be used by the City to acquire a temporary construction agreement and is not intended to be recorded.

5. **Environmental and desktop archeological service:** Cox McLain Environmental Consulting will provide environmental and desktop archeological services as described in their proposal attached to this scope of services.

6. **As-built Survey – Visible Features of Water Line Installed:** Walker Partners will mobilize for one day in the field and prepare a survey of the visible features of the water line installed above ground, for preparing Record Drawings. Walker Partners will prepare an electronic map showing the following:
   a. Shot at top of nut of water valves.
   b. Identify all visible and above ground water appurtenances and meters.

**Schedule**

The following project milestones are estimated and may require modification pending preliminary engineering results and construction permitting constraints:

- Topographic and Boundary Survey (60 calendar days)
- 30% Design Documents Submittal (30 calendar days)
- Additional Topographic and Boundary Survey (as needed) and SUE (30 calendar days)
- 90% Design Documents Submittal (75 calendar days)
  - Hays County Utility Permit and Enterprise Products LONO (60 calendar days)
- 99% Design Documents Submittal (30 calendar days)
- 100% Design Documents Submittal (30 calendar days)

The estimated timeframes identified do not include time for City review of submittals.

**City Responsibilities**

1. The City will provide to Walker Partners all data in the City’s possession relating to Walker Partners’ services on the Project. Walker Partners will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.

2. The City will give prompt notice to Walker Partners whenever the City observes or becomes aware of any development that affects the scope or timing of Walker Partners’ services.

3. The City will examine information submitted by Walker Partners and render in writing or otherwise provide comments and decisions in a timely manner.

4. The City will obtain all necessary right-of-entries from required landowners.

5. The City will provide Title Reports for properties with proposed easements.
EXHIBIT 1
CITY OF SAN MARCOS
Red Sky Water Improvements
SCOPE OF SERVICES

6. The City will obtain all permanent water line, access, and temporary construction easements, including services such as appraisal of properties, negotiations with the property owners, and actual purchase of the easements.

7. The City will provide on-site construction observation services during the construction phase and will confirm the accuracy of the Contractor’s as-built red lines.

8. The City will provide Subsurface Utility Engineering. Two (2) Level A potholes are anticipated: Enterprise Products Pipeline crossing and 8-inch water line connection on Dachshund St.

9. The City will provide a geotechnical data report containing construction recommendations for open trench construction. Number of soil borings to be determined by geotechnical engineer procured by the City.

10. The City will provide a soil corrosion analysis with recommendations for corrosion protection.

11. The City will provide pipe diameter, class and test pressures based on hydraulic and surge analysis performed by others.

12. The City will provide the Primrose Way Water Improvements plans and specifications, and record drawings when available.

13. The City will provide material testing during construction.

Additional Services

Additional Services to be performed, if authorized in writing by the City, but which are not included in the above-described Basic and Supplemental Scope of Services, and once a mutually agreed upon fee is negotiated are as follows:

1. Performing Geotechnical Investigation, Soil Analysis or Subsurface Utility Engineering.

2. Performing title searches for easement or joint-use agreement preparation.

3. Preparation of additional easement/boundary exhibits beyond the number identified in the Scope of Services.

4. Preparation of mill and overlay plans, roadway plans, pavement designs, drainage plans, driveway plans, culvert plans, roadway cross-sections, sidewalk plans, utility relocation plans, and/or dry utility plans.

5. Acting as an agent of the City in the acquisition of permanent or temporary easements.

6. Preparation of platting documents and/or real property survey for site acquisition.

7. Accompanying the City when meeting with the TCEQ, U.S. Environmental Protection Agency, or other regulatory agencies during the course of the Project, beyond those meetings identified above.

8. Preparing applications and supporting documents for government grants, loans, or planning advances.

8
9. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the City.

10. Providing professional services associated with the discovery of any hazardous waste or materials in the project site.

11. Topographic survey of underground water line and appurtenances prior to burial.

Assumptions

The services described above are based on the following assumptions.

1. Plan sheets will be formatted to plot on 11" x 17" paper with a minimum horizontal scale of 1"=40' and a vertical scale of 1"=10'. Assumed thirty-five (35) sheets.

2. Only two (2) permits will be required: Hays County Utility Permit and Enterprise Products Letter of No Objection.

3. Walker Partners will only prepare for and attend one (1) public meeting.

4. Walker Partners will rely on the location of subsurface utilities as located and marked by one-call utility locators, City staff, and/or City’s subsurface utility engineer.

5. The proposed surveying services do not include the following:
   a. Tree location less than 8-inch diameter.
   b. Abstract of Title, easements, restrictions or other encumbrances.
   c. Construction staking.

6. The assumptions included in the attached proposal by Cox McClain.

7. Geotechnical Engineering and Soil Analysis will be performed by others.

8. Subsurface Utility Engineering will be performed by others.

9. Hydraulic and surge analysis will be performed by others.

10. The Contractor will prepare and submit a TCEQ Stormwater Pollution Prevention Plan and the required notifications during construction. The TXDOT SWPPP, E&S Control and Tree Protection Plans, and Bid Form prepared by Walker Partners will be used by the City and Contractor for bidding purposes only.

11. Eighteen (18) water service connections were assumed.

12. Submittal reviews will require two (2) hours per submittal for the first submittal and one (1) hour per re-submittal, and that one-third of the submittals will be re-submitted for a second review.

13. The City will provide on-site construction observation and inspection.
14. Record drawings will only require updates to the water plan and profile sheets.

15. The City of San Marcos has review authority, such that plans and specifications are not required to be submitted to TCEQ for review and approval.

16. Assumed six (6) month construction duration from notice-to-proceed to substantial completion.

17. Assumed one (1) mobilization for as-built survey.
March 2, 2018

Eric L. Nelson, P.E.
Walker Partners
804 Las Cimas Parkway, Suite 150
Austin, TX 78746

Re: CMEC Proposal for Environmental and Archeological Services to Support the City of San Marcos Red Sky Water Line Project, Hays County, Texas

Dear Mr. Nelson,

Cox|McLain Environmental Consulting, Inc. (CMEC) is pleased to submit this proposal to provide environmental and desktop archeological services for the above-referenced project, which would consist of approximately one mile of water pipeline replacement in Hays County, Texas (see Attachment A). According to information provided by Walker Partners, the project will involve the open-cut installation of an eight-inch water line along the same alignment as an existing two-inch line. Depth of excavation is expected to be approximately four feet (typical) to a maximum of ten feet (to clear an existing natural gas pipeline). CMEC understands that the project will be owned and funded by the City of San Marcos, with no federal component. Therefore, the project is subject to the Antiquities Code of Texas but not Section 106 of the National Historic Preservation Act (NHPA) or National Environmental Policy Act (NEPA).

CMEC Firm Profile

CMEC is a WBE/DBE/HUB-certified environmental and cultural resources consulting firm headquartered in Austin and with offices in the Dallas-Fort Worth metroplex, Houston, and Tulsa, Oklahoma. Our staff includes biologists, wetland ecologists, planners, GIS specialists, archeologists, archival researchers, architectural historians, and a historic architect. In addition to environmental services such as NEPA documentation, wetland/Section 404 permit support, Endangered Species Act (ESA) field work and regulatory consultation, and socioeconomic/environmental justice and community impact analysis, CMEC conducts cultural resource permit/research design coordination, archeological and historic structure surveys, National Register of Historic Places (NRHP) and State Antiquities Landmark (SAL) eligibility assessments and nominations, Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) documentation, and other cultural resource studies. Our staff members have managed hundreds of environmental and cultural resources projects for cities, counties, agencies, and other entities throughout Texas, including approximately 35 projects for the City of San Marcos and Hays County. Most recently, CMEC coordinated with the THC on behalf of Hays County to propose an avoidance plan for unmarked burials at San Pedro Cemetery along Posey Road near Old Bastrop Highway, just south of the Red Sky project.

Scope of Work – THC Coordination

CMEC cultural resources professionals will conduct searches of the Texas Historical Commission’s (THC’s) restricted Sites Atlas and other data sources to identify previously documented archeological sites, cemeteries, historical markers, properties and districts listed on the NRHP, and SALs. CMEC will integrate the results of the searches with soil information, topographic maps, aerial photographs, and other pertinent information to formulate an assessment of the project’s potential to cause impacts to archeological resources and recommend next steps. These findings and recommendations will be presented in a standard-format short coordination letter to the THC for review under the Antiquities Code of Texas. Based on preliminary background research and the parameters of the project, it is unlikely an archeological survey will be required. No archeological field services are included here but could be scoped and budgeted separately if required by the THC.
Scope of Work – Environmental Field Visit and Technical Memorandum

CMEC environmental scientists will perform a desktop review of resources in the project area, including protected species, potential habitat, and water resources. CMEC will also evaluate the project’s potential to require permitting or other agency coordination prior to construction (e.g., USFWS, USACE, and/or TCEQ). All findings and recommendations will be presented in a brief memorandum to be submitted to Walker Partners and the City for review and comment. This scope does not include preparation of an Edwards Aquifer Protection Plan or formal USFWS or USACE coordination materials; these and other documents could be provided under separate scope and budget, if required.

Assumptions and Exclusions

- Assumes total project footprint of one mile along existing two-inch water pipeline.
- Assumes no federal nexus.
- Additional exclusions: NEPA documentation; public involvement coordination; biological or water resources field study; right-of-entry coordination; geologic assessment; human environment/demographic services, Section 4(f) services; biological or cultural resources mitigation plans; USACE permitting or formal coordination; USFWS coordination or species presence/absence surveys; Edwards Aquifer coordination; construction phase services; hazardous materials Phase I or Phase II ESAs; historic buildings/structures reconnaissance, intensive study, NRHP nominations, or HABS/HAER documentation; archeological survey, monitoring, testing, or data recovery; archeological trenching; human remains evaluation, coordination, removal, or reinterment; or artifact processing, detailed analysis, or curation. All excluded services could be provided under separate scope/budget.

The environmental and archeological services described above will be completed for a fee of $2,550.46, to be billed on a lump-sum basis. Please see the attached spreadsheet (Attachment B) for a detailed breakdown of costs. This fee proposal is valid for 180 days.

CMEC greatly appreciates the opportunity to submit this proposal. Please feel free to contact me at 512-338-2223 or chris@coxmclain.com if you have any questions.

Sincerely,

Chris Dayton, PhD, RPA
Cultural Resources Program Manager

The above proposal is accepted.

WALKER PARTNERS

By: ___________________________  Its: ___________________________

Date: __________________________

COX | MCLAIN ENVIRONMENTAL CONSULTING, INC.

By: ___________________________  Its: Principal

Date: __________________________
Attachment A – Preliminary Project Layout as of February 2018

RED SKY - ADDED SCOPE:
Construct 8" Water Line
≈700 LF

RED SKY:
Construct 8" Water Line
≈4,370 LF
## Attachment B – Cost Proposal

### Walker Partners - City of San Marcos Red Sky Water Line, Hays County, TX - Environmental Tech Memo and THC Coordination

**Cox McLain Environmental Consulting, Inc.**

### LABOR

<table>
<thead>
<tr>
<th>Description</th>
<th>Env. Project Manager</th>
<th>Sr. Env. Scientist II</th>
<th>Sr. Env. Scientist I</th>
<th>Env. Prof. II</th>
<th>Env. Prof. I</th>
<th>Env. Staff II</th>
<th>Env. Staff I</th>
<th>Env. Tech II</th>
<th>Env. Tech I</th>
<th>Admin/ Clincal/ Tech Edi</th>
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### Rate

- $143.70
- $126.58
- $108.77
- $81.58
- $78.45
- $65.27
- $59.83
- $48.94
- $42.15
- $54.39

### SUBTOTAL Labor Cost

- $0
- $253
- $870
- $0
- $628
- $522
- $0
- $0
- $169
- $109
- $2,550.46

### EXPENSES

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<th>Quantity</th>
<th>Rate</th>
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<td>Per Diem</td>
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**TOTAL Nonlabor Expenses**

- $0.00

Notes/Assumptions: Assumes project area of approximately 1 mile. Assumes Walker and/or COSM would provide/negotiate right of entry such that environmental field visit could be accomplished in one trip. Exclusions: NEPA documentation; public involvement coordination; right-of-entry coordination; geologic assessment; human environment/demographic services; Section 4(f) services; biological or cultural resources mitigation plans; USACE permitting or formal coordination; USFWS coordination or species presence/absence surveys; Edwards Aquifer coordination; construction phase services; hazardous materials Phase I or Phase II ESAs; historic buildings/structures reconnaissance, intensive study, NRHP nominations, or HAER documentation; archeological survey, monitoring, testing, or data recovery; archeological trenching; human remains examination, coordination, removal, or reinterment; or artifact processing, detailed analysis, or curation. All excluded services could be provided under separate scope/budget.

**TOTAL COSTS - CMEC**

- $2,550.46

---

**8401 Shoal Creek Blvd., Suite 100, Austin, TX 78757  512.338.2223**
EXHIBIT 2
AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

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

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: $___________ (NTE annual fee)
Net increase/decrease in contract amount: $_______-0-
Revised annual Agreement amount: $___________ (NTE annual fee)

Contractor Name

By: _______________________________ Date: __________________

______________________________
Printed Name, Title

Approved by:

City of San Marcos: Date: __________________

By: _______________________________

______________________________
Printed Name, Title

City Department (PM, etc.) only below this line.

Account Number(s): ______________________.
Previous Changes in Service:
#_____ ; date; amount
#_____ ; date; amount
#_____ ; date; amount
#_____ ; date; amount
EXHIBIT 3
DETAILED FEE SCHEDULE

(See Next Page)
## EXHIBIT 3 - FEE ESTIMATE

City of San Marcos, Texas
Red Sky Water Improvements

<table>
<thead>
<tr>
<th>Staff</th>
<th>Civil Subconsultant</th>
<th>Lump Sum Items</th>
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### Professional Service Description

#### Phase A - Preliminary Design Phase (30%)

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<tr>
<td>Coordination with City Staff</td>
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<tr>
<td>Coordination with Subconsultants</td>
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<tr>
<td>QC Review and Address QC Comments - 30%</td>
<td>6</td>
<td>$705</td>
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<tr>
<td>Project Accounting and Administration</td>
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<td>Kick Off Meeting</td>
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<tr>
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<td>$1,080</td>
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<tr>
<td>Prepare 30% Plans - Cover Sheet</td>
<td>8</td>
<td>$970</td>
</tr>
<tr>
<td>Prepare 30% Plans - Project Layout Sheet</td>
<td>8</td>
<td>$970</td>
</tr>
<tr>
<td>Prepare 30% Plans - Water Line Plan Sheets (12)</td>
<td>32</td>
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<tr>
<td>Prepare Tree Removal Exhibit (on Erosion and Sedimentation Control Plan Sheets) (6)</td>
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<td>30% Comment Responses</td>
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#### Phase B - Design Phase (90/99/100%)

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<td>99% Review Meeting</td>
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## EXHIBIT 3 - FEE ESTIMATE

City of San Marcos, Texas
Red Sky Water Improvements

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<td>4</td>
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<td>12</td>
<td>$1,410</td>
<td>6</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Prepare for and Attend Pre-construction Conference</td>
<td>12</td>
<td>$1,380</td>
<td>4</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Shop Drawing/Submittal Review (25)</td>
<td>60</td>
<td>$6,650</td>
<td>10</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>6 Requests for Information (RFIs) (2)</td>
<td>38</td>
<td>$4,300</td>
<td>4</td>
<td>16</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Construction Site Visits and Progress Meetings (7)</td>
<td>42</td>
<td>$5,630</td>
<td>21</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>8 Requests for Proposals (RFPs) and Change Orders (COs) (2)</td>
<td>16</td>
<td>$1,600</td>
<td>4</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 Attend Substantial Completion Walk-through and Prepare Punchlist</td>
<td>20</td>
<td>$2,400</td>
<td>8</td>
<td>8</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Final Notice of Acceptability of Work</td>
<td>2</td>
<td>$330</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Phase E - Record Drawings</strong></td>
<td>33</td>
<td>$3,685</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Prepare and Submit Record Drawings</td>
<td>13</td>
<td>$1,685</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>END BASIC SERVICES</strong></td>
<td>1,281</td>
<td>$127,010</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Basic Service Hours</strong></td>
<td>29</td>
<td>337</td>
<td>398</td>
<td>436</td>
<td>81</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>

### Supplemental Services

<table>
<thead>
<tr>
<th>Supplemental Services</th>
<th>Total Basic Service Hours</th>
<th>29</th>
<th>337</th>
<th>398</th>
<th>436</th>
<th>81</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-1 Topographic and Tree Survey</td>
<td>0</td>
<td>$18,300</td>
<td>38,200.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S-2 Boundary Verification - Roadway Easement Location</td>
<td>0</td>
<td>$7,200</td>
<td>7,200.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S-3 Boundary Survey (8 Permanent Easement Descriptions with Exhibits)</td>
<td>0</td>
<td>$7,500</td>
<td>7,500.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S-4 Temporary Construction Easement Exhibits (6)</td>
<td>0</td>
<td>$3,000</td>
<td>3,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S-5 Environmental and Desktop Archeological Services (Including 5% sub-consultant mark-up)</td>
<td>0</td>
<td>$2,678</td>
<td>2,678.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S-6 As-built Survey - Visible Features of Water Line Installed</td>
<td>0</td>
<td>$3,250</td>
<td>3,250.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### END SUPPLEMENTAL SERVICES

| Total Supplemental Services | $42,128 |

### Total Fee Basic + Supplemental Services

| Total Fee Basic + Supplemental Services | $199,138 |
EXHIBIT 3 - FEE ESTIMATE
City of San Marcos, Texas
Red Sky Water Improvements

<table>
<thead>
<tr>
<th>Professional Service Description</th>
<th>Total Task Hours</th>
<th>Total Task Cost</th>
<th>Civil Subconsultant</th>
<th>Lump Sum Items</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Per Each</td>
<td></td>
</tr>
<tr>
<td>Lump Sum Items</td>
<td></td>
<td></td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Managing Principal</td>
<td></td>
<td>$275.00</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td></td>
<td>$165.00</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Project Engineer I</td>
<td></td>
<td>$100.00</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Technician VII</td>
<td></td>
<td>$110.00</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Support Staff II</td>
<td></td>
<td>$70.00</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>Cox McClain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursable Expenses</td>
<td>0</td>
<td>$860.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mileage</td>
<td>0</td>
<td>$860.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>END REIMBURSABLE EXPENSES</td>
<td></td>
<td></td>
<td></td>
<td>$860.00</td>
</tr>
<tr>
<td>Total Reimbursable Expenses</td>
<td>$860.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Fee Basic + Supplemental Services + Reimbursable Expenses</td>
<td>$399,998</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The hours listed above are an estimate. The hours assigned to the Phase are not exclusive to the Phase which they are assigned. The total fee will not exceed the total contract amount as discussed in Article 2. The hourly rates of this contract shall apply throughout the remainder of this contract and to all change in services.

Payment to the ENGINEER will be made as follows:
1. Basic Services - The amounts of these invoices will be based upon the extent of work completed by the Engineer on an hourly basis.
2. Supplemental Services - The Engineer will receive approval in writing before performing supplemental services. The amounts of these invoices will be based upon the extent of work completed by the Engineer on a lump sum basis.
3. Reimbursable Expense - Reimbursable expenses including such things as expenses for plotting, reproduction of documents, auto travel mileage (current IRS approved mileage rate), delivery charges, long distance communications, freight, and state accessibility will be invoiced with appropriate backup documentation.

Invoice and Time of Payment
Invoices will be prepared in a format approved by the City prior to submission of the first monthly invoice. Invoices shall be submitted monthly and paid within 30 days.
EXHIBIT 4
PROJECT SCHEDULE

(See Next Page)
<table>
<thead>
<tr>
<th>ID</th>
<th>Task Name</th>
<th>Duration</th>
<th>Start</th>
<th>Finish</th>
<th>Predecessors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preliminary Phase</td>
<td>308 days</td>
<td>Fri 9/1/17</td>
<td>Thu 7/5/18</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Scoping</td>
<td>142 days</td>
<td>Fri 9/1/17</td>
<td>Sat 1/20/18</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Verify scope per OP Sheet</td>
<td>60 days</td>
<td>Fri 9/1/17</td>
<td>Mon 10/30/17</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Hold Internal Scoping Meeting</td>
<td>1 day</td>
<td>Tue 10/31/17</td>
<td>Tue 10/31/17</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>Finalize Scope &amp; Budget</td>
<td>60 days</td>
<td>Wed 11/1/17</td>
<td>Sat 12/30/17</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>Verify Funds with Finance</td>
<td>21 days</td>
<td>Sun 12/21/18</td>
<td>Sat 1/20/18</td>
<td>5</td>
</tr>
<tr>
<td>7</td>
<td>Professional Service Contract</td>
<td>96 days</td>
<td>Sun 1/21/18</td>
<td>Thu 7/5/18</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Negotiate Contract</td>
<td>73 days</td>
<td>Sun 1/21/18</td>
<td>Tue 4/3/18</td>
<td>6</td>
</tr>
<tr>
<td>9</td>
<td>Prepare ARF Verify Funds with Finance - May need reimbursement form</td>
<td>17 days</td>
<td>Wed 4/4/18</td>
<td>Fri 4/20/18</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>City Council (Typically Tuesday)</td>
<td>25 days</td>
<td>Sat 4/21/18</td>
<td>Tue 5/15/18</td>
<td>9</td>
</tr>
<tr>
<td>11</td>
<td>Execute Contract</td>
<td>30 days</td>
<td>Wed 5/16/18</td>
<td>Thu 6/14/18</td>
<td>10</td>
</tr>
<tr>
<td>12</td>
<td>Kick Off Meeting</td>
<td>21 days</td>
<td>Fri 6/15/18</td>
<td>Thu 7/5/18</td>
<td>11</td>
</tr>
<tr>
<td>13</td>
<td>Design Phase</td>
<td>502 days</td>
<td>Wed 4/4/18</td>
<td>Sun 8/18/18</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>COSM Design</td>
<td>405 days</td>
<td>Fri 7/6/18</td>
<td>Sun 8/18/18</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Consultant/Prepare Preliminary Layout (50%)</td>
<td>104 days</td>
<td>Fri 7/6/18</td>
<td>Wed 9/13/18</td>
<td>12</td>
</tr>
<tr>
<td>16</td>
<td>CO SM Reviews 30% Design</td>
<td>30 days</td>
<td>Thu 10/4/18</td>
<td>Fri 11/2/18</td>
<td>15</td>
</tr>
<tr>
<td>17</td>
<td>30% Review Meeting</td>
<td>1 day</td>
<td>Sat 11/3/18</td>
<td>Sat 11/3/18</td>
<td>16</td>
</tr>
<tr>
<td>18</td>
<td>Consultant/Prepare 90%</td>
<td>75 days</td>
<td>Sun 11/4/18</td>
<td>Thu 11/17/18</td>
<td>17</td>
</tr>
<tr>
<td>19</td>
<td>CO SM Reviews 90% Design</td>
<td>30 days</td>
<td>Fri 11/18/18</td>
<td>Sat 12/10/18</td>
<td>18</td>
</tr>
<tr>
<td>20</td>
<td>90% Review Meeting</td>
<td>1 day</td>
<td>Sun 2/17/19</td>
<td>Sun 2/17/19</td>
<td>19</td>
</tr>
<tr>
<td>21</td>
<td>Consultant/Prepare 69%</td>
<td>30 days</td>
<td>Mon 2/18/19</td>
<td>Tue 3/19/18</td>
<td>20</td>
</tr>
<tr>
<td>22</td>
<td>CO SM Reviews 98% Design</td>
<td>30 days</td>
<td>Wed 3/20/19</td>
<td>Thu 4/18/19</td>
<td>21</td>
</tr>
<tr>
<td>23</td>
<td>Consultant/To Finalize 100% Design</td>
<td>29 days</td>
<td>Fri 4/16/19</td>
<td>Sat 5/18/19</td>
<td>22</td>
</tr>
<tr>
<td>24</td>
<td>Consultant/Submits Sealed Plans</td>
<td>1 day</td>
<td>Sun 5/19/19</td>
<td>Sun 5/19/19</td>
<td>23</td>
</tr>
<tr>
<td>25</td>
<td>Plot</td>
<td>70 days</td>
<td>Mon 5/20/19</td>
<td>Sun 7/28/19</td>
<td>24</td>
</tr>
<tr>
<td>26</td>
<td>Meeting with Purchasing To Advertise</td>
<td>21 days</td>
<td>Mon 7/29/19</td>
<td>Sun 8/18/19</td>
<td>25, 60</td>
</tr>
<tr>
<td>27</td>
<td>Essements</td>
<td>440 days</td>
<td>Wed 4/4/18</td>
<td>Mon 6/17/18</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Notify property owners of project TRO</td>
<td>14 days</td>
<td>Wed 4/4/18</td>
<td>Tue 4/17/18</td>
<td>28</td>
</tr>
<tr>
<td>29</td>
<td>Identify properties and set up files and reports</td>
<td>14 days</td>
<td>Wed 4/4/18</td>
<td>Tue 4/17/18</td>
<td>29</td>
</tr>
<tr>
<td>30</td>
<td>Essements/ROW Acquisitions</td>
<td>212 days</td>
<td>Sun 5/14/18</td>
<td>Mon 6/13/18</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>License Agreements</td>
<td>107 days</td>
<td>Sun 5/14/18</td>
<td>Thu 6/21/18</td>
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</tr>
<tr>
<td>32</td>
<td>Prepare License Agreement Exhibits</td>
<td>21 days</td>
<td>Sun 5/14/18</td>
<td>Sat 5/12/18</td>
<td>17, 28</td>
</tr>
<tr>
<td>33</td>
<td>Prepare offer letter</td>
<td>14 days</td>
<td>Sun 11/25/18</td>
<td>Sat 12/5/18</td>
<td>32</td>
</tr>
<tr>
<td>34</td>
<td>Negotiation with owners</td>
<td>60 days</td>
<td>Sun 12/9/18</td>
<td>Wed 2/6/18</td>
<td>33</td>
</tr>
<tr>
<td>35</td>
<td>Offer accepted, Letter agreement, Exhibit, W-9, Sent to CM</td>
<td>7 days</td>
<td>Thu 2/7/19</td>
<td>Wed 2/13/18</td>
<td>34</td>
</tr>
<tr>
<td>36</td>
<td>Request check</td>
<td>14 days</td>
<td>Thu 2/14/19</td>
<td>Wed 2/27/19</td>
<td>35</td>
</tr>
<tr>
<td>37</td>
<td>Possession of Real Estate From Close</td>
<td>1 day</td>
<td>Thu 2/28/19</td>
<td>Thu 2/28/19</td>
<td>36</td>
</tr>
<tr>
<td>38</td>
<td>Essements and ROW</td>
<td>212 days</td>
<td>Sun 5/14/18</td>
<td>Mon 6/13/18</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Survey/Exhib/Field Notes Prepared</td>
<td>21 days</td>
<td>Sun 11/14/18</td>
<td>Sat 12/24/18</td>
<td>37</td>
</tr>
<tr>
<td>40</td>
<td>Field Notes to appraise</td>
<td>1 day</td>
<td>Sun 11/25/18</td>
<td>Sun 12/25/18</td>
<td>38</td>
</tr>
<tr>
<td>41</td>
<td>Notice of intent to acquire sent to property owner</td>
<td>14 days</td>
<td>Sun 11/25/18</td>
<td>Sat 12/5/18</td>
<td>39</td>
</tr>
</tbody>
</table>
AGENDA CAPTION:
Consider approval of Resolution 2018-72R, approving a Developer Participation Agreement with Highpointe Trace, LLC providing for the City to participate in the cost of a regional wastewater lift station to serve the area along Posey Road from Hunter Road to Old Bastrop Highway in the amount of $1,247,216.00; authorizing the City Manager to execute said agreement; and declaring an effective date.

Meeting date: May 15, 2018

Department: CIP/Engineering

Amount & Source of Funding
Funds Required: $1,247,261.00
Account Number: IMPWW
Funds Available: $5,592,317.54
Account Name: Wastewater Impact Fees

Fiscal Note:
Prior Council Action: NA

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

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☒ Neighborhoods & Housing - Diversified housing options to serve citizens with varying needs and interests
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
**Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]**
Waste Water Master Plan

**Background Information:**
The Trace Subdivision located in the vicinity of IH-35 and Posey Road is currently under development with ~1,000 single-family homes and a mix of commercial and multi-family properties. As part of the development, the Trace Subdivision is constructing a Regional Wastewater Lift Station with City Participation will serve the area along Posey Road from Hunter Road to Old Bastrop Highway. This is in accordance with the City’s 2015 Wastewater Master Plan to provide wastewater service to this sewershed. The City’s cost participation amount is $1,247,216.00.

This is an impact fee project and those funds will be used for the City’s participation.

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

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

**Recommendation:**
Staff recommends approval.
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A DEVELOPER PARTICIPATION AGREEMENT WITH HIGHPOINTE TRACE, LLC PROVIDING FOR THE CITY TO PARTICIPATE IN THE COST OF A REGIONAL WASTEWATER LIFT STATION TO SERVE THE AREA ALONG POSEY ROAD FROM HUNTER ROAD TO OLD BASTROP HIGHWAY IN THE AMOUNT OF $1,247,216; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Developer Participation Agreement (the “Agreement”), is hereby approved.

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

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

ADOPTED on May 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
DEVELOPER PARTICIPATION AGREEMENT
[Trace Sewer Improvements]

This Developer Participation Agreement (the “Agreement”) is effective as of May 15, 2018 (the “Effective Date”), by and between the City of San Marcos, Texas, a home rule municipal corporation (the “City”), 630 East Hopkins Street, San Marcos, Texas 78666 and Highpointe Trace, LLC, a California limited liability company (the “Developer”), 2 Venture, Suite 350, Irvine, California 92618.

I. RECITALS

1.1 TEXAS LOCAL GOVERNMENT CODE SECTION 212.071 authorizes the City to cost participate with a Developer of a subdivision or land to construct public improvements.

1.2 In connection with Developer’s development of the Trace development in Hays County, Texas (the “Project”), the City has requested that Developer construct and/or "upsize" certain sewer system improvements which are not required for the development and use of the Project in order to provide capacity to future developments within the vicinity of the Project which will be serviced by this system, and City has agreed to pay Developer for the additional costs Developer will incur in connection therewith in accordance with the terms of this Agreement. The total scope of sewer improvement work that Developer has agreed to undertake consists of those sewer improvements shown and described in those certain City-approved plans identified as follows (i) TRACE PID Lift Stations, Onsite Forcemain & Gravity Sewer; San Marcos, Texas; Permit No. 2016-20438 dated 7-7-17. Revision 1 dated 8-9-2017; Revision 2 dated 12-22-2017; Revision 3 dated 1-12-2018, (ii) Electrical Specifications TRACE PID LS and FM; City of San Marcos, Texas dated 2-14-2017, and (iii) TRACE PID Phase 1B-Van Horn Trace; Road, Drainage and Utility Improvements; San Marcos, Texas; Permit No. 2016-20437 dated 8-9-2017. Revision 1 dated 12-8-2017; Revision 2 dated 2-8-18 (collectively, the "Approved Sewer Plans", with the aggregate scope of sewer improvements work described therein referred to herein as the “Public Improvements”). The scope of sewer improvements that Developer would have been required to construct to facilitate only the development and use of the Project in the absence of Developer’s agreement to undertake the additional City requested upsizing and related work are referred to herein as the "Developer Improvements", and those additional improvements and "upsized" improvements that the City has requested which are in addition to, and/or beyond the scope of, the Developer Improvements are referred to herein as the "City Improvements". The location and alignment of the Public Improvements is generally depicted on Exhibit "A" attached hereto.

1.3 Attached hereto as Exhibit "B" is the mutually agreed-upon line item budget for the Public Improvements (the "Cost Allocation Schedule") which has been prepared based upon the Approved Sewer Plans and which identifies (i) the scope of work and associated budgeted costs for the Developer Improvements had Developer only undertaken that scope of work ("Developer Base Cost"), and (ii) those specific items which have been upsized or added to the scope of work as a result of the City Improvements and the additional associated budgeted costs related thereto which are in excess of the costs for the Developer Improvements (the "City Improvements Line
1.4 The City has determined that the Public Improvements qualify for cost participation by the City and the City desires to have the Developer design and construct both the Developer Improvements and the City Improvements subject to the terms of this Agreement.

II. AGREEMENT

In consideration of the mutual benefits to and obligations of the parties under this Agreement, the parties agree to the following terms and conditions:

2.1 Design and Construction of Public Improvements.

2.1.1 Design and Construction. The Public Improvements will be constructed by Developer in accordance with the Approved Sewer Plans. Developer will be responsible for entering into one or more contracts for the construction of the Public Improvements (the “Construction Contracts”) and will provide copies of the Construction Contracts, together with any change orders or amendments, to the City.

2.1.2 Project Manager. The Developer will act as project manager in the construction of the Public Improvements. If the plans for the Public Improvements are required to be sealed by a professional engineer, the Developer will ensure that the construction is carried out under the direct supervision of a professional engineer registered in the State of Texas.

2.1.3 Independent Contractor. The Developer shall be solely responsible for selecting, supervising and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage. The parties agree and understand that all contractors, employees, volunteers and personnel furnished or used by the Developer in the installation of the Public Improvements shall be the responsibility of the Developer and shall not be deemed employees or agents of City for any purpose.

2.1.4 Performance Bond. A performance bond naming the City as an obligee will be provided by the Developer to ensure completion of the Public Improvements.

2.1.5 Warranty. The Construction Contracts will provide for at least a one-year warranty against defects in materials and workmanship. This warranty obligation shall be covered by any performance or payment bonds required of the contractors under the terms of the Construction Contracts.

2.1.6 Completion and Acceptance. Subject to Force Majeure (defined below), the parties currently estimate a completion date for the Public Improvements to be on or about September 30, 2018. The date of completion for each of the applicable Public Improvements shall be the date on which the City accepts the applicable Public
Improvements in accordance with the City’s applicable ordinances, standards and processes and provides notice of such acceptance in writing to the Developer. Prior to the City’s acceptance of the applicable Public Improvements, Developer shall, among other applicable requirements, provide to the City a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen and subcontractors have been released, and that there are no claims pending of which Developer has been notified. Notwithstanding the currently estimated timeframe referenced above, Developer will construct the City Improvements generally concurrently with the construction of the Developer Improvements as such schedule is determined by Developer, subject to the requirements of related Subdivision Improvement Agreements, if any.

a. Before the City accepts the Public Improvements, Developer agrees to and shall dedicate at no cost to the City all easements and/or rights-of-way located within the Project, in forms reasonably acceptable to the City, related to and necessary for the location, operation and maintenance of the Public Improvements.

b. The City will coordinate with Developer to determine whether the Public Improvements may be located in existing City easements, and upon written approval by the City, Developer may locate applicable portions of the Public Improvements in the easement areas identified in such approval.

c. It is not anticipated that any offsite easements will be needed for the construction of the Public Improvements, however if any offsite easements are required, the City shall obtain such necessary easements solely for the City Improvements at the City’s cost and expense and Developer shall be responsible for obtaining all other off-site easements.

d. Except as may be required by applicable ordinances, other than provided for in this Agreement, the Developer shall not be required to construct additional wastewater facilities or dedicate easements to serve any other area outside of the Property.

e. For purposes herein, the term “Force Majeure” shall mean circumstances which are beyond the reasonable control of a party (which circumstances may include, without limitation, governmental delays, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the parties hereunder, or similar acts. Whenever a period of time is herein prescribed for the taking of any action by the City or the Developer (other than the payment of sums of money as shall become due hereunder), such party shall not be liable or responsible for, there shall be excluded from the computation of such period of time, any delays due to events of Force Majeure.
2.2 Cost Participation; Payment; Contract Matters

2.2.1 Cost Participation Amount. The City is cost participating in the Public Improvements in an amount not to exceed $1,247,261.00 for those portions of the Public Improvements requested by the City as itemized in Exhibit “B” (i.e., the City Improvements). The City will also pay for the cost of any change orders requested by the City with respect to the City Improvements. The Developer will be responsible for paying the remainder of the costs for the Public Improvements. The City Manager of the City may approve change orders related to the City Improvements up to $50,000. All other change orders for the City Improvements are subject to approval of the San Marcos City Council.

2.2.2 Limits of Participation. Except as to the costs attributable to the oversizing of the Public Improvements (i.e., the City Improvements) requested by the City, the City’s cost participation pursuant to this Agreement shall not exceed thirty percent (30%) of the Developer’s total contract price for the construction of the PID 1A & 1B improvements which approximate $8,245,187 as identified on the Cost Allocation Schedule.

2.2.3 Application for Payment. Payments will be made to Developer on a monthly basis from and after the Effective Date as construction of the Public Improvements progresses. The Developer shall submit a written application for City participation payment no more frequently than once every thirty (30) days. The applications for payment to the City shall be for the amount of the actual costs associated with the City’s portion of the Public Improvements associated with the work under the invoice. The application for payment by the Developer to the City for payment to the Developer shall be in a form reasonably acceptable to City and must include a breakdown of actual costs of the portions of applicable City Improvements Line Items associated with the work under the invoice, with supporting documentation, including all payment receipts and any other documentation reasonably requested by the City to support the City’s expenditure of public funds. The City acknowledges that as of the Effective Date Developer will have undertaken substantial portions of the Public Improvements and that the initial application for City participation payments hereunder will be for City's portion of all such work.

a. City Payment. Subject to all applicable ordinances, standards and processes, the City will pay the City Participation Amount on a monthly basis within 15 days after receipt of each complete (as reasonably determined by the City) written application for participation payment from Developer.

b. Special Assessment Account. The parties hereby acknowledge and agree that pursuant to Section 4.02(a)(4) of the Trace Public Improvement District Financing Agreement dated as of October 20, 2015 (the “PFA”), the Developer may also be receiving funds from the City to reimburse Developer for the Actual Costs (as defined in the PFA) of the Major Public Improvements (as defined in the PFA). It is hereby acknowledged that these funds are separate and distinct from the payments to be made to Developer pursuant to this
Agreement, and Developer's receipt of such funds pursuant to the PFA shall not diminish the City's payment obligations under this Agreement.

2.2.4 Payments to Subcontractors and Suppliers. The Developer shall be solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and insuring that no claims or liens of any type will be filed against any property owned by the City arising out of or incidental to the performance of any service performed pursuant to this Agreement. In the event a statutory lien notice is sent to the City, the Developer shall, where no payment bond covers the work, within thirty (30) days of receiving written notice from the City, obtain a bond at its expense and hold City harmless from any losses that may result from the filing or enforcement of any said lien notice.

2.3 GOVERNMENTAL IMMUNITY, INDEMNITY AND RELEASE

2.3.1 No Waiver of Immunity. The City’s execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

2.3.2 Indemnity. Developer agrees to and shall indemnify, hold harmless, and defend City and its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with the work done by Developer, its officers, employees, agents and contractors, under this Agreement; provided, however, the foregoing obligations shall apply only on a comparative negligence or liability basis as to (i) matters or circumstances arising as a result of the negligence or willful misconduct of City, any other party indemnified hereunder, (ii) matters, defects, circumstances or conditions existing on or with respect to any real property owned by the City or any other party other than Developer which were not caused by Developer, or (iii) City’s breach or default under this Agreement.

2.3.3 Indemnity and Hold Harmless as to Subcontractors. Subject to City's delivery of payments as required hereunder, the Developer shall indemnify and hold the City harmless from any claims for payment of suppliers or subcontractors of Developer for improvements constructed or caused to be constructed by the Developer.

2.3.4 Indemnity and Hold Harmless as to Others. The Developer shall indemnify and hold the City harmless from any and all injuries to or claims of adjacent property owners or occupants resulting from or relating to the Developer’s performance under this Agreement; provided, however, the foregoing obligations
shall apply only on a comparative negligence or liability basis as to (i) matters or circumstances arising as a result of the negligence or willful misconduct of City or any other party indemnified hereunder, (ii) matters, defects, circumstances or conditions existing on or with respect to any real property owned by the City or any other party other than Developer which were not caused by Developer, or (iii) City's breach or default under this Agreement.

2.3.5 Release. The Developer assumes full responsibility for the work to be performed hereunder, and, subject to the City's performance of its obligations under this Agreement, releases, relinquishes and discharges the City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, the Developer's work to be performed hereunder; provided, however, the foregoing release shall apply on a comparative liability basis as to (i) matters or circumstances arising as a result of the negligence or willful misconduct of City, any other party indemnified hereunder, (ii) matters, defects, circumstances or conditions existing on or with respect to any real property owned by the City or any other party other than Developer which were not caused by Developer, or (iii) City's breach or default under this Agreement.

2.4 Miscellaneous

2.4.1 Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement between the parties hereto and may be amended only by a written document signed by the parties. This Agreement shall be binding upon the successors and assigns of the parties. The assignment of all or part of this Agreement by a party is not valid without the written consent of the other party, except that Developer may, transfer or assign its rights or obligations under this Agreement with respect to all or part of the Project from time to time to an Affiliate (defined below) upon written notice to the City of such assignment. Prior to the completion of the Public Improvements, however, Developer shall not transfer or assign its rights or obligations under this Agreement with respect to all or part of the Project to a non-affiliated entity without the prior consent of the City, and provided further that the foregoing shall not limit Developer's ability to sell residential tracts or parcels within the Project without the City's consent. After the completion of the Public Improvements, the Developer may transfer or assign its rights or obligations under this Agreement to any party without the City's consent. Developer shall provide the City thirty (30) days prior written notice of any such assignment occurring prior to completion of the Public Improvements. For purposes herein, the term “Affiliate” shall mean an entity which is controlled by, controls, or is under common control with Developer.

2.4.2 Subject to Ordinances and Laws. This Agreement and the obligations of the parties hereunder are subject to all valid and applicable ordinances, fees (including City impact fees and/or pro rata fees), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.
2.4.3 **Applicable Law and Venue.** This Agreement shall be governed and construed under and in accordance with the laws of the State of Texas. Jurisdiction and venue for any matter arising out of this Agreement shall be in Hays County, Texas. Jurisdiction and venue in federal court for matters arising out of this Agreement shall be in the United States District Court for the Western District of Texas, Austin Division.

2.4.4 **Severability.** If any the provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the holding will not affect any other provisions of this Agreement if the Agreement can be given effect without the invalid provision. The Parties will construe the Agreement as if the invalid or unenforceable provision had not been contained in this Agreement.

2.4.5 **Books and Records.** All of the Developer’s books and other records related to the design, bidding and construction of the Public Improvements shall be available for inspection by the City.

[Signature Page to Follow]
EXECUTED to be effective as of the Effective Date first written above.

CITY OF SAN MARCOS:
By: __________________________
   Bert Lumbreras, City Manager

DEVELOPER:

HIGHPOINTE TRACE, LLC,
a California limited liability company
By: Highpointe Posey, L.P., a California limited partnership, Its Managing Member
   By: Highpointe Investments, Inc., a California corporation, Its General Partner
   By: __________________________
   Timothy D. England, SVP
EXHIBIT A

Public Improvements Depiction and Alignment

(see attached)
EXHIBIT B

Cost Allocation Schedule

(see attached)
### TRACe Waste Water System - Phase 2, Including City Overflowing

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### General Notes
- Lift Station #2 - Base: $3,480,000
- Lift Station #3 - Base: $3,480,000
- Lift Station #4 - Base: $3,480,000
- Lift Station #5 - Base: $3,480,000

### Summary
- **Total Cost:** $17,160,000
- **O&M Cost:** $1,420,000
- **Check Digit:** 0

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### Exhibit B: LS Sewer Cost Allocation - City vs Trace (Final) 4-17-18

**Note:** The image contains a reference to an exhibit showing the allocation of LS Sewer costs between the City and Trace. It is not visible in the current view but is referenced in the document.
AGENDA CAPTION:
Consider approval of Resolution 2018-73R, granting an easement to Bluebonnet Electric Cooperative, Inc. for the installation of electric utility facilities to loop electrical service for the Cottonwood Creek Subdivision; authorizing the City Manager to execute said easement on behalf of the city; and declaring an effective date.
Meeting date: May 15, 2018

Department: CIP/Engineering

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

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: [Please select from the dropdown menu below]
City Facilities
Goal #8 Provide efficient & effective delivery of services
Choose an item.

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

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

**Background Information:**
Bluebonnet Electric is extending electrical service to the Cottonwood Creek Subdivision Phase 3. This easement, as part of this extension, will provide a looped service to the Cottonwood Creek Water Tower providing redundancy to this water facility.

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

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

**Recommendation:**
Staff recommends approval.
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS GRANTING AN EASEMENT TO BLUEBONNET ELECTRIC COOPERATIVE, INC. FOR THE INSTALLATION OF ELECTRIC UTILITY FACILITIES TO LOOP ELECTRICAL SERVICE FOR THE COTTONWOOD CREEK SUBDIVISION; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID EASEMENT 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 Easement to Bluebonnet Electric Cooperative, Inc. for the installation of electric utility facilities to serve the Cottonwood Creek Subdivision is hereby approved.

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

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

ADOPTED on May 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
EASEMENT

THE STATE OF TEXAS

COUNTY OF ____________________

MAP REF. # ____________________

W.O. # _________________________

□ OVERHEAD
□ UNDERGROUND

The undersigned ________________________________________________________(print name(s) of Owner(s)), ("Grantor"), for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto BLUEBONNET ELECTRIC COOPERATIVE, INC. ("Grantee"), whose post office address is P.O. Box 729, Bastrop, Texas 78602, and its legal representatives, successors and assigns, a non-exclusive, permanent and perpetual easement and right of way (the “Easement”) in, upon, below or above Grantor’s lands, situated in the County of _____________, State of Texas, and described as follows (the “Property”):

A tract of land consisting of approximately _______ acres in the ________________________, or described in a deed or other instrument recorded in Volume _______, Page _______. Real Property Records of _____________ County, Texas.

The area of the Easement for Overhead Electric Facilities shall be 15 feet on each side of the centerline of the initial line(s) as constructed by Grantee (the “Easement Area”), and the area of the Easement for Underground Electric Facilities shall be 10 feet either side of the initial line(s) as constructed by Grantee (the “Easement Area”). In addition, Grantee shall have the right to install guy and anchor arrangements inside and/or outside the Easement Area when and where Grantee deems necessary; any area in which such guy and anchor arrangements are installed outside the Easement Area as defined above shall, while such items are in place, be included within the definition of the Easement Area.

The purpose and scope of this Easement is to place, construct, re-construct, re-phase, operate, maintain, relocate, replace and remove in, upon, below or above the Easement Area an electric distribution line or system, telecommunications systems and equipment, and its related appurtenances and equipment, and to cut, trim, chemically treat, and/or remove any or all trees, brush, shrubbery or other obstructions within or outside the Easement Area to the extent necessary to keep the Easement Area clear, or which might otherwise endanger or interfere with the efficiency of the lines, including the removal of any dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling even if same are located outside the Easement Area. Non-use of the Easement shall not be deemed an abandonment; the Easement shall only be terminated by written instrument executed by Grantee and recorded in the real property records of the county or counties in which the Easement Area is located. The purpose and scope of this Easement may not be changed, and Easement Area may not be relocated, without Grantee’s written consent.

Grantee shall have the right of pedestrian, vehicular, and equipment ingress and egress over the Property, or any other of Grantor’s adjacent lands, to and from the Easement Area for the purpose of placing, constructing, re-constructing, re-phasing, operating, maintaining, relocating, replacing and removing said lines and appurtenances, and may make use of such Property or other lands outside the Easement Area as is reasonably necessary for such activities, including the temporary placement and storage of vehicles and equipment.

To have and to hold unto Grantee, its legal representatives, successors and assigns, forever. Grantor binds Grantor and Grantor’s heirs, executors, administrators, legal representatives, successors and assigns to warrant and forever defend all and singular the rights herein to Grantee, its legal representatives, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof. This is an easement appurtenant and is a covenant running with the land.

Grantor may not construct or place any structures, devices, or obstacles in or on the Easement Area that may in Grantee’s opinion constitute a hazard to the safe and reliable operation of the lines and appurtenances installed in the Easement Area or in the opinion of Grantee, a danger to Grantor or the general public.
Grantor warrants that Grantor is the legal owner of the Property and the undersigned has authority to grant this Easement and that the Property is free and clear of encumbrances and liens of whatsoever character except those held by the following:

_________________________________________________________________________________________________.

Grantor authorizes any employee, agent or other representative of Grantee to complete any blank spaces pertaining to the Property description above after this Easement has been executed by Grantor.

This written Easement represents the only agreement pertaining to said Easement.

The undersigned has executed this Easement to be effective as of the ______ day of ____________________, 20___.

__________________________________________________
(Grantor’s Printed Name)

__________________________________________________
(Signature of Grantor or Grantor’s Authorized Representative)

__________________________________________________
(Grantor’s Printed Name)

__________________________________________________
(Signature of Grantor or Grantor’s Authorized Representative)

STATE OF TEXAS

COUNTY OF ________________

This instrument was acknowledged before me on _______________________, 20___ by
______________________________

(Grantor’s Printed Name)

Notary Public, State Of Texas

STATE OF TEXAS

COUNTY OF ________________

This instrument was acknowledged before me on _______________________, 20___ by
______________________________

(Grantor’s Printed Name)

Notary Public, State Of Texas

After recording, please return to:
Bluebonnet Electric Cooperative, Inc.
3198 East Austin Street
Giddings, Texas  78942
DESCRIPTION OF 0.08 OF AN ACRE, MORE OR LESS, OF LAND AREA IN THE FARNAM FRYE
SURVEY, ABSTRACT NO. 183, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT
DESCRIBED AS 1.00 ACRE A DEED FROM COTTONWOOD CREEK JDR, LTD TO THE CITY OF
SAN MARCOS, DATED MARCH 13, 2008 AND RECORDED IN VOLUME 3349, PAGE 156 OF THE
HAYS COUNTY OFFICIAL PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED
BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod set in the common east line of the City of San Marcos tract and a west line of that
tract described as 49.137 acres in a deed from Cottonwood Creek JDR, LTD to Continental Homes of Texas, L.P,
dated August 10, 2017 and recorded in Hays County document number 17028182 of the Hays County Official
Public Records, from which a 1/2" iron rod found with a plastic cap stamped "Baker-Aicklen" for the southeast
corner of the City of San Marcos 1.00 acre tract bears S 01° 20' 27" E 36.47 feet;

THENCE leaving the Continental Homes tract and PLACE OF BEGINNING as shown on that plat numbered
27478-18-b, dated January 4, 2018 as prepared for Bluebonnet Electric Coop. by Byrn & Associates, Inc. of San
Marcos, Texas and crossing the City of San Marcos tract the following five courses:

1. S 88° 47' 41" W 144.90 feet to a 1/2" iron rod set, from which the southwest corner of the of the City of
   San Marcos tract bears S 22° 02' 58" W 39.95 feet,

2. N 02° 21' 52" W 46.36 feet to a point, from which a 1/2" iron rod found with a plastic cap stamped
   "Baker Aicklen" for the northwest corner of the of the City of San Marcos tract bears N 05° 52' 53" W
   188.54 feet,

3. N 87° 38' 08" E 20.00 feet to a calculated point,

4. S 02° 21' 52" E 26.76 feet to a calculated point, and

5. N 88° 47' 41" E 125.25 feet to a calculated point in the common east line of the City of San Marcos tract
   and a west line of the Continental Homes tract;

THENCE with said common line, S 01° 20' 27" E 20.00 feet to the PLACE OF BEGINNING.

There are contained within these metes and bounds 0.08 of an acre, more or less, of land area as prepared from
public records and a survey made on the ground on January 4, 2018 by Byrn & Associates, Inc. of San Marcos.
All 1/2" iron rods set are capped with a plastic cap stamped "Byrn Survey". The Bearing Basis for this description
was determined from GPS observations and refers to Grid North of the Texas State Plane Coordinate System,
NAD 83, South Central Zone.

Kyle Smith, R.P.L.S. #5307

Client: Bluebonnet Electric Cooperative
Date: January 4, 2018
Survey: Frye, Farnam, A-183
County: Hays
Job No: 27478-18
FND 0.08
AGENDA CAPTION:
Consider approval of Resolution 2018-80R, approving an expenditure of $45,000 from the Permanent Art Fund for the purchase of a Texas Wild Rice Sculpture as recommended by the Arts Commission; and declaring an effective date.
Meeting date: May 15, 2018

Department: Community Services - PARD

Amount & Source of Funding
Funds Required: $45,000
Account Number: 12124226 56006
Funds Available: $121,149
Account Name: Tourism Programs - Permanent Art

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Background Information:
The Arts Commission completed a Texas Call for Artists to submit design ideas for a Texas Wild Rice Sculpture. Ten submission were received. The Commission narrowed the field to two finalists. The finalists created maquettes which were presented to the public November 13, 2017. The Arts Commission approved the selection of the design “Big Wavey” by artist Chris Lattanzi, with modifications at their February 21, 2018 meeting. Vote 5-2 in favor.

The Arts Commission met on March 28, 2018 to consider approval of the design with modification. The design was approved 6-0.

The Arts Commission met on April 24, 2018 to approve a location for the sculpture. The commission approved Dog Beach 5-0 as recommended by city staff.

The Parks Advisory Board met on April 26, 2018 to consider the recommendation of Dog Beach. They approved the recommendation 7-0.

As required by ordinance, the City Council must make all final recommendations on the purchase and placement of permanent art.

Council Committee, Board/Commission Action:
Please see above.

Alternatives:
Click or tap here to enter text.

Recommendation:
Click or tap here to enter text.
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN EXPENDITURE OF $45,000 FROM THE PERMANENT ART FUND FOR THE PURCHASE OF A TEXAS WILD RICE SCULPTURE AS RECOMMENDED BY THE ARTS COMMISSION; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The expenditure of $45,000.00 from the Permanent Art Fund for the purchase of a Texas Wild Rice sculpture is approved.

PART 2. The City Manager, or his designee, is authorized to disburse the approved funds for the sculpture in accordance with the City’s purchasing policies or requirements.

PART 3. This resolution is in full force and effect upon its adoption.

ADOPTED on May 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
“Big Wavey”
By Chris Lattanzio

Proposed Location: Dog Beach
AGENDA CAPTION:
Consider approval of Resolution 2018-74R, approving the award of a contract to TRC Engineers, Inc. for the execution of the Electric Utility Pole Attachment Survey Project (IFB 218-232) for the estimated purchase amount of $93,039.02 is approved; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the city and declaring an effective date.

Meeting date:  May 15, 2018

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

Amount & Source of Funding
Funds Required:  $93,039.02 for FY2018
Account Number:  21006319.52305
Funds Available:  $428,153.23
Account Name:  Contracted Services

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

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

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

Background Information:
This is a one-time contract to survey attachments to the City’s Electric Utility Poles.

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

Alternatives:
Conduct survey with force labor if additional position was created.

Recommendation:
On April 5, 2018, seven (7) bids were received for Electric Utility Pole Attachment Survey, Bid # 218-232. James Lopez, GIS/Technology Manager reviewed the bids and in consideration of vendor knowledge, experience, and references recommends award to the low bidder, TRC Engineers, Inc in San Antonio, Texas, with the bid of $93,039.02.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT TO TRC ENGINEERS, INC. FOR THE EXECUTION OF THE ELECTRIC UTILITY POLE ATTACHMENT SURVEY PROJECT (IFB 218-232) FOR THE ESTIMATED PURCHASE AMOUNT OF $93,039.02 IS APPROVED; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASE DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract to TRC Engineers, Inc. for the execution of the Electric Utility Pole Attachment Survey Project (IFB 218-232) for the estimated purchase amount of $93,039.02 is approved.

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

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

ADOPTED this the 15th day of May 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
## BID TABULATION

Electric Utility Pole Attachment Survey
April 5, 2018, at 2:00 p.m.

**IFB 218-232**

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<th>Total Cost if Paid w/P-card</th>
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<td>Palmetto Engineering &amp; Consulting Greenville, SC</td>
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<td>TRC Engineers, Inc San Antonio, TX</td>
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<td>No P-card Bid</td>
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<tr>
<td>Smith Mountain Investments Anson, ME</td>
<td>$177,449.55</td>
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<td>Davey Resource Group, Inc. Kent, Ohio</td>
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<td>$103,086.15</td>
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<td>Schneider Engineering, LTD Boerne, TX</td>
<td>$256,804.57</td>
<td>$256,804.57</td>
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WITNESSED BY:  

[Signatures]
AGENDA CAPTION:
Consider approval, by motion, of Change in Service No. 3 with Kimley Horn and Associates for Engineering Services related to providing design and construction phase services for the Sessom Creek Wastewater Replacement from N.LBJ to Canyon Road Project in a not to exceed amount of $232,555.00.

Meeting date: May 15, 2018

Department: Engineering and Capital Improvements

Amount & Source of Funding
Funds Required: $232,555.00.
Account Number: C521
Funds Available: $352,918
Account Name: SESSOM IMPR. - N.LBJ TO COMANCHE - C521

Fiscal Note:
Prior Council Action: Resolution 2017-121R on August 15, 2017

City Council Strategic Initiative: [Please select from the dropdown menu below]
Stormwater
Goal #9 Protect & Preserve San Marcos River and Edwards Aquifer Recharge Zone
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☒ Land Use - Set appropriate density & impervious cover limitations in environmentally sensitive areas to avoid adverse impacts on water supply
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Waste Water Master Plan

Background Information:
In 2013, the City hired RPS Espey to evaluate Sessom Creek from Canyon Road to Aquarena Springs Drive. In this report, RPS Espey identified several conceptual level solutions. The highest priority project, according to this report, is to relocate the exposed wastewater trunk main in Sessom Creek from N.LBJ to Canyon Road.

The City executed a contract with Kimley Horn in August 2017 for providing design and construction phase services for the Sessom Creek Wastewater Replacement from N. LBJ to Canyon Road Project. The project consists of the following improvements:

- Sessom Drive Sanitary Sewer - the replacement of up to approximately 1,800 linear feet of 12-inch sanitary sewer line from N. LBJ Drive to Canyon Road along Sessom Drive.
- Canyon Road Water Line Relocation - the lowering of up to 60 linear feet of water lines currently exposed within Sessom Creek.
- Sessom Creek Restoration Project: Project Survey and Coordination - The Sessom Creek Restoration Project will be designed by John Gleason, LLC in a separate contract with the Edwards Aquifer Habit Conversation Plan (HCP). The City and HCP agreed on the following scope for the Creek Restoration Project.
  - Stabilizing Sessom Creek from N.LBJ to Canyon Road to prevent sedimentation from entering the San Marcos River.
  - Repairing two (2) separate drainage outfalls along Sessom Drive and Sessom Creek
  - Repair sections of Canyon Road that have been damaged by Sessom Creek

As the HCP design on the Sessom Creek Restoration Project progressed, it was determined that design required to stabilize Canyon Road was going to be much more complicated and expensive due to the steep topography and high volume of water flowing along Sessom Creek.

This change in service adds the following additional scope to Kimley Horn’s contract.

- **Canyon Road Sanitary Sewer** - the replacement and upsizing of approximately 500 linear feet of 6-inch sanitary sewer line to 8-inch sanitary sewer line along Canyon Road
- **Canyon Road Water Service Line Relocation** - the lowering and relocation of three (3) water services along Canyon Road.
- **Sessom Creek Environmental Assessment** - to evaluate whether formal notification to the U.S. Army Corps of Engineers (USACE) would be required for impacts to Waters of the U.S. (WOUS) resulting from the proposed project.
- **Sessom Creek Floodplain Study** - to develop the peak flows for 2-, 10-, 25-, 50-, 100-, and 500- year events (the “design storms”)
- **Sessom Creek Bank Stabilization** - the stabilization of the Sessom Creek bank on the Canyon Road side of the creek for approximately 300 linear feet of creek with a gabion wall system.
- **Canyon Road Reconstruction** - The reconstruction of approximately 500 linear feet of roadway along Canyon Road. The project will also include the removal of approximately 275 linear feet of Loquat
Street south of the existing Canyon Road intersection. Turnarounds will be placed south of the removal limits on Loquat Street and on the northern limits of Canyon Road.

The total construction cost is estimated at $3.7M to $4.1M. The HCP has budgeted $1.5 million towards the Creek Restoration Project.

Both the Sessom Creek Wastewater Replacement Project and the Sessom Creek Restoration Project will be combined and bid under one contract.

Construction should occur in 2019.

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

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

**Recommendation:**
Staff recommends approval of this change in service.
SESSOM CREEK IMPROVEMENTS PROJECT - PHASE 1

TO: Bert Lumbreras – City Manager
THRU: Laurie Moyer, P.E. - Director of Engineering and Capital Improvement
FROM: Shaun Condor, P.E. - Senior Project Engineer
DATE: March 22, 2018
RE: Loquat Closure Update

As part of the Sessom Creek Improvements Project - Phase 1 project, the City must stabilize Canyon Road at Loquat where Sessom Creek crosses under Loquat. The Watershed Protection Division has requested that the City consider removing the portion of Loquat that crosses Sessom Creek as an alternative to rebuilding the intersection.

City staff has reached out to the public to receive feedback on closing Loquat at Sessom Creek and this memo will summarize the results of the outreach.

Outreach

- Public Meeting - Dec. 14, 2017
  o 11 residents attend meeting
  o Over 130 flyers mailed to residents in the area
- Survey Posted – January 3, 2018 until February 2, 2018
  o 31 responses received
  o Over 130 flyers mailed to residents in the area to take survey
  o Message board posted at intersection of Loquat and Canyon
- Emailed Neighborhood Representative to take survey
  o Received 2 response by email or phone
- Texas State Coordination – March 19, 2018
  o Met with Texas State staff to coordinate the closure of Loquat and Canyon with their future land purchase
  o Texas State is in favor of the closure and would like to see Loquat completely closed at Sessom due to safety concerns

Survey Results

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<tr>
<th>Source</th>
<th>Alternative #1 T-Intersection</th>
<th>Alternative #2 Remove Loquat</th>
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<td>*11 responses received</td>
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<td>On-Line Survey</td>
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<td>35 Total Votes</td>
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*Residents also responded to on-line survey. Their vote will captured with the on-line survey numbers.
Emergency Access

- The major concern expressed in the online survey and by internal staff has been emergency access.
  - Police – No major concerns with either option. They prefer multiple routes; but they can adapt.
  - Fire - Below are our two main objections to closing Loquat. Preferred to keep the road open.
    - Delayed response times (in and out). Responding units 1 3 4 and 5 would have to drive all the way around to Ridgeway to access Canyon Dr.
    - Safety - it’s already tight on the roadway (Loquat and Canyon). If you remove the intersection. Units will have to back all the way up Canyon Dr. to exit. Not safe to do so. At least if the intersection says we can back up Loquat to turn around.
  - Staff Response
    - Emergency Access – we will use the cost savings from the stabilization work to build “Hammerheads” so large vehicles can safely turn around.
    - Response Time – nothing can be done on this project; but we can add a CIP to extend Canyon Road to Chestnut to provide an alternate route in the future which will help reduce response time.
    - Pedestrian Access – The San Marcos Greenbelt Alliance has committed to building and maintaining a hike and bike trail connecting Canyon Road to Loquat. The trail (non-ADA) will be at grade crossing which will not be accessible during high rain events.

For additional information please see attachments:
- Appendix A – Loquat Closure Details
- Appendix B – On-Line Survey Results
City of San Marcos, Texas

SUBJECT OF MEETING: Loquat Closure
PROJECT NAME: Sessom Creek Improvements Project - Phase 1

1) Goal: Need input on request by HCP design team to close Loquat Street
2) Overview
   a) HCP is funding project to reduce erosion in Sessom Creek but HCP funds cannot be used on road projects.
   b) City must stabilize Canyon Road due to creek washing it away. In order to stabilize Canyon Road, this Loquat Intersection must be addressed.
   c) HCP came up with 3 alternatives
      i) **Alternative #1** – Convert from a Y to a T intersection
      ii) **Alternative #2** – Eliminate intersection (Remove Loquat) - *If this alternative is approved by the City, the HCP team wants cost savings from stabilization scope to be used to build hammer heads required for eliminating Loquat*
      iii) **Alternative #3** – Maintain existing Y intersection – *This was removed from considering since the T intersection is more cost effective.*

3) Alternative #1 (T-Intersection)
   a) Pros
      i) Maintain access for residents
   b) Cons
      i) Not as good for water quality
      ii) Leave a low water crossing in place

4) Alternative #2 – Benefits
   a) Pros
      i) Allow the reestablishment of the original stream channel and thereby:
         1. increase the area available for water to pass through, eliminate the choke point and reduce localized flooding in the area
         2. reduce peak flows, increase flow duration and thus reduce the potential for downstream flooding
         3. enable the natural stream bottom to adjust with flow events
         4. enable more natural sediment transport through the area, minimizing erosion and maintenance requirements
      ii) Public safety item
         1. The lower part of Loquat is narrow and has no lights or guardrails to protect traffic from veering into an almost vertical slope down to Sessom Creek.
         2. Rather than install this level of infrastructure in a sensitive natural area; removal of the road is an attractive option.
   b) Cons
      i) Loss of vehicle access to Sessom for Residents.
         1. Pedestrian access will be maintained by a proposed pedestrian bridge.
(2) “Hammer Heads” will be installed to address the need for larger vehicles (like fire trucks) to turn around.

ii) Reducing alternative routes for traffic in the area

5) Comments From Departments
a) Fire - below are our two main objections to closing Loquat. Preferred to keep the road open.
   1. Delayed response times (in and out). Responding units 1 3 4 and 5 would have to drive all the way around to Ridgeway to access Canyon Dr.
   2. Safety - it’s already tight on the roadway (Loquat and Canyon). If you remove the intersection. Units will have to back all the way up Canyon Dr. to exit. Not safe to do so. At least if the intersection says we can back up Loquat to turn around.
b) Police – No major concerns with either option. They prefer multiple routes; but they can adapt.
c) Development Services – Prefer to keep it open; if closed, need to account for pedestrian route
d) Transportation – No major concerns with either option.
e) Engineering – Only major concern is loss of connectivity.
   i) Cost should be about the same for both alternatives.
   ii) Traffic Count taken Monday(10/23/2017) = 132 Cars in a 24 Hour Period
   iii) Transportation Master Plan – this road is not identified as a critical road

6) Comments From Public Meeting
a) 11 Comments Card Received
   i) 1 – Alternative 1 (T-intersection)
   ii) 9 – Alternative 2 (Remove Loquat)
   iii) 1 – Not Sure
b) Four attending lived on Canyon Road. Several other attending where for Park improvements in the area.
Appendix A – Loquat Closure Details

Canyon Road will become a dead end between these locations

This section in red is already a dead end

HCP wants to remove this section of the road

Loquat will become a dead end between these locations
Appendix A – Loquat Closure Details

Existing Conditions

Section of Canyon Road to be stabilized

Centerline of Sessom Creek
Appendix A – Loquat Closure Details
Appendix A – Loquat Closure Details

Alternative 1 - T Intersection

Delete Road In Red

Delete Road In Red

Alternative 2: Delete Entire Road in Red
Q1 Please provide your name, street name and email address

Answered: 31  Skipped: 0

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<td>7</td>
<td>Jan Rudnick</td>
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<td>Todd</td>
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Area 2
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<td>1/22/2018 1:19 PM</td>
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</tr>
<tr>
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<td>1/8/2018 1:27 PM</td>
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There are no responses.

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<thead>
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<td>2/2/2018 8:42 AM</td>
</tr>
<tr>
<td>2</td>
<td>111 canyon rd 78666</td>
<td>1/31/2018 2:20 PM</td>
</tr>
<tr>
<td>3</td>
<td>124 W. Hillcrest Dr.</td>
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<td>133 W.Holland St. San Marcos, Tx</td>
<td>1/30/2018 5:28 PM</td>
</tr>
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<td>1/29/2018 7:28 PM</td>
</tr>
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<tr>
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</tr>
<tr>
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<tr>
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<tr>
<td>27</td>
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</tr>
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<td>28</td>
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<td>1/22/2018 4:48 PM</td>
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<tr>
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<td>1/23/2018 3:58 AM</td>
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<td>26</td>
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<td>1/22/2018 5:46 PM</td>
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<td>1/22/2018 1:19 PM</td>
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</tbody>
</table>
There are no responses.

Q2 Do you:

Answered: 31  Skipped: 0

<table>
<thead>
<tr>
<th>Rent a home</th>
<th>Own a home</th>
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</thead>
<tbody>
<tr>
<td>6.45%</td>
<td>93.55%</td>
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</tbody>
</table>

Q3 How long have you lived in San Marcos?

Answered: 31  Skipped: 0

<table>
<thead>
<tr>
<th>Less than a year</th>
<th>Between one to five years</th>
<th>More than five years</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00%</td>
<td>20%</td>
<td>80%</td>
</tr>
</tbody>
</table>

ANSWER CHOICES

| Rent a home          | 6.45% | 2 |
| Own a home           | 93.55%| 29 |
| TOTAL                |       | 31 |
Q4 How would you classify your attitude toward protecting the San Marcos River?

Answered: 31  Skipped: 0

Q5 Rank features in order of preference (1 – most important and 5 – least important).

Answered: 30  Skipped: 1
San Marcos River water quality
Quiet Neighborhood
Roadway Safety
Neighborhood pedestrian a...
Neighborhood vehicular...

<table>
<thead>
<tr>
<th>Score</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
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<td>26</td>
<td>3.73</td>
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<td>3.11</td>
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<td>30</td>
<td>2.27</td>
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<td>5</td>
<td>11</td>
<td>6</td>
<td>11</td>
<td>3</td>
<td>11</td>
<td>26</td>
<td>3.73</td>
</tr>
</tbody>
</table>

Q6 Were you aware that Sessom Creek, which flows into the headwaters of the San Marcos River, is directed through two culverts under the Loquat/Canyon Road Y-intersection?

Answered: 31  Skipped: 0

Yes
No
Q7 How often do you use the Loquat/Canyon Road Y-intersection?

Answered: 31  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple times each day</td>
<td>22.58%</td>
</tr>
<tr>
<td>Daily</td>
<td>12.90%</td>
</tr>
<tr>
<td>Weekly</td>
<td>19.35%</td>
</tr>
<tr>
<td>Monthly</td>
<td>9.68%</td>
</tr>
<tr>
<td>Seldom</td>
<td>29.03%</td>
</tr>
<tr>
<td>Never</td>
<td>6.45%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>31</td>
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</tbody>
</table>

Q8 Which alternatives would you prefer? (information and map below)

Answered: 30  Skipped: 1
## Sessom Creek Roadway Intersection

### Appendix B – On-Line Survey Results

**Q9 Comment Box**

**Answered:** 15  **Skipped:** 16

<table>
<thead>
<tr>
<th>#</th>
<th>RESPONSES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I live on Canyon Road. Last night a neighbor needed a fire truck and ambulance, and it highlighted the the absolute need to keep Loquat open for vehicular traffic. In the event of an emergency or natural disaster, we on Canyon road would be in danger by having only one way to exit this area. I believe that residents on this road should have a stronger voice for the outcome of this project as it impacts us directly on a daily basis.</td>
<td>2/2/2018 8:42 AM</td>
</tr>
<tr>
<td>2</td>
<td>I will greatly miss the connection. I have lived on Canyon for 42 years. Losing the connection seem like the best way to go. Alternative #2.</td>
<td>1/31/2018 2:20 PM</td>
</tr>
<tr>
<td>3</td>
<td>I just cannot support a partial closure of loquat street ...This street provides a Direct Route for Any Type of Emergency vehicle to get down into the Canyon . Thank you</td>
<td>1/29/2018 7:28 PM</td>
</tr>
<tr>
<td>4</td>
<td>Please do not cut it off. please leave it open.</td>
<td>1/29/2018 4:42 PM</td>
</tr>
<tr>
<td>5</td>
<td>The Loquat &quot;cut-off&quot; is handy for residents - me included - but it is also being increasingly used by others as a short-cut through the neighborhood to avoid major congestion on Sessom. Who wouldn't? But the negative impact of increased traffic in our neighborhood and safely considerations on that road far out-weigh the convenience. Members of our family have had two collisions at the sharp, up-hill turn. Once we were completely stopped, but the other vehicle was going too fast on the steep, slippery road, making it impossible for them to stop. Also, I’ve personally helped several stranded (and sometime not quite sober) drivers who have gone off the steep, slick road. The near-by trees confirm the fact, and show evidence of many more incidents. If you factor in pedestrian and bike safety, and the environmental impact on the river, alternative #2 just makes the most sense - by far!</td>
<td>1/28/2018 9:05 AM</td>
</tr>
<tr>
<td>6</td>
<td>Question 5 is not a good question. It should read &quot;pick the two (or three) most important statements below&quot; or something like that. But having a survey is an excellent idea. Thanks.</td>
<td>1/26/2018 8:50 PM</td>
</tr>
<tr>
<td>7</td>
<td>I think it would be a good idea to close off Loquat St.</td>
<td>1/26/2018 10:55 AM</td>
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</table>

### ANSWER CHOICES

<table>
<thead>
<tr>
<th>Alternative #1 (T-Intersection)</th>
<th>Pros</th>
<th>Cons</th>
<th>RESPONSES</th>
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<tbody>
<tr>
<td>a)</td>
<td>Maintain access for residents</td>
<td>Negative impact on water quality; Leaves a low water crossing in place</td>
<td>23.33% 7</td>
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</table>

<table>
<thead>
<tr>
<th>Alternative #2 (Loquat Partial Removal)</th>
<th>Pros</th>
<th>Cons</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td>allow the reestablishment of the original stream channel and thereby:</td>
<td>Loss of one vehicle access route to Sessom Dr. for neighborhood residents. (Pedestrian/bike access will be maintained by a pedestrian/bike crossing.)</td>
<td>76.67% 23</td>
</tr>
<tr>
<td>b)</td>
<td>eliminate point of constriction thus reducing localized flooding</td>
<td>enhance public safety by removing portion of loquat that is narrow, steeply-sloped, with no lights or guardrails</td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td>reduce the level of infrastructure and future maintenance costs in an ecologically sensitive area</td>
<td>enhance public safety by removing portion of loquat that is narrow, steeply-sloped, with no lights or guardrails</td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td></td>
<td>conserve the existing condition of the river</td>
<td></td>
</tr>
</tbody>
</table>

Total Respondents: 30
<table>
<thead>
<tr>
<th>ID</th>
<th>Comment</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>- Join Loquat to Peach Tree - Reroute all lines higher uphill, out of creek, and AWAY from Seesom (stay away from Sessom now and in the future for repairs - already the most critical [only] road through that area and already a bottleneck for utilities.) Lines should be down new utility easement, or better along side new road, parallel to Chestnut</td>
<td>1/25/2018 2:33 PM</td>
</tr>
<tr>
<td>9</td>
<td>Keeping high density (student) housing out of the neighborhood North of Sessoms Drive is my main concern</td>
<td>1/24/2018 1:54 PM</td>
</tr>
<tr>
<td>10</td>
<td>I use this daily on foot and by vehicle. There should be a bridge option instead of these two alternatives. Proposal a bridge option for vehicles and pedestrians up the hill on loquat and canyon to maintain all the pros of both situations.</td>
<td>1/24/2018 1:11 PM</td>
</tr>
<tr>
<td>11</td>
<td>This also allows the Sessom Creek Natural Area to be secluded.</td>
<td>1/24/2018 12:10 PM</td>
</tr>
<tr>
<td>12</td>
<td>Where is the city on better bi-ped access from this neighborhood to campus? The cross walk at Sessoms and Comanche is unusable due to the lack of a side walk on the N side of Sessoms. There are no other cross walks or other facilities between Holland and N. LBJ. I ride my bike to work on Alamo and see many pedestrians using this route as well. For those who choose to cross there, there is a retaining wall blocking access to the sidewalk on the South side of Sessoms. There needs to be more.</td>
<td>1/24/2018 8:51 AM</td>
</tr>
<tr>
<td>13</td>
<td>As long as pedestrian and bicycle access is maintained, which also protects the river by promoting alternative transportation, I’m in favor of closing the street.</td>
<td>1/23/2018 4:37 PM</td>
</tr>
<tr>
<td>14</td>
<td>I am a 30 year owner of property adjacent to Sessoms creek (gulch). Loquat and Canyon streets are obsolete and dangerous. Erosion and hazards caused by the old designs and street layouts should be changed asap. It is difficult for me to see how these proposed changes will provide long term solutions without addressing all the drainage, infrastructure, and erosion issues up stream from the Sessoms Phase 1 proposals. Seems that only a part of the problems are being addressed which will greatly reduce the effectiveness of any of this work down stream. The only question I would like to have answered is, will there be a Sessoms Creek Improvements Phase 2 up stream from phase 1?? Email address provided.</td>
<td>1/23/2018 3:58 AM</td>
</tr>
<tr>
<td>15</td>
<td>this survey seems a little biased towards cutting off loquat. I am not convinced that a small culvert would cause that much damage to the water quality of Sessom creek.</td>
<td>1/22/2018 9:25 PM</td>
</tr>
</tbody>
</table>
AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

CONTRACT: Sessom Creek Wastewater Replacement from N. LBJ to Canyon Road
CONSULTANT: Kimley-Horn and Associates, Inc.

AUTHORIZATION NO.: 03
ORIGINAL CONTRACT DATE: October 03, 2017

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

In general, the additional scope will include:

- **Canyon Road Sanitary Sewer** – the replacement and upsizing of approximately 500 linear feet of 6-inch sanitary sewer line to 8-inch sanitary sewer line along Canyon Road

- **Canyon Road Water Service Line Relocation** – the lowering and relocation of three (3) water services along Canyon Road.

- **Sessom Creek Environmental Assessment** – to evaluate whether formal notification to the U.S. Army Corps of Engineers (USACE) would be required for impacts to Waters of the U.S. (WOUS) resulting from the proposed project.

- **Sessom Creek Floodplain Study** – to develop the peak flows for 2-, 10-, 25-, 50-, 100-, and 500- year events (the “design storms”)

- **Sessom Creek Bank Stabilization** – the stabilization of the Sessom Creek bank on the Canyon Road side of the creek for approximately 300 linear feet of creek with a gabion wall system.

- **Canyon Road Reconstruction** – The reconstruction of approximately 500 linear feet of roadway along Canyon Road. The project will also include the removal of approximately 275 linear feet of Loquat Street south of the existing Canyon Road intersection. Turnarounds will be placed south of the removal limits on Loquat Street and on the northern limits of Canyon Road.

Please see Attachment A for more details.

Previous contract amount: $ 264,575.00
Net increase/decrease in contract amount: $ 232,555.00
Revised contract amount: $ 497,130.00
Requested by:

By: Andrew W. Var. Leeuwen - Senior Vice President
Date: 3/26/2018

Approved by:

City of San Marcos:

By: ______________________________ Date: __________

Bert Lumbreras – City Manager
ATTACHMENT A
CITY OF SAN MARCOS
CANYON ROAD BANK STABILIZATION CHANGE IN SERVICE
SCOPE OF SERVICES

Project Understanding

The work to be performed by Kimley-Horn and Associates, Inc. (KIMLEY-HORN or the Consultant) under this contract will consist of providing Design Phase (60%, 90%, 99%, 100% Documents), Bid and Construction Phase Services for the Sessom Drive Wastewater Replacement from N. LBJ to Canyon Road. The project consists of the following improvements:

- Canyon Road Sanitary Sewer – the replacement and upsizing of approximately 500 linear feet of 6-inch sanitary sewer line to 8-inch sanitary sewer line along Canyon Road to the southwest corner of the intersection of Canyon Road and Loquat.
- Canyon Road Water Service Line Relocation – the lowering and relocation of three (3) water services along Canyon Road.
- Sessom Creek Environmental Assessment – to evaluate whether formal notification to the U.S. Army Corps of Engineers (USACE) would be required for impacts to Waters of the U.S. (WOUS) resulting from the proposed project.
- Sessom Creek Floodplain Study – to develop the peak flows for 2-, 10-, 25-, 50-, 100-, and 500-year events (the “design storms”) for the subject reach as shown in Attachment C, based on hydrologic and hydraulic methodologies included in the City’s Stormwater Technical Manual.
- Sessom Creek Bank Stabilization – the stabilization of the Sessom Creek bank on the Canyon Road side of the creek for approximately 300 linear feet of creek. It is assumed that the project can be designed using a gabion wall system with either tiebacks or sail nails depending on available right-of-way and soil conditions. It is further assumed that the wall foundations will bear two or three feet below the existing creek elevations and will be supported either on natural material or straight shaft foundations. The gabion wall system is not anticipated to be taller than 15 feet (exposed height) and will have minimal slope from the top of the wall to the edge of the roadway.
- Canyon Road Reconstruction – The reconstruction of approximately 500 linear feet of roadway along Canyon Road. The project will also include the removal of approximately 275 linear feet of Loquat Street south of the existing Canyon Road intersection. Turnarounds will be placed south of the removal limits on Loquat Street and on the northern limits of Canyon Road.

Basic Scope of Services

Design Phase (Preliminary and Final)

1. Project Management and QA/QC: This task consists of effort associated with project administration, coordination with City staff, coordination and supervision of the project team, coordination with other projects specifically the Sessom Creek Restoration Project (designed by John Gleason, LLC), and quality management so that project milestones and deliverables attempt to meet schedule and budget constraints.

2. Meetings
   a. Project Coordination Meetings: Nine (9) monthly coordination meetings between the Habitat Conservation Plan (HCP) and City of San Marcos have been budgeted for the Design Phase. It is assumed that meetings will be held prior to beginning Preliminary and Final design as well as during each design phase. Kimley-Horn will attend meetings
with City of San Marcos Staff and John Gleason, LLC Staff to determine project constraints and needs as well as discuss design considerations.

b. Project Meetings: Two (2) project meetings have been budgeted for the Design Phase, following each milestone submittal (Preliminary and Final Design).

c. Public Meetings: One (1) public meeting has been budgeted which consists of preparing exhibits and attending the meeting.

3. Tasks
   a. Sessom Creek Environmental Assessment
      i. Perform Aquatic Resources Delineation in general accordance with the USACE 1987 Wetlands Delineation Manual and appropriate USACE Regional Supplement as detailed below.

      ii. Perform Desktop Review by locating readily available resource documents which may include aerial photographs, historic topographic maps, soil surveys, plant species data, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), and other related data for a desktop review of site conditions. Kimley-Horn will perform a desktop review of the located information to make a preliminary determination based on Kimley-Horn’s opinions and experiences of the areas that could be potentially be categorized as jurisdictional WOUS and those that may not be jurisdictional. Sections of the digital topographic maps, aerial photographs, and floodplain maps deemed appropriate by Kimley-Horn, and proposed project boundaries will be projected and converted to the appropriate Geographic Information System (GIS) format.

      iii. Perform a site visit to determine the existence and approximate locations of aquatic resources on the site generally following the USACE 1987 Wetlands Delineation Manual and the applicable USACE Regional Supplement. Kimley-Horn will identify potential WOUS, including traditional navigable waters, relatively permanent waters, non-relatively permanent waters, and wetlands that are adjacent, abutting, or isolated to these waters. The site visit will include completion of USACE wetland determination data forms with plant identification, notation of hydrologic indicators, and excavation of shallow soil profiles, as appropriate within each different vegetative community spread throughout the project site. Kimley-Horn will identify potentially jurisdictional waterbodies by delineating ordinary high water marks and map them using a GPS unit with sub-meter accuracy and the procedures required by the USACE. Following the site visit, Kimley-Horn will prepare exhibits showing the boundaries (polygons) and acreage and/or linear footage (if applicable) of aquatic resources identified onsite during the site visit. Kimley-Horn will provide a professional opinion regarding the likelihood the identified aquatic resources to be considered jurisdictional and regulated by the USACE.

      iv. Prepare a report for the project documenting the results of the Aquatic Resources Delineation performed onsite. The report will address the applicable framework, describe the assessment methodology, limitations and findings, and provide site-specific conclusions and recommendations. The Aquatic Resources Delineation report will include the following information, as applicable:
ATTACHMENT A
CITY OF SAN MARCOS
CANYON ROAD BANK STABILIZATION CHANGE IN SERVICE
SCOPE OF SERVICES

- Brief description of the project, methods/sampling procedures, and results;
- A preliminary determination and description of the potentially jurisdictional WOUS and potentially non-jurisdictional aquatic resources identified on the project site;
- Acreage of the project area evaluated with boundaries indicated;
- Location of the observation points/data points/soil sample stations;
- Wetland Determination Data Forms completed in accordance with USACE guidelines for the observation points/data points/soil sample stations;
- Acreage and linear footage (if applicable) of the aquatic resources onsite and potentially jurisdictional areas (suspect WOUS) and potentially non-jurisdictional aquatic resources including polygons of aquatic resources (mapped by GPS) shown on exhibits;
- Historical information (including topographic quadrangle maps, historic aerial photographs, FEMA maps, NWI maps, and soil surveys) to document the potential limits of USACE jurisdiction for the identified aquatic resources (if applicable);
- Professional opinions regarding the potential jurisdictional status of the identified aquatic resources with supporting documentation and rationale;
- Analysis of potential applicable USACE permitting scenarios; and
- Regulatory language for potential applicable permits with General Conditions.

b. Sessom Creek Floodplain Study

i. Fully Developed Hydrologic Analysis – Develop 2-, 10-, 25-, 50-, 100-, and 500-year (the “design storms”) peak flows for the subject reach using the unit hydrograph method and HEC-HMS. Fully developed conditions is defined as the land uses on the City’s Comprehensive Plan Map (July 2017).

ii. Topographic Cross Sections – Utilize topographic cross sections from previously completed survey data. No additional topographic cross sections are included in this task.

iii. Pre-Project Hydraulic Analysis – Create one HEC-RAS model for the subject reach to establish pre-project water surface elevations and velocities for the design storms based on the provided cross sections and the fully developed hydrologic analysis.

iv. Post-Project Hydraulic Analysis: Modify the cross sections within the pre-project HEC-RAS model to include the proposed geometries of Canyon Road and Loquat Street. The post-project model will include the Loquat Street culvert crossing. This task includes one iteration to modify the cross sections to include cut areas for the project to meet the following City requirements:

1. Floodplain alteration may not increase mean stream velocity unless the resultant velocity remains at 6 feet per second or less.

2. Floodplain alteration may not increase the 100-year water surface elevation by more than 1-foot.
c. Gabion Wall System – Preliminary Design
   i. Wall layout and profile.
   ii. Typical section for each wall height.
   iii. End conditions and proposed transition material.
   iv. Proposed construction access.
   v. List of proposed technical specifications.

d. Gabion Wall System – Final Design
   i. Final wall layout and profile.
   ii. Final typical section and construction details for each wall height.
   iii. Final end conditions and proposed transition material.
   iv. Final site grading.
   v. Final Miscellaneous and Standard Details.
   vi. Final technical specifications.
   vii. Final general notes.
   viii. Final OPCC.

e. Canyon Road Reconstruction – Preliminary Design
   i. Design preliminary horizontal and vertical roadway geometrics utilizing Microstation V8 and Geopak roadway design software.
   ii. Prepare preliminary design schematic identifying impacts associated with proposed roadway cross section and removal of Loquat Street. The preliminary design schematic will be limited to existing topography and utilities, horizontal and vertical alignment, roadway typical section, retaining wall, existing and proposed right-of-way, and existing and proposed pavement edges.
   iii. Prepare preliminary grading cross sections at a spacing no less than 20 feet and at driveways and intersections.
   iv. Evaluate multiple retaining wall alternatives approximately 300 linear feet along Canyon Road adjacent to Sessom Creek.

f. Canyon Road Reconstruction – Final Design
   i. Prepare existing and proposed typical section sheets incorporating any unresolved comments from the Preliminary Design.
ii. Incorporate Road Reconstruction plans into the Title Sheet, Index of Sheets, and a Project Layout which references survey control benchmarks.

iii. Prepare Plan-Profile Sheets for Canyon Road at a scale of 1”= 40’ horizontal and 1”=10’ vertical.

iv. Prepare intersection grading and details sheets detailing the turnarounds on Loquat Street and Canyon Road.

v. Develop driveway modification details at 3 locations.

vi. Prepare final proposed grading cross sections at a spacing no less than 20 feet and at driveways, cross drainage structures, utility crossings, and intersections.

vii. Prepare retaining wall plan-profile sheets establishing the horizontal and vertical geometrics for approximately 300 linear feet of retaining wall along Canyon Road adjacent to Sessom Creek.

viii. Calculate quantities and prepare Item Summaries Sheets tabulating project quantities.

ix. Incorporate TxDOT and City standard details as applicable.

x. Prepare General Notes, and Construction Timeline Estimate.

xi. Prepare an opinion of probable construction costs (OPCC) at each milestone deliverable.

xii. Prepare project specifications.

g. Canyon Road Sanitary Sewer – Final Design

i. Project Layout Sheet: Kimley-Horn will provide a layout of the project with plan sheet references.

ii. Overall Quantity Sheet: Kimley-Horn will provide a quantity table that includes the individual sheet quantities and the overall project quantities.

iii. Wastewater Line Plan and Profile Sheets: Estimated Number of Sheets – two (2).


v. Abandonment Plan Sheets

vi. Engineer’s OPCC.

h. Erosion/Sedimentation Control: KIMLEY-HORN will develop erosion and sedimentation control measures to be included in the plans and details. Additional coordination is included to combine the necessary erosion control measures required for the wastewater construction with any erosion control measures that overlap from the Sessom Creek Bank Stabilization Project.
ATTACHMENT A
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SCOPE OF SERVICES

i. Traffic Control: KIMLEY-HORN will provide traffic control details for construction of the improvements.

j. Permitting
   i. City of San Marcos Permits: KIMLEY-HORN will prepare the tree counts, floodplain permit, and street cut permits for contractor use during construction and submit to the City prior to construction.

j. Joint Project Coordination: Kimley-Horn will coordinate with John Gleason, LLC regarding the Sessom Creek Bank Stabilization Project. The coordination will consist of file and data sharing, survey review and comments, plan and specification incorporation and review, and additional coordination as required to complete the project.

4. Deliverables:
   a. The Floodplain Study will include a narrative, drainage area map, floodplain map, supporting calculations, and models used in the analysis.
   b. Aquatic Resources Delineation report.
   c. Preliminary Design: KIMLEY-HORN will provide two (2) hard copies of 11” x 17” plan sets and one (1) pdf electronic copy. At a minimum, the plan set will contain the following:
      i. Cover Sheet
      ii. General Notes
      iii. Project Layout Sheet: KIMLEY-HORN will provide a layout of the project with plan sheet references.
      iv. Overall Quantity Sheet: KIMLEY-HORN will provide a quantity table that includes individual sheet quantities and the overall project quantities.
      v. Wastewater Line Plan and Profile Sheets: Estimated Number of Sheets – six (6). Five (5) main sheets and one (1) connection sheet.
      vi. Water Line Plan and Profile Sheets: Estimated Number of Sheets – two (2).
      vii. Gabion Wall and Canyon Road Reconstruction Plan and Profile Sheets.
      viii. List of Standard Details: City of San Marcos details will be used where available. City of Austin details will be used otherwise.
      ix. List of Standard Specifications: City of San Marcos Division 1 specifications will be used. City of Austin standard specifications will be used.
      x. Project Specific/Special Specifications
      xi. Project Specific/Special Details
      xii. Engineer’s Opinion of Probable Construction Costs (OPCC).
xiii. Construction Project Schedule: KIMLEY-HORN will develop a Construction Schedule for the project consisting of design, bid and construction phases. The schedule will be updated during design.

d. Preliminary Design Comment Response Letter.

e. Final Design: KIMLEY-HORN will provide two (2) hard copies of 11" x 17" plan sets and one (1) pdf electronic copy. The plan set will also contain the following:

   i. Cover Sheet
   ii. General Notes
   iii. Project Layout Sheet: KIMLEY-HORN will provide a layout of the project with plan sheet references.
   iv. Overall Quantity Sheet: KIMLEY-HORN will provide a quantity table that includes individual sheet quantities and the overall project quantities.
   v. Wastewater Line Plan and Profile Sheets: Estimated Number of Sheets – six (6). Five (5) main sheets and one (1) connection sheet.
   vi. Water Line Plan and Profile Sheets: Estimated Number of Sheets – two (2).
   vii. Gabion Wall Plan and Profile Sheets.
   viii. Canyon Road Reconstruction Plan and Profile Sheets
   ix. Detail Sheets
   x. Erosion Control Plan and Details
   xi. Traffic Control Standard Details
   xii. Engineer's OPCC.
   xiii. Construction Project Schedule: KIMLEY-HORN will develop a Construction Schedule for the project consisting of design, bid and construction phases. The schedule will be updated during design.

f. Final Design Comment Response Letter.

Phase C – Bid Phase

1. Project Management: This task consists of routine communication with the City and other activities associated with managing the project.

2. Attend Pre-Bid Meeting: KIMLEY-HORN will assist the City in conducting pre-bid meeting and developing the agenda.

3. Answer Questions: KIMLEY-HORN will coordinate with the City for issuing responses for technical questions and requests for additional information from potential bidders.
4. Addenda: KIMLEY-HORN will prepare addenda required to clarify, correct or change the bid documents. Addenda will be provided in Adobe .pdf (searchable) format and sealed by responsible engineer(s). Addenda will be issued to bidders through the City's Purchasing Department.

5. Bid Tabulation and Recommendation of Award: KIMLEY-HORN will assist the City in opening of bids, review all bids and evaluate them for responsiveness and bid amount. KIMLEY-HORN will also check references, by telephone, of the low bidder and second low bidder. KIMLEY-HORN will prepare a letter summarizing the review and evaluation and include recommendations for award of the contract for construction, or other action as may be appropriate. The City will make the final decision on the award of the contract for construction and the acceptance or rejection of all bids.

6. Deliverables: KIMLEY-HORN will incorporate addenda items in the Construction Plans; include addenda in the bound Project Manual; and issue a “Conformed” set of plans for construction.
   a. Bid Form: KIMLEY-HORN will provide the Bid Form in Word Document format.
   b. Technical Specifications: KIMLEY-HORN will provide one (1) pdf electronic copy of the Technical Specifications.
   c. Conformed Plans: KIMLEY-HORN will provide one (1) electronic copy of Construction Plans in pdf, one (1) CAD copy, two (2) 22” x 34” plan sets, and three (3) 11” x 17” plan sets.

Phase D – Construction Phase

1. Project Management: This task consists of routine communication with the City; managing, manpower, budgets, and schedules; invoicing; and other activities associated with managing the project.

2. Attend Pre-Construction Conference: KIMLEY-HORN will attend a Pre-Construction Conference prior to commencement of work.

3. Submittal Review: KIMLEY-HORN will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which the Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Ten (10) submittals have been assumed.

4. Response to Requests for Information/Modifications: KIMLEY-HORN will respond to reasonable and appropriate Contractor requests for information (RFI’s) and issue necessary clarifications and interpretations of the Contract Documents to the City as appropriate to the orderly completion of Contractor's work. Five (5) RFI’s have been assumed.

5. Construction Observation: KIMLEY-HORN will provide on-site construction observation services during the construction phase. KIMLEY-HORN will make visits at intervals as directed by Client in order to observe the progress of the Work. Such visits and observations by KIMLEY-HORN are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the work based on KIMLEY-HORN’s exercise of professional judgment. Based on information obtained during such visits and such observations, KIMLEY-HORN will
evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and KIMLEY-HORN will keep Client informed of the general progress of the Work.

The purpose of KIMLEY-HORN's site visits will be to enable KIMLEY-HORN to better carry out the duties and responsibilities specifically assigned in this Agreement to KIMLEY-HORN, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. KIMLEY-HORN will not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor will KIMLEY-HORN have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, KIMLEY-HORN neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Two (2) site visits per month for a duration of two (2) months followed by one (1) site visit per month for a duration of four (4) months is assumed.

6. Pay Application Review: Based on its observations and on review of applications for payment and accompanying supporting documentation, KIMLEY-HORN will determine the amounts that KIMLEY-HORN recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute KIMLEY-HORN's representation to Client, based on such observations and review, that, to the best of KIMLEY-HORN's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, KIMLEY-HORN's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. Review of six (6) Pay Applications has been assumed.

7. Review of Change Orders: KIMLEY-HORN may recommend Change Orders to Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

8. Substantial Completion: KIMLEY-HORN will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, KIMLEY-HORN considers the Work substantially complete, KIMLEY-HORN will notify Client and Contractor.

9. Final Notice of Acceptability of the Work: KIMLEY-HORN will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that KIMLEY-HORN may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, KIMLEY-HORN will also provide a notice that the Work is generally in accordance with the Contract Documents to the best of KIMLEY-HORN's knowledge, information, and belief based on the extent of its services and based upon information provided to KIMLEY-HORN upon which it is entitled to rely.
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10. Deliverables:
   a. Site Visit Reports: KIMLEY-HORN will submit a site visit report to the City following each visit to the site during construction.
   b. Submittal Log: KIMLEY-HORN will prepare a spreadsheet for identifying required submittals that the Contractor must provide as well as tracking to-date submittals and RFI’s provided by the Contractor. An updated Submittal Log will be submitted to the City on a monthly basis.

Phase E – Record Drawings
   1. Record Drawings: KIMLEY-HORN will review the Contractor’s redline as-built drawings and incorporate deviations from the construction drawings as appropriate. Record drawing information will be based solely on the provided marked-up drawings and appropriate field documentation received from the City. KIMLEY-HORN will deliver one (1) set of full size bond drawings and one (1) set of half size plans for review.
   2. Record Drawings Survey: KIMLEY-HORN will survey all above ground appurtenances such as manholes, manhole inverts, water meters, valves, inlets, etc. once all construction is complete. Survey of the appurtenances will be completed by a Registered Land Surveyor licensed in the State of Texas.
   3. Deliverables: After review, KIMLEY-HORN will deliver two (2) sets of full size bond drawings, one (1) pdf electronic copy and one (1) CAD copy.

Supplemental Scope of Services

Option 1b: Nationwide Permit with Notification

KIMLEY-HORN will prepare the appropriate supplemental documentation and permit application form necessary to pursue formal authorization under the applicable Nationwide Permit (NWP). This will include performing and documenting limited reviews for impacts to federally-listed threatened and endangered species and documented cultural resources. KIMLEY-HORN will submit the required NWP application information to the USACE Fort Worth District and will regularly coordinate with the assigned USACE project manager to ensure timely permit application processing. We may require additional client-provided information for a complete submittal package including need and purpose, site alternatives, and avoidance and minimization measures. This task does not include the following:

- the preparation of a compensatory mitigation plan should it be required;
- formal threatened and endangered species presence/absence surveys;
- functional assessment; or
- cultural resources survey.

If the USACE requests accompaniment on a site visit to confirm results, we will perform this for an additional fee under a separate agreement. We assume that the project will not require an Individual Permit (IP). If an IP is required, we will prepare a separate proposal describing our services to assist with obtaining the IP for the project from the USACE.
Schedule

The following project milestones are estimated and may require modification pending preliminary engineering results and construction timeframe constraints:

- Preliminary Design Documents Submittal (90 days)
- Final Design Documents Submittal (45 days)

The estimated timeframes identified do not include time for City review of submittals.

City Responsibilities

1. The City will provide to KIMLEY-HORN all data in the City’s possession relating to KIMLEY-HORN’s services on the Project. KIMLEY-HORN will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.

2. The City will give prompt notice to KIMLEY-HORN whenever the City observes or becomes aware of any development that affects the scope or timing of KIMLEY-HORN’s services.

3. The City will examine information submitted by KIMLEY-HORN and render in writing or otherwise provide comments and decisions in a timely manner.

4. The City will obtain all necessary right-of-entries from required landowners.

5. The City will provide Title Reports for properties with proposed easements.

6. The City will obtain all permanent sanitary sewer line, access, and temporary construction easements, including services such as appraisal of properties, negotiations with the property owners, and actual purchase of the easements.

7. The City will be responsible for conveying bidding and construction contract administration questions to John Gleason, LLC for the purposes of requesting responses to contractor questions via addenda, submittal reviews, Requests for Information, Requests for Proposals, and any other items pertaining to the Sessom Creek Bank Stabilization Project which do not involve Kimley-Horn.

Additional Services

Additional Services to be performed, if authorized in writing by the City, but which are not included in the above-described Basic and Supplemental Scope of Services, and once a mutually agreed upon fee is negotiated are as follows:

1. Performing Geotechnical Investigation or Subsurface Utility Engineering.

2. Performing Environmental Investigation or Environmental permit preparation and submittal.

3. Performing title searches for easement or joint-use agreement preparation.

4. Preparation of additional easement/ boundary exhibits beyond the number identified in the Scope of Services.

5. Acting as an agent of the City in the acquisition of permanent or temporary easements.
6. Preparation of platting documents and/or real property survey for site acquisition.

7. Accompanying the City when meeting with the TCEQ, U.S. Environmental Protection Agency, or other regulatory agencies during the course of the Project, beyond those meetings identified above.

8. Preparing applications and supporting documents for government grants, loans, or planning advances.

9. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the City.

10. Providing professional services associated with the discovery of any hazardous waste or materials in the project site.

11. Submittals to FEMA or any other agency besides the City. A Conditional Letter of Map Revision (CLOMR) or a Letter of Map Revision (LOMR) request is a service KIMLEY-HORN can provide as an additional service if requested by the City.

12. Consultation with the USACE.

Limitations

It is important for the Client to understand that the EPA and the USACE occasionally issue guidance concerning what they intend to exert jurisdiction over. Changes that impact our strategy or scope will cause additional work and will be addressed as an additional service amendment to this letter agreement. Observations will be made under the applicable regulatory guidance at the time of the observations.

Official authority to make a determination defining applicable jurisdictional limits rests solely with the Environmental Protection Agency (EPA); however, authority has been delegated to the USACE. Jurisdictional Determinations (JD) are made by the USACE, upon specific written request, on a case-by-case basis and may make use of certain information at its disposal (such as other permits in the local area) that may not be readily available to the public. The Aquatic Resources Delineation should not be considered authoritative, and it may not wholly eliminate uncertainty regarding the USACE’s jurisdictional limits.
### ATTACHMENT B - FEE SCHEDULE

**City of San Marcos, Texas**  
**Canyon Road Bank Stabilization**

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<tr>
<th>Professional Service Description</th>
<th>Kimley-Horn Staff</th>
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<td>i. Aquatic Resources Delineation</td>
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<td>iii. Site Visit</td>
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<td>i. Cut Cross Sections</td>
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<td>i. Revise Cross Section Geometry based on Road Grades</td>
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<td>ii. Proposed Culvert Crossing</td>
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<td>iii. Iteration to Mitigate for Increases in Water Surface Elevations and / or Velocities</td>
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<td>iv. Narrative</td>
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<td>v. Drainage Area Map</td>
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<td>vi. Floodplain Map</td>
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<td>vii. Calculation Summary Attachments</td>
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<td>viii. Production Work</td>
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<td>ix. Coordination with Gleason and CoSM</td>
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<td>Gabion Wall System - Preliminary Design</td>
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<td>i. Wall Layout and Profile</td>
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<td>ii. Typical Section for each wall height</td>
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**ATTACHMENT B - FEE SCHEDULE**

City of San Marcos, Texas

Canyon Road Bank Stabilization

<table>
<thead>
<tr>
<th>Task Description</th>
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<tbody>
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<td>Project Layout Sheet</td>
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## ATTACHMENT B - FEE SCHEDULE

City of San Marcos, Texas  
Canyon Road Bank Stabilization

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<td>ii. Overall Quantity Sheet</td>
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<td>iii. Plan Profile Sheets</td>
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<td>iv. Water Service Relocation Sheets</td>
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<td>v. Abandonment Plans Sheets</td>
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<td>vi. OPCC</td>
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<td>Erosion/Sedimentation Control Analysis</td>
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<tr>
<td>Traffic Control Analysis including LBJ Drive and Sessom Drive Intersection Detail</td>
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### Phase C - Bid Phase

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<tr>
<td>1. Project Management</td>
<td>31</td>
<td>$4,300</td>
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<tr>
<td>2. Prepare for and Attend Pre-bid Meeting</td>
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<td>3. Answer Contractor Questions</td>
<td>7</td>
<td>$1,025</td>
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<td>4. Addenda</td>
<td>11</td>
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<td>5. Bid Tabulation and Recommendation of Bid Award</td>
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<td>6. Conformed Documents</td>
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### Phase D - Construction Phase

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<td>1. Project Management</td>
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<td>$18,935</td>
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<td>2. Coordination with City Staff</td>
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<td>Project Accounting and Administration</td>
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<td>3. Prepared for and Attend Pre-construction Conference</td>
<td>6</td>
<td>$1,095</td>
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<td>4. Shop Drawings/Submittal Review</td>
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<td>$3,290</td>
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<td>5. Requests for Information (RFIs)</td>
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<td>$4,910</td>
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<td>6. Construction Site Visits and Progress Meetings</td>
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<td>$2,920</td>
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<td>7. Pay Application Review</td>
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<td>8. Requests for Proposals (RFPs) and Change Orders (COs)</td>
<td>24</td>
<td>$3,480</td>
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<td>9. Attend Final Completion Walk-through and Prepare Punchlist</td>
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<td>$1,620</td>
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### Phase E - Record Drawings

<table>
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<tbody>
<tr>
<td>1. Prepare and Submit Record Drawings</td>
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</table>

## END BASIC SERVICES

- **Total Basic Service Hours:** 1,517
- **Total Basic Service Cost:** $222,875
- **Total Supplemental Service Hours:** 64
- **Total Supplemental Service Cost:** $232,555

### Supplemental Services

- **Total Supplemental Services Cost:** $9,680
- **USACE Permitting Memo for Nationwide Permit without Notification**
  - **Task Description:**
  - **Total Task Hours:** 2
  - **Total Task Cost:** $3,020
- **USACE Nationwide Permit with Notification**
  - **Task Description:**
  - **Total Task Hours:** 4
  - **Total Task Cost:** $6,660

### END

- **Total Fee Basic + Supplemental Services Cost:** $232,555
# ATTACHMENT B - FEE SCHEDULE

## City of San Marcos, Texas

Canyon Road Bank Stabilization

<table>
<thead>
<tr>
<th>Professional Service Description</th>
<th>Kimley-Horn Staff</th>
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<tbody>
<tr>
<td></td>
<td>Total Task Hours</td>
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<tr>
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</table>

The hours listed above are an estimate. The hours assigned to the Phase are not exclusive to the Phase which they are assigned. The total fee will not exceed the total contract amount as discussed in Article 2. The hourly rates of this
AGENDA CAPTION:
Consider approval, by motion, of Change Order # 3 with Rocking Q Construction LLC, in the amount of $170,941.30, for the upsizing of the IH-35 bore casing from 24" to 36", replace internally restrained pipe joints with external restraints, and overlay Durango Street in connection with the Reclaimed Water Expansion Project.

Meeting date: May 15, 2018

Department: Engineering/C.I.P.

Amount & Source of Funding
Funds Required: $170,941.30
Account Number: C258
Funds Available: $400,000
Account Name: WW Collection Improvements

Fiscal Note:
Prior Council Action: None

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

City Facilities
Goal #5 Maintain & Improve City's Infrastructure
Choose an item.

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

☐ Economic Development - Choose an item.
☒ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
Rocking Q Construction LLC is currently working on the Reclaimed Water Expansion Project and will be adding Change Order #3 to their scope of work. Change Order #3, for $170,941.30, includes the upsizing of the IH-35 bore casing from 24" to 36" and replacing internally restrained pipe joints with external restraints. When the project was initially bid, externally restrained pipe was not available. This type of pipe is preferred due to the ease in which it can be dismantled and replaced if needed for future maintenance. The upsizing of the IH-35 bore casing from 24" to 36" is required due to the size of the external joint restraints relative to the size of the carrier pipes. The proposed carrier pipes are sized as follows:

1) 16" Reclaimed Water Pipe  
2) 16" Wastewater Pipe  
3) 16" Domestic Water Pipe

External restraints will not fit into a 24" casing pipe with the above carrier pipe sizes.

The change order also includes the mill and overlay of Durango Street. The original bid only included trench repair however the condition of the street has deteriorated during construction and the entire road surface needs to be replaced.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Staff recommends approval of this change order
We are submitting this Change Order to your contract. Upsize the RWL and Electric bores. Reconfigure carrier pipe, RWL and WWL to eliminate internally restrained pipe and provide externally restrained pipe.

### Reclaim Water Line

<table>
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<tr>
<th>ITEM</th>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>PREVIOUS QUANTITY</th>
<th>REVISED QUANTITY</th>
<th>CHANGE IN QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
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</thead>
<tbody>
<tr>
<td>28B</td>
<td>501S-B-36</td>
<td>36&quot; Steel Casing Jacked or Bored (RWL IH-35)</td>
<td>-</td>
<td>327.00</td>
<td>327.00</td>
<td>LF</td>
<td>$699.15</td>
<td>$228,622.05</td>
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<tr>
<td>34B</td>
<td>510-ARRJ-16PVC</td>
<td>16&quot; C905, includes external bell restraints &amp; 16&quot; x 30&quot; Casing Spacers. (RWL IH-35)</td>
<td>-</td>
<td>327.00</td>
<td>327.00</td>
<td>LF</td>
<td>$163.62</td>
<td>$53,503.74</td>
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<tr>
<td>34C</td>
<td>510-ARRJ-16PVC</td>
<td>16&quot; C905, includes external bell restraints &amp; 16&quot; x 30&quot; Casing Spacers. (Railroad Bores)</td>
<td>640.00</td>
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<td>LF</td>
<td>$146.45</td>
<td>$93,728.00</td>
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**TOTAL FOR BID CATEGORY**

| SUB TOTAL | $375,853.79 |

### Wastewater Line

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<th>ITEM</th>
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<th>DESCRIPTION</th>
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<th>REVISED QUANTITY</th>
<th>CHANGE IN QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
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<tr>
<td>91A</td>
<td>510-ARRJ-24PVC</td>
<td>24&quot; SDR26 WWL (Restrained)</td>
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<td>359.00</td>
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<td>LF</td>
<td>$179.15</td>
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**TOTAL FOR BID CATEGORY**

| SUB TOTAL | $68,989.85 |

### Electric

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<th>UNIT PRICE</th>
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<td>956</td>
<td>501S-B-36</td>
<td>Electric &amp; Com. Encasement Upsize Casing to 36&quot; (IH-35)</td>
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<td>327.00</td>
<td>327.00</td>
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<td>$1,029.58</td>
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**TOTAL FOR BID CATEGORY**

| SUB TOTAL | $336,672.66 |

**TOTAL CHANGE ORDER**: $137,731.30
CITY OF SAN MARCOS
CHANGE ORDER

PROJECT:  Reclaim Water Expansion Project-Pipeline

Date Prepared:  3/7/2018
Change Order #:  3

Your signature below will constitute your acceptance of this Change Order:

1. Prepared By: 2. Design Consultant Recommendation
Project Manager, P.E., Title Date Design Consultant, Title Date

3. Reviewed By: 4. Contractor Approval
Christin Lindsey, Contracts Coordinator Date Contractor, Title Date

5. Recommended By: 6. Approved By:
Laurie Moyer, P.E. Date Jared Miller, City Manager Date
Director of Capital Improvements

Distribution List:
- Project Manager, P.E., Title - Email Address
- Design Consultant, Title - Email Address
- Christin Lindsey, Contracts Coordinator - CLindsey@sanmarcostx.gov
- Contractor, Title
- Laurie Moyer, P.E., Director of Capital improvements - LMoyer@sanmarcostx.gov

Page 2 of 2 Revised: July 29, 2013
# Materials

<table>
<thead>
<tr>
<th>Item #</th>
<th>Casing Upsize (IH-35 RWL)</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total</th>
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<tbody>
<tr>
<td>RWL IH-35</td>
<td>24&quot; Steel Casing</td>
<td>LF</td>
<td>-327</td>
<td>$53.00</td>
<td>$17,331.00</td>
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<td>RWL IH-35</td>
<td>36&quot; Steel Casing</td>
<td>LF</td>
<td>327</td>
<td>$102.50</td>
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<td>RWL IH-35</td>
<td>Difference in price added to upsize casing</td>
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<td>$49.50</td>
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Provide Externally Restrainted Pipe (IH-35 RWL)

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<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total</th>
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<tbody>
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<td>RWL IH-35</td>
<td>16&quot; DR18 C905 Pipe</td>
<td>LF</td>
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<td>RWL IH-35</td>
<td>16&quot; FRJ DR18 C905</td>
<td>LF</td>
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<td>16&quot; Bell Restraint Harness (Domestic)</td>
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<td>16&quot; x 24&quot; Casing Spacer Center Restrained</td>
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<td>Difference in price added to externally restraint pipe</td>
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Provide Externally Restrainted Pipe (Railroads RWL)

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Provide Externally Restrainted Pipe (IH-35 WWL) and add 5 LF to Casing

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<th>Qty</th>
<th>Unit Price</th>
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<tbody>
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<td>327</td>
<td>$102.50</td>
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Total Change Order #3 $137,731.30
We are submitting this Change Order to your contract.

Upsize the RWL and Electric bores. Reconfigure carrier pipe to eliminate internally restrained pipe and provide externally restrained pipe.

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**TOTAL FOR BID CATEGORY I:** $211,666.17

**TOTAL FOR BID CATEGORY II:** $812,738.00

**TOTAL CHANGE ORDER TOTAL II:** $1,024,404.17

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**REvised CONTRACT AMOUNT:** $5,286,751.52

Your signature below will constitute your acceptance of this Change Order:

1. Prepared By: Laurie Moyer, P.E.
2. Design Consultant Recommendation
3. Reviewed By: Laurie Moyer, P.E.
4. Contractor Approval
5. Recommended By: Laurie Moyer, P.E.
6. Approved By: Laurie Moyer, P.E.

**Distribution List:**

- Project Manager, P.E., Title: - Email Address
- Design Consultant, Title: - Email Address
- Contracts Coordinator: - Email Address
- Inspector: - Email Address

**Revised:** July 29, 2013
### MATERIALS

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### Casing Upsize (IH-35 Electric) |

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<tr>
<td>Electric</td>
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### Bid Items

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<th>Unit Price</th>
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<td>34B</td>
<td>16&quot; C905, Includes external bell restraints, 16&quot; x 36&quot; casing spacers (RWL IH-35)</td>
<td>LF</td>
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<td>$53,503.74</td>
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<tr>
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<td>16&quot; C905, Includes external bell restraints, 16&quot; x 36&quot; casing spacers (RWL Railroads)</td>
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<tr>
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<td>24&quot; WWL Restrained</td>
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<td>91</td>
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<td>$(310,650.00)</td>
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Total Change Order #3: $131,686.17
Bid Proposal for Rockin Q 24" Bell Restraint

ROCKIN Q CONSTRUCTION LLC  
Bid Date: 10/04/2017 05:00 p.m.  
Core & Main Bid #: 419230

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Subtotal 1,369.00  
Sub Total 1,369.00  
Total 1,369.00

<price is still good 1-31-18>

SQR 24 sewer pipe bell restrants
## QUOTE

*ATTENTION*

See new terms and conditions at the bottom of the page.

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### CUSTOMER

ROCKIN Q CONSTRUCTION  
4579 GOEHMANN LANE  
FREDERICKSBURG, TX  
78624

### PROJECT INFORMATION

SAN MARCOS-16"DR18 PURPLE #3

### PROJECT INFORMATION

SAN MARCOS-16"DR18 PURPLE #3

### UNIT PRICE

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Subtotal: 43,982.50  
Tax: 0.00  
Bid Total: 43,982.50

#### ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:38:54

BIDCNEW
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WATER SUBTOTAL

Section Sub-total:

Subtotal: 35,789.86
Tax: .00
Bid Total: 35,789.86

ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:36:51
## Quote

### Customer Information
- **Customer:** ROCKIN Q CONSTRUCTION
- **Address:** 4579 GOEHMANN LANE, FREDERICKSBURG, TX 78624
- **Contact:** 341 FT $110/EA

### Project Information
- **Project:** SAN MARCOS-16"DR18 PURPLE #1

### Line Item Details

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**Package Sub-total:** 22,653.79

**16"X30" STAINLESS STEEL CASING SPACER CENTER/REST 12" WIDE**
- 16"X30"SS CASING SPACER | 340.0000 | 16,320.00

**WATER SUBTOTAL**
- **Section Sub-total:** 38,973.79

**ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES**

*ATTENTION*
See new terms and conditions at the bottom of the page.

---

**SUBTOTAL:** 38,973.79

**Tax:** .00

**Bid Total:** 38,973.79

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All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:39:35
Date 10/27/2017
Invoice # 10160

**Ship To**
Black Rock Construction
McKie Street & SB IH35
San Marcus, Texas 78666

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**Thank you for your business!**

---

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Subtotal $20,430.00
Sales Tax (6.75%) $0.00
Total $20,430.00
Payments/Credits $0.00
Balance Due $20,430.00
PO Box 441 - Weatherford, TX 76086

Bill To
Black Rock Construction
1475 Heritage Parkway
Suite 113
Mansfield, Texas 76063

P.O. #
San Marcus Pr...
Terms
Net 30

<table>
<thead>
<tr>
<th>Units</th>
<th>Qty</th>
<th>Description</th>
<th>Units Price</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Feet</td>
<td>160</td>
<td>36&quot; x .500 x 189.75#, New Steel Casing Pipe, Bev &amp; Sq., Dead 20's</td>
<td>102.15</td>
<td>16,344.00</td>
</tr>
</tbody>
</table>

Ship To
Black Rock Construction
McKie Street & SB IH35
San Marcus, Texas 78666

Ship Date 11/1/2017
Due Date 12/1/2017

Thank you for your business!

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Date 11/1/2017
Invoice # 10179

Subtotal $16,344.00
Sales Tax (6.75%) $0.00
Total $16,344.00
Payments/Credits $0.00
Balance Due $16,344.00
Bill To
Black Rock Construction
1475 Heritage Parkway
Suite 113
Mansfield, Texas 76063

P.O. # San Marcus Pr...
Terms Net 30

<table>
<thead>
<tr>
<th>Units</th>
<th>Qty</th>
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<th>Units Price</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Feet</td>
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<td>24&quot; x .500 x 125.49#, New Steel Casing Pipe, Bev &amp; Sq., 20' Lengths</td>
<td>53.00</td>
<td>2,120.00</td>
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Subtotal $2,120.00
Sales Tax (6.75%) $0.00
Total $2,120.00
Balance Due $2,120.00

Thank you for your business!

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Date 9/8/2017
Invoice # 9884

Ship To
Black Rock Construction
San Marco, Texas

Ship Date 9/8/2017
Due Date 10/8/2017
Other
CUSTOMER: Rockin Q
PROJECT: San Marcos Street Project

<table>
<thead>
<tr>
<th>Mix Designs</th>
<th>Price Per Yard</th>
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<tbody>
<tr>
<td>Class A Concrete</td>
<td>$90.00</td>
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<tr>
<td>Class C Concrete</td>
<td>$99.00</td>
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<tr>
<td>Class I Concrete</td>
<td>$93.50</td>
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<tr>
<td>Class B Concrete</td>
<td>$87.00</td>
</tr>
<tr>
<td>Item 360 Concrete</td>
<td>$99.00</td>
</tr>
<tr>
<td>Flow Fill - Excavatable</td>
<td>$83.00</td>
</tr>
<tr>
<td>Flow Fill - Non Excavatable</td>
<td>$85.00</td>
</tr>
<tr>
<td>6 Sack Grout</td>
<td>$164.50</td>
</tr>
</tbody>
</table>

* Monofilament Polypropylene fibers for use in site concrete @ 1-1.5 lbs/CY add $6.50/CY
* Environmental Fee: $10.00/Load
* For 3/8" aggregate add $6.00/CY
* Fly Ash is subject to availability. For straight cement add $3.00/CY
* Temperature Control: ICE .75/lbs
* A Rinse Out fee of $125.00 per truck will be applied on trucks that have had color added.
* Truck Charges: $3.00/minute after the first hour truck arrives on site
* Short Load Charge 1-2.5 yds $200.00, 3-4.5 yds $125.00*Does not apply to a tag load behind full load to complete pour.

Pricing good through 2017 and subject to an increase January 1, 2018
Raw materials are subject to availability.

Tex-Mix Concrete operates 10 plant locations supplying the areas of Georgetown, Austin, Buda, Kyle, San Marcos, Lockhart, New Braunfels, Wimberley and San Antonio with a 125-truck fleet to service these areas.

We thank you for considering Tex-Mix Concrete as your ready mixed supplier and look forward to meeting your needs in the future.
Cecil Whiteley Concrete Pumping, LLC
P.O. Box 1275
Canyon Lake, TX 78133
830-534-2422

BILL ADDRESS
Rocking Q Construction
4579 Goehmann Ln
Fredericksburg, TX 78624

SITE ADDRESS
4435 S McKie St
San Marcos, TX 78666

COMPLETED BY OPERATOR:

<table>
<thead>
<tr>
<th>Unit #/Size</th>
<th>Pour Type</th>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>[ ]</td>
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</table>

SAFETY NOTE: OVERHEAD POWER LINES □ PRESENT □ NOT PRESENT

IF YOU CANNOT MAINTAIN 20' CLEARANCE NOTIFY DISPATCH BEFORE WORK BEGINS!

COMPLETED BY OPERATOR:

<table>
<thead>
<tr>
<th>TIME</th>
<th>MILEAGE</th>
<th>HOURS (EMPLOYER COMPLETES)</th>
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</thead>
<tbody>
<tr>
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C.O.D. CALCULATION (EMPLOYER COMPLETES)

<table>
<thead>
<tr>
<th>QUANTITIES</th>
<th>YARDS PUMPED</th>
<th>PRIME</th>
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<tbody>
<tr>
<td></td>
<td>50</td>
<td>2</td>
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</table>

COMMENTS: 60 foot of 2 inch hose. Started pushing these pipe out so had to pump slow and had to relocate to other side of highway and had to move to a better location to wash the hopper out

I have read the rental terms and conditions and accept these. I have reviewed the times and pump size on this invoice and verified their accuracy. I am aware of my safety responsibilities per the terms and accept these.
IH-35 CASING & CARRIER PIPE DETAIL

CASING SPACER BODY (EXTERNAL RESTRAINT)

PRESSURE GROUT BETWEEN CASING AND SURROUNDING EARTH

16" CARRIER PIPE

CASING PIPE
# CITY OF SAN MARCOS
## CHANGE ORDER

**PROJECT:** Reclaim Water Expansion Project - Pipeline  
**CONTRACTOR:** Rockle G Construction LLC  
**ADDRESS:** 4799 Dushman Lane, Fredericksburg, TX 78624  
**DATE:** 3/7/2018  
**Change Order #:** 3  

We are submitting this Change Order to your contract, 
Upsize the RWL and Electric boxes. Reconfigure conduit pipe to eliminate internally restrained pipe and provide externally restrained pipe. Mill and pave Durango St curb to curb with 2" HMAC.

## RECLAIM WATER ITEMS

<table>
<thead>
<tr>
<th>Number</th>
<th>SPEC REF.</th>
<th>DESCRIPTION</th>
<th>Previous Quantity</th>
<th>Revised Quantity</th>
<th>Change in Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>28B</td>
<td>501S-B-35</td>
<td>36'' Steel Casing Jacketed or Bored (RWL, IH-35)</td>
<td>-</td>
<td>327.00</td>
<td>327.00</td>
<td>LF</td>
<td>$659.15</td>
<td>$223,622.00</td>
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<tr>
<td>34B</td>
<td>510ARRJ-16PVC</td>
<td>18'' C/005, includes external boll resting on 16'' x 36'' Casing Spacers (RWL, IH-35)</td>
<td>-</td>
<td>327.00</td>
<td>327.00</td>
<td>LF</td>
<td>$1,636.62</td>
<td>$535,054.74</td>
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<tr>
<td>34C</td>
<td>510ARRJ-16PVC</td>
<td>18'' C/005, includes external boll resting on 16'' x 36'' Casing Spacers (Railroad Boro)</td>
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<td>640.00</td>
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<td>$146.46</td>
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<td><strong>319,581.30</strong></td>
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## WASTEWATER ITEMS

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<tbody>
<tr>
<td>70</td>
<td>515S-B-35</td>
<td>36 Steel Casing Jacketed or Bored</td>
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<td>5.00</td>
<td>LF</td>
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<tr>
<td>91A</td>
<td>510ARRJ-24PVC</td>
<td>24'' SRD26 WVL (Restrainted)</td>
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<td>359.00</td>
<td>359.00</td>
<td>LF</td>
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<td>$66,314.85</td>
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<td><strong>SUB TOTAL II</strong></td>
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## ELECTRIC

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<th>Revised Quantity</th>
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<th>Unit</th>
<th>Unit Price</th>
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</thead>
<tbody>
<tr>
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<td>501S-B-35</td>
<td>Electric &amp; Comm. Encased Paving Casing to 36'' (IH-35)</td>
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<td>327.00</td>
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<td>$1,029.50</td>
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<tr>
<td>16A</td>
<td>315S-A</td>
<td>Asphalt Milling 2.0'' Durango St</td>
<td>12,064.00</td>
<td>13,704.00</td>
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<td>$28,700.00</td>
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<tr>
<td>17A</td>
<td>340S-C</td>
<td>Hot Mix Asphalt 2.0'' Durango St</td>
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<td>13,704.00</td>
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<td>$18.50</td>
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<td><strong>TOTAL FOR BID CATEGORY</strong></td>
<td><strong>SUB TOTAL IV</strong></td>
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## ADDITIONS

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<th>DESCRIPTION</th>
<th>Previous Quantity</th>
<th>Revised Quantity</th>
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<th>Unit</th>
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</thead>
<tbody>
<tr>
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<td>24'' Steel Casing Jacketed or Bored</td>
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<td>34</td>
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<td>18'' TRJ/C05</td>
<td>5,598.00</td>
<td>4,631.00</td>
<td>(967.00)</td>
<td>LF</td>
<td>$65.05</td>
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<td><strong>TOTAL FOR BID CATEGORY</strong></td>
<td><strong>SUB TOTAL V</strong></td>
<td>****</td>
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<td><strong>TOTAL ADDITIONS</strong></td>
<td><strong>TOTAL ADDITIONS</strong></td>
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## WASTEWATER ITEMS

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<th>Previous Quantity</th>
<th>Revised Quantity</th>
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<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>91</td>
<td>510ARRJ-24PVC</td>
<td>24'' SRD26 WVL</td>
<td>561.00</td>
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<td>(359.00)</td>
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## ELECTRIC

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<th>Change in Quantity</th>
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<td>(327.00)</td>
<td>LF</td>
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<td>-329,918.00</td>
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<td><strong>TOTAL FOR BID CATEGORY</strong></td>
<td><strong>SUB TOTAL VII</strong></td>
<td>****</td>
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## GENERAL ITEMS

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<th>Unit</th>
<th>Unit Price</th>
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<td></td>
<td>SY</td>
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<td><strong>SUB TOTAL VIII</strong></td>
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**TOTAL CHANGE ORDER**  
TOTAL SUBTOTALS: -3,843,785.00  
TOTAL CHANGE ORDER: -178,941.30  

**CHANGE IN DAYS REQUESTED FOR CHANGE ORDER**: additional time requested for the lead time for the additional materials required.

### Revised: July 26, 2013

Page 1 of 2
# CITY OF SAN MARCOS
## CHANGE ORDER

### PROJECT:
Reclaim Water Expansion Project-Pipeline

### Date Prepared:
3/7/2018

### Change Order #:
3

Your signature below will constitute your acceptance of this Change Order:

<table>
<thead>
<tr>
<th>1. Prepared By:</th>
<th>2. Design Consultant Recommendation</th>
</tr>
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<tbody>
<tr>
<td>[Signature]</td>
<td>[Signature]</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
<tr>
<td>4/18/18</td>
<td>4/18/18</td>
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<table>
<thead>
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<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
<tr>
<td>4/12/18</td>
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</table>

<table>
<thead>
<tr>
<th>5. Recommended By:</th>
<th>6. Approved By:</th>
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<tbody>
<tr>
<td>Laurie Moyer, P.E.</td>
<td>Jared Miller, City Manager</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
<tr>
<td>4/18/18</td>
<td></td>
</tr>
</tbody>
</table>

### Distribution List:
- **Project Manager, P.E., Title**: Email Address
- **Design Consultant, Title**: Email Address
- **Cheslin Lindsey, Contracts Coordinator**: C.Lindsey@sanmarcostx.gov
- **Inspector**: [Inspector Information]
- **Laurie Moyer, P.E., Director of Capital improvements**: L.Moyer@sanmarcostx.gov

Revised: July 19, 2013
<table>
<thead>
<tr>
<th>Item #</th>
<th>Casing Upsize (IH-35 RWL)</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
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<td>-327</td>
<td>$53.00</td>
<td>$17,331.00</td>
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<td>28B</td>
<td>36&quot; Steel Casing</td>
<td>LF</td>
<td>327</td>
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<td>$33,577.50</td>
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<td></td>
<td><strong>RWL IH-35</strong> Difference in price added to upsize casing</td>
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<td>$49.50</td>
<td>$16,186.50</td>
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<td><strong>Provide Externally Restrainted Pipe (IH-35 RWL)</strong></td>
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<tr>
<td>34D</td>
<td>16&quot; DR10 C905 Pipe</td>
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<td>$139.29</td>
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<td>34C</td>
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<td><strong>Provide Externally Restrainted Pipe (IH-35 WWL) and add 5 LF to Casing</strong></td>
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<tr>
<td>91A</td>
<td>24&quot; SDR26 WWL</td>
<td>LF</td>
<td>359</td>
<td>$80.00</td>
<td>$28,720.00</td>
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<td>91</td>
<td>24&quot; SDR26 WWL</td>
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<td>$17,331.00</td>
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<td>$33,577.50</td>
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<td>Additional Grout and Grouting time required for upsize casing</td>
<td>LF</td>
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<td>$30.08</td>
<td>$9,836.16</td>
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<td><strong>Item #</strong> Revise Asphalt Quantities on Durango St</td>
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<tr>
<td>16B</td>
<td>Asphalt Milling 2.0&quot;</td>
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<td>6000</td>
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<tr>
<td>17B</td>
<td>Hot Mix Asphalt 2.0&quot;</td>
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<td>$19.65</td>
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<td>$9,031.75</td>
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<td>$85,478.50</td>
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<tr>
<td>16A</td>
<td>Asphalt Milling 1.5&quot;</td>
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<td>-5161</td>
<td>$ 1.75</td>
<td>$ (9,031.75)</td>
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<td>$ (95,476.50)</td>
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<td>$ 133,820.00</td>
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<td>$ (212,550.00)</td>
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<td>36&quot; Steel Casing, Jacked or Bored (IH-35 Bore)</td>
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<td>$ 228,622.05</td>
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<td>327</td>
<td>$ 163.62</td>
<td>$ 53,503.74</td>
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<td>34C</td>
<td>16&quot; C905, Includes external bell restraints, 16&quot; x 36&quot; casing spacers (RWL Railroads)</td>
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<td>640</td>
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<td>$ 93,728.00</td>
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<td>5</td>
<td>$ 935.00</td>
<td>$ 4,675.00</td>
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<td>91</td>
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**Total Change Order #3**  $ 179,421.05
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<td>Average street width</td>
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<tr>
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<td>Package Sub-total:</td>
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<tr>
<td>110</td>
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<td>EA</td>
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WATER SUBTOTAL

Section Sub-total: 43,982.50

Subtotal: 43,982.50
Tax: 0.00
Bid Total: 43,982.50

ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:38:54

* ATTENTION* See new terms and conditions at the bottom of the page.
### QUOTE

**ATTENTION**

See new terms and conditions at the bottom of the page.

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<th>CUSTOMER NO</th>
<th>QUOTING BRANCH</th>
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<th>CUSTOMER</th>
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<td>ROCKIN G CONSTRUCTION 4579 GOEHMANN LANE FREDERICKSBURG, TX 78624</td>
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WATER SUBTOTAL

Section Sub-total: 35,789.86

Subtotal: 35,789.86

Tax: -

Bid Total: 35,789.86

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ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:36:51
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Subtotal: 38,973.79
Tax: 0.00
Bid Total: 38,973.79

ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date. After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By SPR 3/02/18 11:39:35
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**SUBTOTAL**

|       |       |                                                 |       | **1,369.00** | **1,369.00** |

**Sub Total**

**Total**

1,369.00

*10/04/2017 - 2:04 PM*
PO Box 441 - Weatherford, TX 76086

Bill To
Black Rock Construction
1475 Heritage Parkway
Suite 113
Mansfield, Texas 76063

P.O. #  San Marcus Pr.
Terms  Net 30

<table>
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<tr>
<th>Units</th>
<th>Qty</th>
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Thank you for your business!

Subtotal  $2,120.00
Sales Tax (6.75%)  $0.00
Total  $2,120.00
Payments/Credits  $0.00
Balance Due  $2,120.00

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Date 9/8/2017
Invoice # 9884

Ship To
Black Rock Construction
San Marco, Texas

Ship Date 9/8/2017
Due Date 10/8/2017
Date 11/1/2017
Invoice # 10179

Ship To
Black Rock Construction
McKie Street & SB IH35
San Marcus, Texas 78666

Ship Date 11/1/2017
Due Date 12/1/2017

P.O. # San Marcus Pr...
Terms Net 30

Units Qty Description Units Price Amount
Feet 160 36" x .500 x 189.75#, New Steel Casing Pipe, Bev & Sq., Dead 20's 102.15 16,344.00

Thank you for your business!

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Subtotal $16,344.00
Sales Tax (6.75%) $0.00
Total $16,344.00
Payments/Credits $0.00
Balance Due $16,344.00
PO Box 441 - Weatherford, TX 76086

Bill To
Black Rock Construction
1475 Heritage Parkway
Suite 113
Mansfield, Texas 76063

P.O. #  San Marcus Pr...
Terms  Net 30

Ship To
Black Rock Construction
McKie Street & SB IH35
San Marcus, Texas 78666

Ship Date  10/27/2017
Due Date  11/26/2017

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<td>102.15</td>
<td>20,430.00</td>
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Thank you for your business!

QFC Services, LLC
info@qfcpipe.com
www.qfcservices.com

Subtotal  $20,430.00
Sales Tax (6.75%)  $0.00
Total  $20,430.00
Payments/Credits  $0.00
Balance Due  $20,430.00
Electric Casing Shot Pumping

Cecil Whiteley Concrete Pumping, LLC
P.O. Box 1275
Canyon Lake, TX 78133
830-534-2422

Invoice # 1908
Date: February 2018

BILL ADDRESS
Rocking A Construction
4579 Gehmann Ln
Fredericksburg, TX 78624

SITE ADDRESS
I-35 S. McKeie St.
San Marcos, TX 78666

COMPLETED BY OPERATOR:
Unit #/Type: Y + P
Size Requested: Y
Employee: Dwain
Supervisor: Ingram
Ready Mix: P.O. Number: 

Pour Type: Estimated Yards: 78

SAFETY NOTE: OVERHEAD POWER LINES ☐PRESENT ☐NOT PRESENT
CLEAN-UP ON SITE ☐OFFSITE ☐

IF YOU CANNOT MAINTAIN 20' CLEARANCE NOTIFY DISPATCH BEFORE WORK BEGINS!

COMPLETED BY OPERATOR:
LEAVE YARD: 8AM
ARRIVE JOB: 9AM
END SETUP: 10AM
START PUMPING: 10:00 AM
FINISH PUMPING: 3:30 PM
END CLEAN UP: 6:15 PM
ARRIVE YARD: 

TIME

9AM 10AM 5:30PM 6:15PM

MILEAGE

HOURS (EMPLOYER COMPLETES)

C.O.D. CALCULATION (EMPLOYER COMPLETES)

TOTAL HOURS: ☐ @ 9 1/4 = ☐
TOTAL YARDS: ☐ @ ☐ = ☐
TRAVEL: ☐ @ ☐ = ☐
PRIME: ☐ @ ☐ = ☐
OTHER: ☐ @ ☐ = ☐
FUEL SURCHARGE: ☐ @ ☐ = ☐
PER DIEM: ☐ @ ☐ = ☐
OTHER: ☐ @ ☐ = ☐

Total: ☐ 30 75 ☐

YARDS PUMPED 50
PRIME ☐

1500 = 4 hrs 300 hr after

$1575.00 for additional pumping 7/16” casing

COMMENTS: 60 feet of 3 inch hose. Started pushing
these pipe out and had to pump slow and had to relocate
to other side of highway and had to move to a safer
location to wash the hooper out.

I have read the rental terms and conditions and accept these. I have reviewed the times and pump size on this invoice
and verified their accuracy. I am aware of my safety responsibilities per the terms and accept these.

AUTHORIZED REPRESENTATIVE SIGNATURE (SIGN PRIOR TO WORK)

TIMES AND QUANTITIES VERIFICATION (INITIAL UPON COMPLETION)
CUSTOMER: Rockin Q
PROJECT: San Marcos Street Project

Mix Designs

<table>
<thead>
<tr>
<th>Mix Design</th>
<th>Price Per Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A Concrete</td>
<td>$90.00</td>
</tr>
<tr>
<td>Class C Concrete</td>
<td>$99.00</td>
</tr>
<tr>
<td>Class I Concrete</td>
<td>$93.50</td>
</tr>
<tr>
<td>Class B Concrete</td>
<td>$87.00</td>
</tr>
<tr>
<td>Item 360 Concrete</td>
<td>$99.00</td>
</tr>
<tr>
<td>Flow Fill - Excavatable</td>
<td>$83.00</td>
</tr>
<tr>
<td>Flow Fill - Non Excavatable</td>
<td>$85.00</td>
</tr>
<tr>
<td>6 Sack Grout</td>
<td>$164.50</td>
</tr>
</tbody>
</table>

- Monofilament Polypropylene fibers for use in site concrete @ 1-1.5 lbs/CY add $6.50/CY
- Environmental Fee: $10.00/Load
- For 3/8" aggregate add $6.00/CY
- Fly Ash is subject to availability. For straight cement add $3.00/CY
- Temperature Control: ICE .75/lbs
- A Rinse Out fee of $125.00 per truck will be applied on trucks that have had color added.
- Truck Charges: $3.00/minute after the first hour truck arrives on site
- Short Load Charge 1-2.5 yds $200.00, 3-4.5 yds $125.00*Does not apply to a tag load behind full load to complete pour.

Pricing good through 2017 and subject to an increase January 1, 2018
Raw materials are subject to availability.

Tex-Mix Concrete operates 10 plant locations supplying the areas of Georgetown, Austin, Buda, Kyle, San Marcos, Lockhart, New Braunfels, Wimberley and San Antonio with a 125-truck fleet to service these areas.

We thank you for considering Tex-Mix Concrete as your ready mixed supplier and look forward to meeting your needs in the future.
AGENDA CAPTION:
Consider approval, by motion, of the updated 2018 City Council Meeting Calendar, officially setting the Regular Meeting dates for 2018 per San Marcos City Code Section 2.041.

Meeting date: May 15, 2018

Department: City Clerk’s Office

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

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

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

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

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

**Background Information:**
The City Council will approve an Ordinance on second reading which allows them to set a Regular Meeting on a day other than a 1st or 3rd Tuesday, but it must be approved at a regular meeting.

The attached Calendar has been updated to reflect all Regular Meetings and planned workshops for the remainder of the calendar year. This does not prevent the Council from calling Special Meetings if necessary.

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

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

**Recommendation:**
Click or tap here to enter text.
# Council Meeting Planner 2018

This is a proposed meeting schedule for the 2018 Calendar Year. Some workshop dates may be subject to change due to unforeseen conflicts with Council/Staff schedules or venue availability.

<table>
<thead>
<tr>
<th>MEETING TYPE</th>
<th>STARTING</th>
<th>ENDING</th>
<th>CITY HOLIDAY CLOSURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGULAR MEETING DATE</td>
<td>6:00PM</td>
<td>n/a</td>
<td>JAN 1 - NEW YEAR’S DAY NOV 12 - VETERANS DAY</td>
</tr>
<tr>
<td>COUNCIL VISIONING (JAN 9 &amp; 10)</td>
<td>8:00AM</td>
<td>5:00PM</td>
<td>JAN 15 - MLK DAY NOV 22 &amp; 23 - THANKSGIVING</td>
</tr>
<tr>
<td>BUDGET POLICY WORKSHOP (TBD)</td>
<td>TBD</td>
<td>TBD</td>
<td>FEB 19 - PRESIDENT’S DAY DEC 24 &amp; 25 - CHRISTMAS</td>
</tr>
<tr>
<td>BUDGET WORKSHOP (JUN13&amp;14)</td>
<td>5:30PM</td>
<td>8:30PM</td>
<td>MAY 28 - MEMORIAL DAY JULY 4 - INDEPENDENCE DAY</td>
</tr>
<tr>
<td>BUDGET WORKSHOP (AUG 2)</td>
<td>5:30PM</td>
<td>8:30PM</td>
<td>SEPT 3 - LABOR DAY</td>
</tr>
<tr>
<td>ELECTION CANVASS/SWARING IN CEREMONY (NOV 14)</td>
<td>5:30PM</td>
<td>6:30PM</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>JANUARY</th>
<th>FEBRUARY</th>
<th>MARCH</th>
<th>APRIL</th>
<th>MAY</th>
<th>JUNE</th>
</tr>
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<tr>
<td>1 2 3 4 5 6 7</td>
<td>1 2 3 4 5 6 7</td>
<td>1 2 3 4 5 6 7</td>
<td>1 2 3 4 5 6 7</td>
<td>1 2 3 4 5 6 7</td>
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</tr>
<tr>
<td>8 9 10 11 12 13 14</td>
<td>11 12 13 14 15 16 17</td>
<td>4 5 6 7 8 9 10</td>
<td>4 5 6 7 8 9 10</td>
<td>4 5 6 7 8 9 10</td>
<td>4 5 6 7 8 9 10</td>
</tr>
</tbody>
</table>

**Other Annual Conferences/Events:**
- National League of Cities Congressional City Conference – March 11-14, 2018
- National Night Out in San Marcos – Tuesday, October 2, 2018
- Election Day – November 6, 2018
- American Planning Association Conference – April 21-24, 2018
- Texas Municipal League Conference – October 9-12, 2018
AGENDA CAPTION:
Receive a staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2018-15, amending the Official Zoning Map of the City by rezoning a 59.734 acre, more or less, tract of land in the La Cima Subdivision, located west of the intersection of Old Ranch Road 12 and Wonder World Drive, from “FD” Future Development District to “SF-4.5” Single-Family District; and including procedural provisions; and consider approval of Ordinance 2018-15, on the first of two readings.

Meeting date: May 15, 2018

Department: Planning and Development Services

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

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: N/A

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☒ Land Use - Direct Growth, Compatible with Surrounding Uses
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
The subject property consists of approximately 59.734 acres located west of the intersection of Old Ranch Road 12 and Wonder World Drive. The property is currently vacant but was recently platted and annexed (Ordinance 2018-68). It is located within the area identified on the Preferred Scenario Map as an Area of Stability and surrounded by mostly vacant land. However, the San Marcos Academy is located to the north of the property as is The Settlement subdivision.

This property is part of the larger La Cima Development included in a Development Agreement with the City of San Marcos adopted September 16, 2014 (Resolution 2014-131). This agreement regulates issues including but not limited to the schedule of annexation, the permitted uses and development standards, impervious cover, environmental and water quality standards and architectural design standards. The Future Development (“FD”) zoning classification is a default classification for newly annexed land. Per the development agreement, SF-4.5 is an allowable residential use. Phase 1, Section 1 provides for the development of 130 residential lots along with eight new streets.

The request is consistent with the Development Agreement that was approved in 2014.

Council Committee, Board/Commission Action:
The Planning and Zoning Commission recommended approval for the zoning change request at a Public Hearing at the Regular Meeting on April 24, 2018.

Alternatives:

Recommendation:
Staff provides this information with recommendation of approval for the zoning change request.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING A 59.734 ACRE, MORE OR LESS, TRACT OF LAND IN THE LA CIMA SUBDIVISION, LOCATED WEST OF THE INTERSECTION OF OLD RANCH ROAD 12 AND WONDER WORLD DRIVE, FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “SF-4.5” SINGLE-FAMILY DISTRICT; AND INCLUDING PROCEDURAL PROVISIONS.

RECITALS:

1. On April 24, 2018, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “SF-4.5” Single-Family District for a 59.734 acre, more or less, tract of land in the La Cima Subdivision, located west of the intersection of Old Ranch Road 12 and Wonder World Drive.

2. Subsequent to the public hearing on that date, the Planning and Zoning Commission considered the request and voted to recommend that the request be approved by the City Council of the City.

3. The City Council held a public hearing on May 15, 2018 regarding the request.

4. All requirements of Chapter 1, Development Procedures, of the City Land Development Code pertaining to Zoning Map amendments have been met.

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

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

SECTION 1. The Official Zoning Map of the City, as described in Section 4.1.2.2 of the City Land Development Code, is amended to rezone the 59.734 acre tract of land described in Exhibit “A,” attached hereto and made a part hereof for all purposes, from “FD” Future Development District to “SF-4.5” Single-Family District.

SECTION 2. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on May 15, 2018.

PASSED, APPROVED AND ADOPTED on second reading on May 29, 2018.
Attest:

Jamie Lee Case
City Clerk

Approved:

Michael Cosentino
City Attorney
<table>
<thead>
<tr>
<th>Lot Number</th>
<th>Ending Feet</th>
<th>Beginning Feet</th>
<th>Lot Size</th>
<th>Lot Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 1</td>
<td>100</td>
<td>0</td>
<td>200</td>
<td>Lot 1</td>
</tr>
<tr>
<td>Lot 2</td>
<td>50</td>
<td>200</td>
<td>150</td>
<td>Lot 2</td>
</tr>
<tr>
<td>Lot 3</td>
<td>10</td>
<td>100</td>
<td>90</td>
<td>Lot 3</td>
</tr>
</tbody>
</table>

**Legend:**
- Lot: Residential lot.
- Ending Feet: End point of the lot.
- Beginning Feet: Start point of the lot.
- Lot Size: Size of the lot in feet.
- Lot Type: Type of lot, either Lot 1 or Lot 2.
At their regular meeting on April 24, 2018 the Planning and Zoning Commission considered this item during a Public Hearing.

Public Notification:

*Personal notification for the April 24, 2018 P&Z Meeting was mailed on April 13, 2018 (please see attached map and list).*

*Notice for the May 15, 2017 City Council Meeting was published in the April 29, 2018 San Marcos Daily Record.*

Correspondence:

*Staff did not receive any responses.*

Public Hearing:

*No one spoke in favor or in opposition.*

Planning & Zoning Commission *draft* meeting minutes:

ZC-18-04 (La Cima, Phase 1, Section 1) Hold a public hearing and consider a request by Doug Goss, on behalf of LSCM Ph. 1-1, LLC, for a zoning change from “FD” Future Development to “SF-4.5” Single Family for approximately 59.734 acres, more or less, described as La Cima Phase 1, Section 1, located west of Old Ranch Road 12. (A.Brake)

Chair Garber opened the public hearing.

Alison Brake, Planner, gave an overview of the request.

*A motion was made by Commissioner Gleason, seconded by Commissioner Dillon, that ZC-18-04 (La Cima, Phase 1, Section 1) be approved as submitted. The motion carried by the following vote:*
For: 8 - Chair, Garber, Vice Chair Gleason, Commissioner Ramirez, Commissioner McCarty, Commissioner Haverland, Commissioner Rand, Commissioner Dillon, and Commissioner Baker.

Against: 0 -

Absent: 1 - Commissioner Porterfield

Attachments:

1. Notification Map
2. Property Owner List
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
<table>
<thead>
<tr>
<th>OwnerName</th>
<th>OwnAddr1</th>
<th>OwnAddr2</th>
<th>OwnCity</th>
<th>State</th>
<th>ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAZY OAKS RANCH LP</td>
<td>303 COLORADO ST</td>
<td>STE 2300</td>
<td>AUSTIN</td>
<td>TX</td>
<td>78701-0021</td>
</tr>
<tr>
<td>SAN MARCOS BAPTIST ACADEMY</td>
<td>2801 RANCH RD 12</td>
<td></td>
<td>SAN MARCOS</td>
<td>TX</td>
<td>78666</td>
</tr>
</tbody>
</table>
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
Zoning Request
ZC-18-04
450 Academy Oaks
(59.734 Acres)

Summary: The applicant is requesting to zone 59.734 acres, more or less, described as La Cima Phase 1, Section 1, located west of Old Ranch Road 12 from “FD” Future Development to “SF-4.5” Single Family consistent with an approved Development Agreement (Resolution 2014-131R).

Applicant: Doug Goss
11612 FM 2244
Building 1, Suite 140
Austin, TX 78738

Property Owners: LCSM Ph. 1-1, LLC
303 Colorado, Suite 2300
Austin, TX 78701

Notification: Personal notifications of the public hearing were mailed on Friday, April 13, 2018 to all property owners within 200 feet of the subject property. Additionally, signs were posted on the site. Notice for the May 15, 2018 City Council Meeting was published in the April 29, 2018 San Marcos Daily Record.

Response: There have been no citizen comments as of the staff report date.

Property/Area Profile:

Legal Description: 59.734 acres, Phase 1, Section 1, La Cima Subdivision

Location: West of Old Ranch Road 12, north of West Centerpoint Road

Existing Use of Property: Vacant
Proposed Use of Property: Single Family
Preferred Scenario Map: Area of Stability

Existing Zoning: Future Development (“FD”)
Proposed Zoning: Single Family (SF-4.5)
Utility Capacity: Adequate
Sector: Sector 2

<table>
<thead>
<tr>
<th>Area Zoning and Land Use Pattern:</th>
<th>Zoning</th>
<th>Existing Land Use</th>
<th>Preferred Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>N of Property</td>
<td>Outside City Limits</td>
<td>San Marcos Academy</td>
<td>Area of Stability</td>
</tr>
<tr>
<td>S of Property</td>
<td>Outside City Limits</td>
<td>Vacant</td>
<td>Area of Stability</td>
</tr>
</tbody>
</table>
Case Summary

The subject property consists of approximately 59.734 acres located west of the intersection of Old Ranch Road 12 and Wonder World Drive. The property is currently vacant but was recently platted and annexed (Ordinance 2018-68). It is located within the area identified on the Preferred Scenario Map as an Area of Stability and surrounded by mostly vacant land. However, the San Marcos Academy is located to the north of the property as is The Settlement subdivision.

This property is part of the larger La Cima Development included in a Development Agreement with the City of San Marcos adopted September 16, 2014 (Resolution 2014-131). This agreement regulates issues including but not limited to the schedule of annexation, the permitted uses and development standards, impervious cover, environmental and water quality standards and architectural design standards. The Future Development (“FD”) zoning classification is a default classification for newly annexed land. Per the development agreement, SF-4.5 is an allowable residential use. Phase 1, Section 1 provides for the development of 130 residential lots along with eight new streets.

Planning Department Analysis

The subject tract lies within an Area of Stability on the Preferred Scenario Map. Areas of Stability are predominantly existing single-family zoning, but they may also be mixed residential areas that are appropriate for compatible redevelopment/infill or new development. Vision San Marcos explains that areas of stability include established neighborhoods, undeveloped or agricultural land, and the majority of the City’s Extraterritorial Jurisdiction (ETJ). While the existing character of these areas is anticipated to be generally maintained, it does not mean that these areas will not or should not change.

A review worksheet is attached to this report which details the analysis of the zoning request using Comprehensive Plan Elements. Utilizing the approved Development Agreement, Comprehensive Plan and the Land Development Code staff has made the following findings:

- The subject tract lies within an Area of Stability on the Preferred Growth Scenario Map – a Development Agreement with the City of San Marcos regulating the permitted uses was adopted in 2014. Rezoning to SF-4.5 in an Area of Stability is allowed without a Preferred Scenario Map Amendment.
- The subject tract is located in the Purgatory Creek watershed. The Development Agreement adopted in 2014 regulates the Impervious Cover limitation of the overall La Cima development.
- The Development Agreement also regulates the parkland to be dedicated. A future phase of the La Cima development is expected to connect to Purgatory Creek Greenspace through a network of trails.
- While transportation access to the site is adequate, the Travel Demand Model shows the intersection of Wonder World Drive and Old Ranch Road 12 at capacity during peak traffic hours. A traffic signal is scheduled at this intersection which could ease the crossing of the major arterial. In addition, West Centerpoint Road is being constructed and will travel from the intersection of Wonder World Drive and Old Ranch Road 12 through the La Cima.
development, connect with Centerpoint Road in the Kissing Tree development and finally to Hunter Road. This could alleviate some of the peak traffic when fully constructed.

The request is consistent with the Development Agreement that was approved in 2014.

In addition, the consistency of this proposed change to the LDC criteria is detailed below:

<table>
<thead>
<tr>
<th>Evaluation Criteria (LDC 1.5.1.5)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consistent</strong></td>
</tr>
<tr>
<td>Change implements the policies of the adopted Comprehensive Plan, including the land use classification on the Preferred Scenario Map</td>
</tr>
<tr>
<td>The change in zoning is consistent with the Preferred Scenario Map. SF-4.5 an allowable zoning category to request without first changing the Preferred Scenario Map.</td>
</tr>
<tr>
<td>Consistency with any development agreement in effect</td>
</tr>
<tr>
<td>Resolution 2014-131 was approved in 2014 between the City of San Marcos and Lazy Oaks Ranch, LP. SF-4.5 is an allowable use per Section 1.04(A)(1) of the agreement.</td>
</tr>
<tr>
<td>Whether the uses permitted by the proposed change and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified</td>
</tr>
<tr>
<td>Uses allowed within the Single Family district are compatible and appropriate for this area. This area is mostly residential in nature, with the San Marcos Academy located to the north.</td>
</tr>
<tr>
<td>Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area</td>
</tr>
<tr>
<td>The property will be served with City water and wastewater per the Development Agreement. There are no Capital Improvement Plan projects anticipated in the immediate area.</td>
</tr>
<tr>
<td>Other factors which substantially affect the public health, safety, morals, or general welfare</td>
</tr>
</tbody>
</table>
### Evaluation Criteria (LDC 1.5.1.5)

<table>
<thead>
<tr>
<th>Consistent</th>
<th>Inconsistent</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>None noted.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Additionally, the Council should consider:

1. **Is the property suitable for use as presently zoned?**
   
   **Staff evaluation:** The property was recently annexed and is governed by an approved Development Agreement. SF-4.5 is an allowable use per Section 1.04(A)(1) of the agreement.

2. **Has there been a substantial change of conditions in the neighborhood surrounding the subject property?**
   
   **Staff evaluation:** The surrounding area has remained single-family with The Settlement subdivision to the north of the property.

3. **Will the proposed rezoning address a substantial unmet public need?**
   
   **Staff evaluation:** A change to Single Family zoning would be consistent with the approved Development Agreement that was approved in 2014.

4. **Will the proposed rezoning confer a special benefit on the landowner/developer and cause a substantial detriment to the surrounding lands?**
   
   **Staff evaluation:** No, there is no special benefit to the landowner as the proposed zoning district meets the intent and vision of the Comprehensive Plan as well as the regulations of the approved Development Agreement.

5. **Will the proposed rezoning serve a substantial public purpose?**
   
   **Staff evaluation:** The rezoning does serve a substantial public purpose by providing additional single family housing in San Marcos.

Staff provides this information with **recommendation of approval** for the zoning change request.

**The Council’s Responsibility:**

The Council is required by law to hold a public hearing and receive public comment regarding the proposed zoning. After considering the public input, the Council is charged with ultimately deciding whether to approve or deny the zoning change request.

---

**Prepared by:**
Alison Brake, CNU-A Planner  
April 19, 2018  
**Name** **Title** **Date**
**LAND USE** – Preferred Scenario Map / Land Use Intensity Matrix

<table>
<thead>
<tr>
<th>Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?</th>
<th>YES</th>
<th>NO (map amendment required)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
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</table>

**ECONOMIC DEVELOPMENT** – Furthering the goal of the Core 4 through the three strategies

<table>
<thead>
<tr>
<th>STRATEGY</th>
<th>SUMMARY</th>
<th>Supports</th>
<th>Contradicts</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparing the 21st Century Workforce</td>
<td>Provides / Encourages educational opportunities</td>
<td></td>
<td>Applicant has not indicated that educational facilities will be included.</td>
<td></td>
</tr>
<tr>
<td>Competitive Infrastructure &amp; Entrepreneurial Regulation</td>
<td>Provides / Encourages land, utilities and infrastructure for business</td>
<td></td>
<td>Applicant has not indicated that infrastructure will be extended.</td>
<td></td>
</tr>
<tr>
<td>The Community of Choice</td>
<td>Provides / Encourages safe &amp; stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity</td>
<td></td>
<td>Applicant has not indicated that opportunities for jobs and services will be included.</td>
<td></td>
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**ENVIRONMENT & RESOURCE PROTECTION** – Land Use Suitability & Development Constraints

<table>
<thead>
<tr>
<th>Constraint by Class</th>
<th>1 (least)</th>
<th>2</th>
<th>3 (moderate)</th>
<th>4</th>
<th>5 (most)</th>
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</thead>
<tbody>
<tr>
<td>Cultural</td>
<td>X</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edwards Aquifer</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Endangered Species</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floodplains</td>
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<td></td>
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</tr>
<tr>
<td>Geological</td>
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<tr>
<td>Slope</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**ENVIRONMENT & RESOURCE PROTECTION** – Water Quality Model Results

<table>
<thead>
<tr>
<th>Located in Subwatershed:</th>
<th>Purgatory Creek</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modeled Impervious Cover Increase Anticipated for watershed</td>
<td>0-25%</td>
</tr>
<tr>
<td>Notes: The change in impervious cover under the Preferred Scenario is attributed to portions of the Paso Robles development, the Government Center, and downtown development. Purgatory Creek is a direct tributary of the San Marcos River, home of several endangered species. The Plan emphasizes the need to identify potential pollution from redevelopment as construction runoff and debris can wash into the creek during storm events.</td>
<td></td>
</tr>
</tbody>
</table>

**NEIGHBORHOODS** – Where is the property located

| CONA Neighborhood(s): | N/A |
| Neighborhood Commission Area(s): | Sector 2 (Tres Hefter III, Commissioner) |
| Neighborhood Character Study Area(s): | N/A |

**PARKS, PUBLIC SPACES AND FACILITIES** – Availability of parks and infrastructure

| Will Parks and / or Open Space be Provided? | YES | NO |
| Will Trails and / or Green Space Connections be Provided? | NO | X |

As part of the overall La Cima Development.

<table>
<thead>
<tr>
<th>Maintenance / Repair Density</th>
<th>Low (maintenance)</th>
<th>Medium</th>
<th>High (maintenance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wastewater Infrastructure</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Infrastructure</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Public Facility Availability

<table>
<thead>
<tr>
<th>Parks / Open Space within ¼ mile (walking distance)?</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Purgatory is located to the south of the La Cima Development.</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

| Wastewater service available? | YES | NO |
| As part of Development Agreement, extensions are required and developer will provide. | X |

| Water service available? | YES | NO |
| As part of Development Agreement, extensions are required and developer will provide. | X |

**TRANSPORTATION** – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

<table>
<thead>
<tr>
<th>Existing Daily LOS</th>
<th>Wonder World Drive Old Ranch Road 12</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Peak LOS</td>
<td>Wonder World Drive Old Ranch Road 12</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred Scenario Daily LOS</td>
<td>Wonder World Drive Old Ranch Road 12</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred Scenario Peak LOS</td>
<td>Wonder World Drive</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Transportation Demand Model shows that Wonder World Drive remains at a level of service A for the Existing Daily and Peak along with the Preferred Daily. It drops from an A to a C LOS in the Preferred Scenario Peak LOS. Old Ranch Road 12 is shown as a LOS F across the board. This could be alleviated with the construction of West Centerpoint Road through the La Cima Development.

<table>
<thead>
<tr>
<th>Old Ranch Road 12</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sidewalk Availability</td>
<td>N/A  Good  Fair  Poor</td>
</tr>
<tr>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Sidewalks are required to be built as part of the development.</td>
<td>YES</td>
</tr>
<tr>
<td>Adjacent to existing bicycle lane?</td>
<td>NO X</td>
</tr>
<tr>
<td>Adjacent to existing public transportation route?</td>
<td>X</td>
</tr>
</tbody>
</table>

Notes: The closest CARTS bus route is Route 5 which is the Texas State/Outlet Malls route.
LA CIMA PHASE I, SECTION 1
FINAL PLAT

DECEMBER, 2017
HAYS COUNTY, TEXAS

NOTES:
1. Bearing bags in Texas coordinate system, South Central Zone, NAED83, GED.
2. Distances shown herein are based on surface measurements to convert surface distances to grid, multiply by the combined scale factor.
3. Coordinates shown herein are Texas Coordinate System, South Central Zone, NAED83, GED.
4. The combined scale factor for this project is 0.999875.

BENCHMARK LIST:

BM SD, 16:
1/2" RSC "12C"
ELEVATION = 760.29 FEET.

BM SD-49:
1/2" RSC "12C"
ELEVATION = 781.78 FEET.

BM SD-16:
1/2" RSC "12C"
ELEVATION = 820.12 FEET.

NOTE: SEE SHEET 4 OF 4 FOR LINE AND CURVE TABLES.
<table>
<thead>
<tr>
<th>LINE #</th>
<th>EASTING</th>
<th>NORTING</th>
<th>DISTANCE</th>
<th>COORDS</th>
<th>COORDS</th>
<th>DISTANCE</th>
<th>COORDS</th>
<th>DISTANCE</th>
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<tbody>
<tr>
<td>140</td>
<td>12,465</td>
<td>18,000</td>
<td>18,000</td>
<td>E 300</td>
<td>4-300</td>
<td>4,465</td>
<td>8,465</td>
<td>4,465</td>
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<tr>
<td>141</td>
<td>12,500</td>
<td>18,000</td>
<td>20,000</td>
<td>E 400</td>
<td>4-400</td>
<td>4,500</td>
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</tr>
<tr>
<td>142</td>
<td>12,535</td>
<td>18,000</td>
<td>22,000</td>
<td>E 500</td>
<td>4-500</td>
<td>4,535</td>
<td>8,535</td>
<td>4,535</td>
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<tr>
<td>143</td>
<td>12,570</td>
<td>18,000</td>
<td>24,000</td>
<td>E 600</td>
<td>4-600</td>
<td>4,570</td>
<td>8,570</td>
<td>4,570</td>
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<tr>
<td>144</td>
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<td>18,000</td>
<td>26,000</td>
<td>E 700</td>
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<td>4,605</td>
<td>8,605</td>
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<tr>
<td>145</td>
<td>12,640</td>
<td>18,000</td>
<td>28,000</td>
<td>E 800</td>
<td>4-800</td>
<td>4,640</td>
<td>8,640</td>
<td>4,640</td>
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<tr>
<td>146</td>
<td>12,675</td>
<td>18,000</td>
<td>30,000</td>
<td>E 900</td>
<td>4-900</td>
<td>4,675</td>
<td>8,675</td>
<td>4,675</td>
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<tr>
<td>147</td>
<td>12,710</td>
<td>18,000</td>
<td>32,000</td>
<td>E 1000</td>
<td>4-1000</td>
<td>4,710</td>
<td>8,710</td>
<td>4,710</td>
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<tr>
<td>148</td>
<td>12,745</td>
<td>18,000</td>
<td>34,000</td>
<td>E 1100</td>
<td>4-1100</td>
<td>4,745</td>
<td>8,745</td>
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<tr>
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<td>12,780</td>
<td>18,000</td>
<td>36,000</td>
<td>E 1200</td>
<td>4-1200</td>
<td>4,780</td>
<td>8,780</td>
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<tr>
<td>150</td>
<td>12,815</td>
<td>18,000</td>
<td>38,000</td>
<td>E 1300</td>
<td>4-1300</td>
<td>4,815</td>
<td>8,815</td>
<td>4,815</td>
</tr>
<tr>
<td>151</td>
<td>12,850</td>
<td>18,000</td>
<td>40,000</td>
<td>E 1400</td>
<td>4-1400</td>
<td>4,850</td>
<td>8,850</td>
<td>4,850</td>
</tr>
</tbody>
</table>

**FINAL PLAT**

**LA CIMA**

**PHASE I, SECTION 1 - FINAL PLAT**

**FILE#** 201702220017

**DATE** 02-26-16

**DRAWN BY** DC

**CHECKED BY** DC

**CONTRACT**

**DRAWN FOR** Bowman Consulting, Inc.

**COPY# 1/6**

**PLAN # 1171**

**ORIGINAL**

**FOLD DATE** Dec 15, 2017 - 11:33 am
ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION

Updated: March, 2018      Case # ZC-____-____

CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Applicant's Name</th>
<th>Property Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doug Goss</td>
<td>LCSM Ph. 1-1, LLC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant's Mailing Address</th>
<th>Owner's Mailing Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>11612 FM 2244</td>
<td>303 Colorado</td>
</tr>
<tr>
<td>BLDG 1, STE 140</td>
<td>STE 2300</td>
</tr>
<tr>
<td>Austin TX, 78738</td>
<td>Austin, TX 78701</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant's Phone #</th>
<th>Owner's Phone #</th>
</tr>
</thead>
<tbody>
<tr>
<td>512-402-1790</td>
<td>512-457-8000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant's Email</th>
<th>Owner's Email</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="mailto:Dougg@nd-austin.com">Dougg@nd-austin.com</a></td>
<td><a href="mailto:blee@dcllp.com">blee@dcllp.com</a></td>
</tr>
</tbody>
</table>

PROPERTY INFORMATION

Subject Property Address(es): 450 Academy Oaks Drive

Legal Description: Lot All Lots Block All Blocks Subdivision La Cima Phase 1, Section 1

Total Acreage: 59.734

Tax ID #: R159385-R159524

Preferred Scenario Designation: ETJ

Existing Zoning: FD

Preferred Land Use: NA -- Initial Zoning Request

DESCRIPTION OF REQUEST

Proposed Zoning District(s): SF 4.5

Proposed Land Uses / Reason for Change: Platted Single Family Lots/City Annexation

AUTHORIZATION

All required application documents are attached. I understand the fees and the process for zoning and understand my responsibility to be present at meetings regarding this application.

MF-12, 18, 24 Filing Fee $1,275 plus $50 per acre Technology Fee $11 MAXIMUM COST $4,011

Other Districts Filing Fee $1,000 plus $100 per acre Technology Fee $11 MAXIMUM COST $3,011

To be completed by Staff: Accepted By: ____________________________ Date Accepted: ________________

Proposed Meeting Date: ____________________________ Application Deadline: ____________________________

APPLY ONLINE – WWW.MYGOVERNMENTONLINE.ORG/
AGENT AUTHORIZATION TO REPRESENT PROPERTY OWNER

I, Bryan Lee (on behalf of LCSM Ph. 1-1 LLC), acknowledge that I am the rightful owner of the property located at 450 Academy Oaks Drive (address).

I hereby authorize Doug Goss (agent name) to serve as my agent to file this application for Zoning (application type), and to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Property Owner: [Signature] Date: 3/12/2018

Printed Name: LCSM Ph. 1-1, LLC,
Bryan Lee, Manager

Signature of Agent: [Signature] Date: 3/13/2018

Printed Name: Doug Goss
AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS

The City of San Marcos Land Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. **It is the responsibility of the applicant to periodically check the sign locations to verify that the signs remain in place until final action is taken on the application and have not been vandalized or removed until after such final decision or when such application is withdrawn by the applicant. It is the responsibility of the applicant to immediately notify the Planning and Development Services Department of missing or defective signs.**

- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be $85 plus an $11 technology fee.**

- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be $85 plus an $11 technology fee.**

I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.

Signature: ___________________________ Date: 3/13/2018

Print Name: Doug Goss

To be completed by Staff: Case # __________ - __________ - ________
Consider approval of Ordinance 2018-15, on the first of two readings, amending the Official Zoning Map of the City by rezoning approximately 59.734 acres of land, more or less, described as La Cima, Phase 1, Section 1, located west of Old Ranch Road 12 from “FD” Future Development District to “SF-4.5” Single-Family District, and including procedural provisions.
Location:

- Approximately 59.734 acres located west of Old Ranch Road 12, south of the San Marcos Academy
- Located within an Area of Stability
Context & History:

- Part of larger La Cima Development
  - Development Agreement approved 2014 (Res. 2014-131)
  - Final Plat recorded in December 2017
  - Recently annexed (Ord. 2018-68)

- FD zoning is default classification for newly annexed land

- Provides for the development of 130 residential lots with 8 new streets
  - SF-4.5 allowed per Development Agreement
Recommendations:

Staff provides this request to the Commission for your consideration and recommends approval of the rezoning request as submitted.

The Planning and Zoning Commission recommended approval of the rezoning request as submitted at the April 24 Regular Meeting (8-0).
AGENDA CAPTION:
Receive a staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-75R, approving a second amended and restated Development Agreement with Lazy Oaks Ranch, LP and its partial assignees in connection with the La Cima Development near the intersection of Old Ranch Road 12 and Wonder World Drive that, among other things, adds approximately 394 acres of land to the project area, adds 400 dwelling units, and allows up to 720 multi-family units, but not purpose built student housing, within up to 30 acres of the project area; authorizing the City Manager to execute the agreement on behalf of the City; and providing an effective date.

Meeting date: May 15, 2018

Department: Planning & Development Services

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

Fiscal Note:
Prior Council Action: N/A

City Council Strategic Initiative: N/A

Comprehensive Plan Element (s):
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection -
☒ Land Use - Set appropriate density & impervious cover limitations in environmentally sensitive areas to avoid adverse impacts on water supply
☒ Neighborhoods & Housing - Diversified housing options to serve citizens with varying needs and interests
☐ Parks, Public Spaces & Facilities -
☐ Transportation -
☐ Not Applicable
Background Information:
The La Cima Development Agreement was approved in September 2014. There has been one Preliminary Plat approved under this existing agreement and two Final Plats have been approved. Natural Development Austin, L.L.C., on behalf of Lazy Oaks Ranch, LP, is requesting amendments to an existing Development Agreement. The Final Plat for Phase 1, Section 1 was recorded on December 27, 2017 and this section was annexed on January 30, 2018. The zoning case for this phase is scheduled to be heard by the Planning and Zoning Commission on April 24 and City Council on May 15, 2018.

Amendments to the Development Agreement were submitted for review in July 2017. It was determined that a Council Subcommittee should be reassembled to review the amendments. The City Council Subcommittee, consisting of Council Member Derrick, Council Member Gregson, and Council Member Prewitt, met with Staff on November 13, 2017. After conveying information from this meeting to the applicant a revised Development Agreement was submitted in December 2017. The Subcommittee reconvened in March 2018 to discuss the revisions. The applicant submitted a redlined document on March 28, 2018 that addresses all comments. A summary chart has been created to show the changes between the existing Development Agreement and the proposed.

Council Committee, Board/Commission Action:
This item was not required to be presented to the Planning & Zoning Commission. City Council approved the original Development Agreement in September 2014.

Alternatives:

Recommendation:
Staff finds the request to amend the Development Agreement is consistent with Chapter 2, Article 4, Division 3 of the San Marcos Development Code as well as the intent of the City Council Subcommittee discussion and recommends approval of the request as presented.
RESOLUTION NO. 2018 - R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH LAZY OAKS RANCH, LP AND ITS PARTIAL ASSIGNEES IN CONNECTION WITH THE LA CIMA DEVELOPMENT NEAR THE INTERSECTION OF OLD RANCH ROAD 12 AND WONDER WORLD DRIVE THAT, AMONG OTHER THINGS, ADDS APPROXIMATELY 394 ACRES OF LAND TO THE PROJECT AREA, ADDS 400 DWELLING UNITS, AND ALLOWS UP TO 720 MULTI-FAMILY UNITS, BUT NOT PURPOSE BUILT STUDENT HOUSING, WITHIN UP TO 30 ACRES OF THE PROJECT AREA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE

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

PART 1. The Second Amended and Restated Development Agreement attached hereto is approved.

PART 2. The City Manager is hereby authorized to execute the Second Amended and Restated Development 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 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Natural Development Austin, L.L.C., on behalf of Lazy Oaks Ranch, LP, is requesting amendments to an existing development agreement for land originally comprised of approximately 2,029.023 acres out of the W. Burke Survey, Abstract No. 68, the W. Smithson Survey, Abstract No. 419, the J Williams Survey, Abstract No. 430, and the J. Huffman Survey, Abstract No. 228, located off of Ranch Road 12 west of Wonder World Drive.

**History:**

The La Cima Development Agreement was approved in September 2014. There has been one Preliminary Plat approved under this existing agreement and two Final Plats have been approved. The Final Plat for Phase 1, Section 1 was recorded on December 27, 2017 and this section was annexed on January 30, 2018. The zoning case for this phase is scheduled to be heard by the Planning and Zoning Commission on April 24 and City Council on May 15, 2018.

Amendments to the Development Agreement were submitted for review in July 2017. It was determined that a Council Subcommittee should be reassembled to review the amendments.

The City Council Subcommittee, consisting of Council Member Derrick, Council Member Gregson, and Council Member Prewitt, met with Staff on November 13, 2017. The following items were discussed in relation to the original request:

- **Addition of Acreage and Lowering of Overall Project Density**
  - Discussed the addition of acreage to the project as well as lowering density from 1.18 units/acre to 1.16 units/acre

- **Addition of multifamily**
  - Discussed phasing the addition of multifamily so that it’s not all built at once and integrating it through the project rather than locating it all up front along Ranch Road 12
  - Discussed including development standards, such as architectural controls

- **Incentivizing residential development**
  - Discussed Resolution 2015-165R – policy decision restricting financial incentives for residential development

- **Commercial development (both Neighborhood Commercial and Community Commercial)**
  - Discussed concern that this acreage had changed
• **Parkland dedication**
  - Discussed their request to donate money for the purchase of land in addition to dedication of the Wildenthal Tract for parkland – concern was raised that this tract was not the most suitable for active parkland

The above items were conveyed to the applicant at a meeting with Staff on November 28, 2017. The applicant then submitted a revised Development Agreement on December 4, 2017.

Summarized below, the revised agreement met the above listed discussion points:

- **Addition of approximately 394 acres and overall density remains at 1.16 units/acre**
  - Wildenthal Tract withdrawn from revised request
- **All Multifamily Design Standards (Ord. 2014-35) would apply**
- **Multifamily development proposed to occur in two phases:**
  - 1\textsuperscript{st} = no more than 15 acres developed as MF
  - 2\textsuperscript{nd} = deferred until 1\textsuperscript{st} phase is complete and 75% occupied and at least 200 SF homes are completed and occupied
- **No request to incentivize residential requirement**
- **Dedication of 35.6 acres of parkland (the total amount required for both single-family and multifamily development per the LDC) – their intent is to contain all in a 91.5 acre area shown on Exhibit E**
  - Concept Plat states that this parkland will be dedicated at the earliest of: (a) final plat approval of Phase 8 or (b) upon Hays County’s completion of the extension of West Centerpoint to the southeastern corner of the property

The Subcommittee reconvened on March 9, 2018 to discuss the revisions. The additional recommendations of that meeting are summarized below:

1. Any multifamily residential shall be located west of Old Ranch Road 12 and Wonder World Drive.
2. The architectural controls of the multifamily residential shall meet the minimum of what’s required in the multifamily design standards and if there are any deviations, bring them forward to Council for approval.

The applicant submitted a redlined document on March 28, 2018 that addresses all comments. A summary chart has been created to show the changes between the existing Development Agreement and the proposed.

**Staff Analysis & Recommendation:**

Staff finds the request to amend the Development Agreement is consistent with Chapter 2, Article 4, Division 3 of the San Marcos Development Code as well as the intent of the City Council Subcommittee discussion and recommeds approval of the request as presented.
Public Notification:

Published Notice appeared in the San Marcos Daily Record on April 29, 2018.

Public Hearing:

This item was not required to be presented to the Planning & Zoning Commission. A public hearing is being held by the City Council.
This **SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this “Agreement”) is made and entered into as of the _____ day of September, 2013 (the “Effective Date”), by and between the CITY OF SAN MARCOS, TEXAS, a Texas municipal corporation (the “City”), Hays County, Texas (the “County”), and LAZY OAKS RANCH, LP, a Texas Limited Partnership dba La Cima San Marcos (“LOR”) or the “Owner”), LCSM Ph. 1-1, LLC, a Texas limited liability company as partial assignee of LOR (“LCSM Ph.1-1”), LCSM Ph. 1-2, LLC, a Texas limited liability company as partial assignee of LOR (“LCSM Ph.1-2”), La Cima Commercial, LP a Texas partnership as a partial assignee of LOR (“La Cima Commercial”), and LCSM West, LP, a Texas limited partnership (“LCSM West”) — and, together with LOR, LCSM Ph.1-1, LCSM Ph. 1-2, and La Cima Commercial, the “Owner”). The City and Owner are sometimes hereinafter referred to individually as “Party”, and collectively as the “Parties”. The Parties agree as follows:

**PURPOSES AND CONSIDERATIONS**

WHEREAS, the City and LOR, Owner, entered into that certain Amended and Restated Development Agreement dated September 16, 2014February 5, 2013, approved by Resolution 2014-13118R and recorded under Document Number 2014-1403206213005585 in the Official Public Records of Hays County, Texas, the “Existing Development Agreement”), related to that certain 2,029,023 acres, more or less, parcel of land (“the “Existing Property”) located in the Extraterritorial Jurisdiction (“ETJ”) of the City, Hays County, Texas, and more particularly described in Exhibit “A” attached hereto and incorporated herein for all purposes;

WHEREAS, Owner has acquired an adjoining 1.15 acre, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in Exhibit “B-1” attached and incorporated herein for all purposes and an adjoining 2.303 acres, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in Exhibit “B-2” attached and incorporated herein for all purposes (collectively, the “La Cima Outparcels”);

WHEREAS, Owner has acquired an adjoining 390.52 acre, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in Exhibit “CB” attached and incorporated herein for all purposes (the “Wootan Tract” and, together with the La Cima Outparcels, the “Additional Property”);

WHEREAS, Owner has acquired an adjoining 23.823 acre, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in Exhibit “C” (the “Received Exchange Property”) in exchange for the transfer of a 23.823 acre parcel and a 2.467 acre parcel out of the Existing Property as more particularly described in Exhibit “D” (the “Transferred Exchange Property”) the Existing Property and the Additional Property are depicted on Exhibit “D” attached hereto and incorporated herein for all purposes;

WHEREAS, Owner desires to develop the Existing Property (save and except for the Transferred Exchange Property), the Received Exchange Property, and the Additional Property (collectively, the “Property”) totaling 2,422,996 acres of land as a single family residential, limited nonresidential and conservation, preservation and open space development generally to foster a walkable and bikeable community in accordance with the Conceptual Land Use Plan, as more particularly described in Exhibit “E” attached hereto and incorporated herein for all purposes and under the name La Cima San Marcos (the “Project”);

WHEREAS, the Property is appraised for ad valorem tax purposes as land for agricultural or wildlife management use or timber land under Chapter 23, Texas Tax Code;

WHEREAS, the City is authorized by Section 43.035 of the Texas Local Government Code to offer to...
make a development agreement with the owner of land appraised for such purposes pursuant to Section 212.172 of the Texas Local Government Code to defer the annexation of the property until the land owner files a subdivision plat or other development application for any portion of the property;

WHEREAS, by entering into this Agreement, Owner has accepted the City’s offer to enter into a development agreement pursuant to both Section 43.035 and Section 212.172 of the Texas Local Government Code with the mutual understanding that this Agreement shall constitute a permit for the purposes of Chapter 245 of the Texas Local Government Code;

WHEREAS, an area adjacent or contiguous to an area that is subject of development agreement entered into under Section 43.035 and Section 212.172 of the Texas Local Government Code is considered to be adjacent or contiguous to the municipality; and

WHEREAS, the City is authorized to amend the Existing Development Agreement and to make and enter into this Agreement with Owner in accordance with Subchapter G, Chapter 212, Local Government Code and Chapters 1 and 2 of the City’s Land Development Code (“LDC”), to accomplish the following purposes:

A. Extend the City’s planning authority in accordance with the Conceptual Land Use Plan and the development regulations contained herein under which certain uses and development of the Property is authorized; and

B. Authorize enforcement by the City of municipal land use and development regulations as applicable; and

C. Authorize enforcement by the City of land use and development regulations other than those that apply within the City’s boundaries, as may be agreed to by the Parties and included in this Agreement; and

D. Specify the uses and development of the Property before and after annexation; and

E. Provide for infrastructure including, but not limited to, stormwater drainage and water, wastewater and other utility systems; and

F. Include such other lawful terms and considerations the Parties consider appropriate.

NOW THEREFORE, the City and Owner in consideration of the premises, the mutual covenants and agreements of the Parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, hereby amend and restate the Existing Development Agreement and agree as follows:

SECTION 1: GENERAL TERMS AND CONDITIONS

1.01 Conceptual Land Use Plan
The City hereby approves the general use and development of the Property in accordance with the Conceptual Land Use Plan, which is incorporated herein as Exhibit “E”. Exhibit “F” separately shows the proposed Open Space that is part of the Conceptual Land Use Plan. The Conceptual Land Use Plan shall constitute the land use plan under Section 1.4.2.4(g) of the LDC. The Conceptual Land Use Plan may be amended from time to time in accordance with the processes and procedures outlined in Section 1.4.2.6(c) of the City’s LDC. Development applications for the Property shall be consistent with the Conceptual Land Use Plan. The Transferred Exchange Property is hereby released from, and no longer subject to the terms and conditions of, this Agreement and/or the Existing Development Agreement.

1.02 Annexation
Upon approval of this Agreement, Owner agrees to the full purpose annexation of the Property at
the time the corporate limits of the City becomes adjacent to the Property. Provided, however, that
the City hereby agrees to phase the annexation of the Property as follows: At the time the City's
corporate limits become adjacent to the Property, the City may initiate the full purpose annexation
of all or any portion of the Property on which a final subdivision plat has been recorded. Upon
annexation of all or any portions of the Property, the applicant shall initiate a zoning change for said
annexed portions to establish a zoning district(s) that is (are) consistent with the terms and
conditions of this Agreement. The City hereby guarantees the continuing ETJ status of the
remainder of the Property not subject to a final recorded plat until such time that a final plat is
recorded for all or any portion of such remainder of the Property. The Parties hereby agree that all
applicable regulations and planning authority of the City’s LDC may be enforced on the Property.
The limitations on the City’s annexation authority shall apply only during the term of this Agreement.

1.03 Governing Development Regulations
A. Development of the Property shall be governed by the following:
   1. The Conceptual Land Use Plan and this Agreement; and
   2. The applicable provisions of the City's LDC and Ordinances;
   3. The applicable provisions of the Development Regulations of Hays County; and
   4. Construction plans and final plats for all or any portion of the Property that are approved
      from time to time by the City (collectively, the “Approved Plats”).
   5. The Parties acknowledge that prior to or concurrent with the submittal of the first plat
      application for development on the Property or any portion thereof, a Traffic Impact
      Analysis (the “TIA”) will be required. At the time of submittal of the TIA, the traffic impacts
      shall be evaluated based on the full build-out development of the entire project (as defined
      in Section 1.04, below) and not on the individual plat.
   6. Applicable provisions of the Texas Local Government Code, and other state and federal
      laws (“Other Laws”).
   7. In the event of a conflict between the City's and/or County's development regulations and
      the Owner's rights under this Agreement, this Agreement shall control.

B. The Conceptual Land Use Plan, this Agreement, the LDC, the Approved Plats, the Required
   Studies and Other Laws shall hereinafter be referred to collectively as the “Governing
   Regulations.”
C. Plat Approval: Owner and the City agree that the approved land uses in each final plat of
   portions of the Property shall be consistent with the Conceptual Land Use Plan, as may be
   amended from time to time.
D. Enforcement: The Parties agree that the City and County shall be entitled to enforce all
   applicable municipal land use and development regulations for the Property and the Governing
   Regulations.
E. No Contractual Enlargement of Exemption from City Standards: Notwithstanding any other
   provision in this Agreement, including references to such things as the “Governing Regulations”
   or the “Time of Submittal”, this Agreement shall in no manner be construed to create any
   exemption from applicable ordinances or laws, entitlement or vesting of rights beyond what is
   expressly provided in Chapter 245. Owner specifically acknowledges that development of the
   Property shall be subject to the City’s ordinances, regulations, and policies regarding water and
   sewer utility connections, including those that address development over the Edwards Aquifer
   Recharge Zone, as amended from time to time.
F. The Governing Regulations shall be applicable to control the development of the Property.
   Unless otherwise specifically authorized by the City, the Property may not be developed to a
   lesser standard than that required by the Governing Regulations.
G. Third Party Inspection Services: Unless an alternative is mutually agreed upon by the Parties,
   any plan review and building inspections conducted during the permitting process and through
   receipt of certificate of occupancy shall be conducted by a qualified, third-party plan review and
   inspection service, mutually agreed upon by the Parties, and results shall be provided in the
   City’s permitting system.

1.04 Permitted Uses, Project Density and Dimensional and Development Standards
Owner envisions the development of the Property as a predominantly single family residential development with limited nonresidential development, open space, conservation and preservation areas in accordance with the Conceptual Land Use Plan. The existing topography and natural areas on the Property provide for opportunities to develop the Property as a conservation development where pods of smaller lot sizes may be clustered to provide for preservation of existing natural features and open space. The Property may be developed as a conservation development, a conventional development or a combination thereof. In order to achieve the maximum development flexibility possible within the Project, this Agreement establishes a variety of uses and lot types and sizes that may be developed on the Property.

A. Permitted Uses: The following uses shall be permitted on the Property in accordance with the City’s zoning districts as defined on the Effective Date:


2. Nonresidential: All permitted uses identified in the NC, Neighborhood Commercial District shall be permitted within the 328.51 acre, 3 unit per acre portion of the Property depicted on the Conceptual Land Use Plan. All permitted uses identified in the CC, Community Commercial District shall be permitted within the Additional Property depicted as Community Commercial on the Conceptual Land Use Plan up to a maximum of 200 acres. Nonresidential uses, if developed, are intended to be located at appropriate locations, such as along thoroughfare corridors or at the intersections of major thoroughfares, within the development.

2-3. Multi-Family: All permitted uses identified in the MF-24, Multiple-Family Residential District shall be permitted within any portion of the Property depicted as Community Commercial on the Conceptual Land Use Plan (but excluding the La Cima Outparcels) up to a maximum of 30 acres; provided, however, that Purpose Built Student Housing (as established by City Ordinance No. 2016-24) shall be prohibited.

3. School Site. The Parties acknowledge that the Project is located within the San Marcos Consolidated Independent School District (the “District”). Owner shall dedicate up to a 12 acre site for a future elementary school to the District at the time of platting of such school site with a maximum impervious cover allocation equal to the greater of 55% of such site or 6.6 acres. The actual terms, size, timing, and location of the school site will be determined by Owner and the District.

4-5. Fire/PolicE/EMS Station; Transit Stops. Owner has transferred to the Cityshall dedicate up to a 3.505 acre site, located no more than one-third mile driving distance from the intersection of Old Ranch Road 12 and Wonder World Drive, for a future fire station and/or police or EMS station, to the City at the time of platting of any portion of the Property or by October 1, 2016, whichever is sooner. Such site shall have a maximum impervious cover allocation equal to the greater of 60% of such site or 2.1 acres. The actual terms, size, and location of the fire and/or police station site will be determined by Owner and the City. Transit stop locations will be determined by Owner and City at the time of platting of such locations.

5-6. Conditional uses authorized in the above residential and nonresidential base districts shall only be permitted if approved by the City in accordance with the procedures and requirements of the City’s LDC. Any proposed use, other than a Corporate Campus or other office use, within a nonresidential area with a single tenant greater than 80,000 square feet in size shall require a Conditional Use Permit in accordance with the City’s Land Development Code subject to a recommendations by the Planning and Zoning Commission and final approval by City Council.

6-7. Notwithstanding anything in this Agreement or in the City’s LDC or ordinances to the contrary, no extraction of or exploration for surface or sub-surface mineral resources or natural resources may be conducted on the Property, including but not limited to quarries, borrow pits, sand or gravel operations, oil or gas exploration or extraction activities, and mining operations. This prohibition shall not be interpreted to prohibit excavation of soil in
connection with the development of the Property consistent with this Agreement.

B. **Project Density:** The Project shall be restricted to a maximum of 2,800,400 dwelling units for an overall project density of 1,1618 units per acre (“UPA”). Project density shall be further restricted as follows:

1. Approximately 706.59 acres of the Additional Property located east of Purgatory Creek as illustrated on the Conceptual Land Use Plan shall be restricted to a maximum of 3 units per acre and all lot types provided for in Section 1.04.C of this Agreement are permitted, provided, however, that any portion of the maximum 200 acres of nonresidential as permitted in Section 1.04.A.2. of this Agreement not developed for nonresidential may also be developed for residential uses in accordance with these density and lot type restrictions;

2. The approximately 712.75 acres of the Property residential area located west of Purgatory Creek and adjacent to the San Marcos Academy property that is part of the Property as illustrated on the Conceptual Land Use Plan shall be restricted to a maximum of 23 units per acre and all lot types provided for in Section 1.04.C of this Agreement are permitted; and

3. Approximately 249.84 acre residential area located west of Purgatory Creek and being the southern portion of the residential permitted west of Purgatory Creek that is part of the Existing Property as illustrated on the Conceptual Land Use Plan shall be restricted to a maximum of 2 units per acre and the Single Family Residential Estate and Single Family Residential Rural Lots provided for in Sections 1.04.C.1 and 1.04.C.2 of this Agreement;

4. The approximately 72.39 acre residential area located west of Purgatory Creek and being the northern portion of the residential permitted west of Purgatory that is part of the Existing Property as illustrated on the Conceptual Land Use Plan shall be restricted to a maximum of 1 unit per acre and the Single Family Residential Estate Lots as provided for in Section 1.04.C.1 of this Agreement;

5. If the first series of PID bonds have not been issued all of the 259.2 acres designated as the “Additional Conservation Open Space or Proposed Habitat (RHCP) Preserve” area on Exhibit “F” shall cease to be so designated in the Conceptual Land Use Plan and may be developed as residential restricted to a maximum of 1 unit per acre and the Single Family Residential Estate Lots as provided for in Section 1.04.C.1 of this Agreement; and

6. Project density may be distributed evenly or may be clustered utilizing a conservation or clustered development plan provided that the maximum density for each of the designated areas above does not exceed the applicable the maximum density for such designated area and subject to the applicable use, lot type and size restrictions for such designated area, all as described herein and depicted on the Conceptual Land Use Plan.

C. **Dimensional and Development Standards:** The Property shall be developed in compliance with the following lot sizes, dimensions and development regulations:

1. **Single Family Residential Estate Lots**
   - Lot Area, Minimum: 43,560 sq. ft
   - Lot Width, Minimum: 150 feet
   - Lot Depth, Minimum: 200 feet
   - Lot Frontage, Minimum: 100 feet
   - Front Yard Setback, Minimum: 20 feet
   - Side Yard Setback, Interior, Minimum: 10 feet
   - Side Yard Setback, Corner, Minimum: 20 feet
   - Rear Yard Setback, Minimum: 20 feet
   - Building Height, Maximum: 2.5 stories
   - Impervious Cover, Maximum: 40%

2. **Single-Family Residential Rural Lots**
   - Lot Area, Minimum: 11,000 sq. ft.
   - Lot Width, Minimum: 80 feet
   - Lot Depth, Minimum: 100 feet
Lot Frontage, Minimum: 60 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 10 feet
Side Yard Setback, Corner, Minimum: 10 feet
Rear Yard Setback, Minimum: 10 feet
Building Height, Maximum: 2.5 stories
Impervious Cover, Maximum: 50%

3. Single Family Residential Manor Lots
Lot Area, Minimum: 6,000 sq. ft.
Lot Width, Minimum: 50 feet
Lot Depth, Minimum: 100 feet
Lot Frontage, Minimum: 35 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 5 feet
Side Yard Setback, Corner, Minimum: 10 feet
Rear Yard Setback, Minimum: 10 feet
Building Height, Maximum: 2 stories
Impervious Cover, Maximum: 60%

4. Single Family Residential Cottage Lots
Lot Area, Minimum: 4,500 sq. ft.
Lot Width, Minimum: 40 feet
Lot Depth, Minimum: 100 feet
Lot Frontage, Minimum: 35 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 5 feet
Side Yard Setback, Corner, Minimum: 10 feet
Rear Yard Setback, Minimum: 10 feet
Building Height, Maximum: 2 stories
Impervious Cover, Maximum: 60%

5. Garden/Patio Home/Zero Lot Line Homes
Lot Area, Minimum: 2,700 sq. ft.
Lot Width, Minimum: 28 feet
Lot Depth, Minimum: 90 feet
Lot Frontage, Minimum: 25 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 0/5 feet*
Side Yard Setback, Corner, Minimum: 10 feet*
Rear Yard Setback, Minimum: 5 feet
Garage Side Yard Setback Opposite House: 0 feet
Garage Setback from Front of House: 10 feet
Building Height, Maximum: 2 stories
Impervious Cover, Maximum: 75%

* Refer to Section 9 below for additional clarification regarding side yard setback. The primary structure/dwelling may be constructed with a 0 side yard on one side, and a side yard of not less than 5 feet on the other side. A detached accessory structure such as a garage or storage building may have a 0 side yard on the 5 foot side provided, however, the structure is located behind the rear façade of the primary building on the lot. On the 0 side, the structure may be set back a maximum of 1 foot. A 5 foot wide maintenance, drainage, and roof overhang easement extending the full depth of the lot shall be designated along the side property line which abuts the zero side yard on an adjacent lot, and shall be indicated on the Final Plat. In all cases, there shall be at least a 10 foot side yard on corner lots where adjacent to a street right-of-way or alley.
** To help achieve the flexibility envisioned and the goals for the development of the Project, the exceptions to the Lot Width to Depth ratio provided in Section 6.7.2.1(j) of the City’s LDC shall include and be applicable to Garden/Patio Home/Zero Lot Line lots.

6. Townhouse Residential Lots
Lot Area, Minimum: 2,500 sq. ft.
Lot Width, Minimum: 25 feet
Lot Depth, Minimum: 90 feet
Lot Frontage, Minimum: 25 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 0 feet attached walls / 5 feet end walls
Side Yard Setback, Corner, Minimum: 10 feet
Rear Yard Setback, Minimum: 10 feet
Building Height, Maximum: 2 stories
Impervious Cover, Maximum: 75%

Lot Area, Minimum: 12,000 square feet
Units/Acre (Maximum/Gross Acre): 24.0
Lot Width, Minimum: 60
Lot Depth, Minimum: 100
Lot Frontage, Minimum: 60
Front Yard Setback, Minimum: 10
Side Yard Setback, Interior, Minimum: 10
Side Yard Setback, Corner, Minimum: 15
Rear Yard Setback, Minimum: 10
Building Height, Maximum: 4 stories
Impervious Cover, Maximum: 75%

8. Nonresidential
Lot Area, Minimum: 6,000 sq. ft.
Lot Width, Minimum: 50 feet
Lot Depth, Minimum: 100 feet
Lot Frontage, Minimum: 50 feet
Front Yard Setback, Minimum: 10 feet
Side Yard Setback, Interior, Minimum: 5 feet
Side Yard Setback, Corner, Minimum: 10 feet
Rear Yard Setback, Minimum: 5 feet
Building Height, Maximum: N/A
Impervious Cover, Maximum: 80%

8. Lot Width to Depth Ratio
To help achieve the flexibility envisioned and the goals for the development of the Project, the exceptions to the Lot Width to Depth ratio provided in Section 6.7.2.1(j) of the City’s LDC shall include and be applicable to Garden/Patio Home/Zero Lot Line lots.

The primary structure/dwelling may be constructed with a 0 side yard on one side, and a side yard of not less than 5 feet on the other side. A detached accessory structure such as a garage or storage building may have a 0 side yard on the 5 foot side provided, however, the structure is located behind the rear façade of the primary building on the lot. On the 0 side, the structure may be set back a maximum of 1 foot. A 5 foot wide maintenance,
drainage, and roof overhang easement extending the full depth of the lot shall be designated along the side property line which abuts the zero side yard on an adjacent lot, and shall be indicated on the Final Plat. In all cases, there shall be at least a 10 foot side yard on corner lots where adjacent to a street right-of-way or alley.

10.9 Cluster/Conservation Development

To encourage cluster development within the Project, the following limitations on the location of the above residential lot types shall be applicable:

<table>
<thead>
<tr>
<th>Slope Limitations</th>
<th>Slope Gradient</th>
<th>Lot Types Permitted</th>
</tr>
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</table>
|                    | 0% to 15%      | Single Family Residential Estate Lots  
|                    |                | Single Family Residential Rural Lots  
|                    |                | Single Family Residential Manor Lots  
|                    |                | Single Family Residential Cottage Lots  
|                    |                | Garden/Patio Home/Zero Lot Line Homes  
|                    |                | Townhouse Residential Lots |
|                    | 15% to 25%     | Single Family Residential Rural Lots  
|                    |                | Single Family Residential Manor Lots  
|                    |                | Single Family Residential Cottage Lots  
|                    |                | Garden/Patio Home/Zero Lot Line Homes |
|                    | Over 25%       | Single Family Residential Estate Lots  
|                    |                | Single Family Residential Rural Lots  
|                    |                | Open Space and Conservation Areas |

D. Phasing: A phasing plan shall be submitted with a Subdivision Concept Plat to ensure orderly development of the Project. Any portion of the Property developed as MF-24, Multiple-Family Residential District in accordance with Section 1.04.A.3 above shall be developed in a minimum of two phases with the first phase to be no more than 15 acres and any subsequent phases shall be deferred until after such first phase is complete and at least 75% occupied and at least 200 single-family homes have been completed and occupied.

E. Architectural Design Standards

Architecture and the built environment are important elements to the development of the Project. Due to the importance of these elements, all architectural styles should produce a cohesive visual framework while maintaining architectural variety. All architecture should reflect high quality and craftsmanship, both in design and construction. The use of unusual shapes, colors, and other characteristics that cause disharmony should be avoided. A Texas Hill Country style should be reflected through the use of natural materials and textures.

Achieving a high quality of architectural design for all buildings within the Development is considered a principal goal of these design standards. A variety of lot and dwelling types within the neighborhood should be encouraged. Careful design of a neighborhood can mix different housing types and price ranges. Reflecting the vision of the Project, these development standards call for exterior materials that express the natural environment and range of natural materials found in Central Texas.

The Owner shall record deed restrictions regulating the development of the Property which deed restrictions shall incorporate the standards and requirements of this section E. The deed restrictions shall be enforceable by a homeowner’s association created by the Owner and shall be subject to the provisions of Section 1.09.

1. Project Residential Architectural Design Standards
   a. A minimum of 100% of each residence on a Single Family Residential Estate lot in
accordance with Section 1.04.C.1, excluding doors, windows, fascia, trim, handrails, guardrails, decks, columns, etc., shall be masonry consisting of brick, stone, stucco or a combination thereof.

b. A minimum of 80% of each residence on the lots identified in Section 1.04.C.2 – 1.04.C.6, excluding doors, windows, fascia, trim, handrails, guardrails, decks, columns, etc., shall be masonry consisting of brick, stone, stucco or a combination thereof.

c. The number of primary exterior materials shall be limited to three (3) excluding architectural accent features, roof materials, and windows or doors.

d. Exterior facades shall have a variety of earth tone colors including, but not limited to, reds, browns, light tans, natural and warm whites (stark whites shall be prohibited), buffs, beiges, creams and regionally quarried stone colors.

e. All facades of a building shall be of consistent design and treatment unless the building facade is not visible from public view.

f. The use of window awnings, overhangs and shutters is encouraged. Materials and colors shall be the same or complimentary to the exterior of the building.

g. All single family detached dwellings are encouraged to have front porches or porticos.

h. Detached garages are permitted and encouraged.

i. Detached garages with second level dwelling units are permitted provided, however, that second level dwelling units and the primary structure shall be on a single service meter and the occupancy restrictions of the City's LDC prohibiting occupancy by more than more than two unrelated persons will apply.

j. Corner dwelling units shall present a façade that is consistent in design and architecture to both streets.

k. Corner dwelling units are encouraged to have wrap around porches.

l. Corner lots shall have landscaping that is consistent in design and treatment on both street frontages.

m. Pool and HVAC equipment on corner lots shall be located on the interior side or rear property line.

n. Trash and waste containers shall be located in an area that is screened from public view.

o. These standards shall apply equally to additions and/or alterations to existing structures as well as to new structures. All accessory structures shall be constructed in such a manner so as to be compatible in look, style and materials as the primary structures on the project site.

p. Alternative design standards for all structures may be utilized upon review and approval by the Director of Development Services at the time of site planning. Any decision of the Director of Development Services may be appealed to the Planning and Zoning Commission.

2. Project Nonresidential Architectural Design Standards

a. All facades shall use one or more of four native limestone colors: Lueders, Cordova Cream, Sandstone, and Shell Stone, or a similar matching manufactured stone. Comparable materials in color, finish, durability, and quality may be substituted for the referenced materials upon review and approval by the Director of Development Services, appealable to the Planning and Zoning Commission.

b. Architectural façades that clearly define a base, middle and cap are required. These materials should be responsive to climate, adjacent context, site orientation and building usage.

c. All buildings within the Project shall be designed with a high level of detail, with careful attention to the combination of and interface between materials. Materials chosen shall be appropriate for the theme and scale of the building, compatible with its location within the development, and expressive of the community's desired character and image. Details and materials shall be consistent on all sides of buildings.

d. A minimum of 80% of each building, excluding doors and windows, shall be masonry consisting of brick, stone, stucco, split face concrete units, or faux stone or brick.

e. Front facades shall be oriented towards the street right-of-way as appropriate.

f. Building entrances shall be recessed from the front façade or located under a shade
device such as an awning or portico.
g. Off-street parking areas shall be shielded from view from the right-of-way through the use of landscape plantings, landscape berms or a combination thereof.
h. These standards shall apply equally to additions and/or alterations to existing structures as well as to new structures. All accessory structures shall be constructed in such a manner so as to be compatible in look, style and materials as the primary structures on the project site.
g. Alternative design standards for all structures may be utilized upon review and approval by the Director of Development Services at the time of site planning. Any decision of the Director of Development Services may be appealed to the Planning and Zoning Commission.

i-3. Project Multi-Family Architectural Design Standards. Any portion of the Property developed as MF-24, Multiple-Family Residential District in accordance with Section 1.04.A.3 above shall be developed in accordance with the permitted uses and development standards for the MF-24, Multi-Family Residential District (including the multifamily residential design standards set forth in Ordinance 2014-35). Upon submittal of deed restrictions required in Section 1.09 below, the Owner shall meet or exceed the Building Design Section of such multifamily residential design standards. Any deviations from such multifamily residential design standards shall require approval of the City Council.

F. Additional Landscape Standards
In addition to the requirements of the City’s LDC, the following landscape standards shall be applicable to the development of the Project:
1. The use of drought tolerant, native landscape materials, xeriscaping, active or passive rainwater collection, or a combination thereof, is strongly encouraged for all portions of the Project.
2. Where feasible, native vegetation shall be preserved and remain undisturbed and shall be maintained consistent with any installed landscaping.
3. Where possible, trees that are intended for removal should be relocated utilizing accepted transplanting or relocation practices. Any trees that are relocated may be counted towards any required tree preservation credits.
4. A minimum of 25% of the total lot area of a NC, Neighborhood Commercial lot and 10% of the total lot area of a CC, Community Commercial lot shall be dedicated to landscaping. The Corporate Campus shall have a minimum of 15% of the total lot area dedicated to landscaping. All landscape areas on nonresidential lots shall be provided with an irrigation system designed by a Texas Licensed Irrigator consisting of one of, or a combination of, an automatic underground spray or drip irrigation system or a hose attachment. No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.
5. Where a solid ground cover or lawn is proposed for the front yard of a residential lot, the use of an automatic spray or drip irrigation system is strongly encouraged. At a minimum, a hose attachment shall be required within 100 feet of all front yard landscaping to ensure proper hand watering/irrigation.
6. A minimum 100 foot wide tree preservation/open space landscape buffer setback shall be provided adjacent to the existing Fox Ridge single family residential subdivision along the northwest property line and along the portion of Purgatory Creek that borders the existing Settlement subdivision. The Conceptual Land Use Plan illustrates the location of this tree preservation/open space landscape buffer and provides GIS coordinates at various points along the buffer for reference. This tree preservation/open space landscape buffer is intended to serve as a buffer from the adjacent lots in the Fox Ridge and Settlement Subdivisions. The tree preservation/open space landscape buffer setback will be privately owned and maintained by the Property Owner. Unless otherwise approved through a Site Development Permit, there shall be no clearing, grading or public access within the tree preservation/open space landscape buffer setback area except as may be necessary to allow for the construction of a fence along a property line. The tree preservation/open space landscape buffer setback area shall be maintained free of all, trash, rubbish, debris or other similar nuisances and fire hazards in accordance with this agreement and the
requirements of the City of San Marcos Code of Ordinances.

7. The boundary between the Residential 2+ U/A area and southeastern most portion of the “Conservation or Open Space or Proposed Habitat (RHCP) Preserve” as illustrated on the Conceptual Land Use Plan and generally located between the existing Fox Ridge/Settlement subdivisions and the Residential 2+ U/A area within the Project, south of Purgatory Creek, has been delineated with GIS coordinates as provided on the Conceptual Land Use Plan.

1.05 Public Infrastructure Improvements

A. The City hereby agrees to allow the extension, improvements of, and connections to City water and wastewater facilities to provide service to the Project up to a maximum of 4,000 service units equivalent. Owner anticipates that the Project will require 4,000 service units of water and wastewater from the City. At the time of execution of this Agreement, City anticipates that it will have sufficient water and wastewater capacity to serve the Project. City further acknowledges that its approval of any subdivision plat of property within the Project shall constitute a representation by the City that it has sufficient water and wastewater capacity available to serve the platted lots at the time of plat approval.

B. All water and wastewater infrastructure required to serve the Project shall be designed and built to the City’s construction standards and in conformance with all rules, regulations and ordinances related to the construction and extension of water and wastewater utilities in effect at the time of submittal of construction plans and shall be subject to review and inspection by the City prior to acceptance.

C. The property owner/developer shall be responsible for the payment of all costs associated with the extension and improvements of infrastructure required to properly serve the development of the Property, which costs may be financed through the PID described in Section 1.05.B below. Prior to the acquisition of any off-site easements or rights-of-way the proposed utility alignments shall be approved by the City. The Owner is responsible for the acquisition of all necessary easements to serve the proposed development. In the event the Owner is unable to acquire an easement through reasonable commercial efforts the Owner may request the assistance of the City. Within 30 days of the receipt of a written request from the Owner, the City will commence an effort, exercising all powers available to the City as a Home Rule municipality, to acquire the necessary easements. The City will direct the work of an acquisition team, acceptable to the City and the Owner, contracted and paid by the Owner, in order to acquire the necessary easements.

D. Notwithstanding the foregoing, nothing herein shall be construed to prohibit the parties and/or adjacent developments or subdivisions from mutually agreeing to cost participate or oversize reimbursement on specifically defined infrastructure in accordance with applicable City and State requirements for such participation or reimbursement.

E. To ensure a high quality, attractive development, where feasible, all utility infrastructure, including but not limited to water, wastewater and electrical infrastructure, for the Project shall be placed underground. All utility appurtenances that are required to be above ground may be placed above ground as necessary to serve the development of the Property. All extensions shall be made in a public utility easement or public right-of-way (ROW).

F. The Owner hereby requests and supports the City expanding its water and wastewater Certificate of Convenience and Necessity areas as necessary to serve the development of the Project.

G. The City hereby acknowledges that the County authorized the creation of a Public Improvement District (“PID”) on the Existing Property (the “Existing PID”) on September 23, 2014, pursuant to a County Resolution adopted pursuant to Chapter 372 of the Local Government Code (the “Existing PID Resolution”), the Owner has submitted a petition to Hays County (the “County”) requesting the creation of a Public Improvement District (“PID”) on the Property. The City hereby agrees to not oppose the creation of the PID on the Property nor any subsequent issues of PID bonds.

H. The City hereby recognizes and acknowledges that oversizing of infrastructure improvements may be necessary to accommodate future growth and development of adjacent properties. In
the event that oversizing is determined to be appropriate, the City shall enter into an agreement with the Owner in accordance with Section 7.1.3.1 of the Land Development Code.

I. The City and the County are willing to consider Chapter 380 and Chapter 381 economic development incentive agreements for the commercial portions of the Project. The terms, conditions, and amount of any incentive agreements shall be determined by separate agreement of the City, County, Owner, and/or applicable third parties.

J. Street Standards. All streets and roads within the Property shall be designed and constructed in conformance with the design guidelines and cross sections adopted by the City of San Marcos in accordance with Context Sensitive Street Design Standards. Alternative street design standards and cross sections for all streets may be utilized upon review and approval by the City and County Directors of Development Services at the time of detailed engineering and platting. Any decision of the City and County Directors of Development Services may be appealed to the Planning and Zoning Commission and the County Commissioners Court.

1.06 Impervious Cover

The maximum allowable impervious cover for the Property ("Permitted Maximum Allowable Property Impervious Cover") shall be 20% of the 2,422,996,029.02 acres of the gross area of the Property (which gross area expressly includes the 700.2 acres of gross area of the Conservation Open Space or Proposed Habitat (RHCP) Preserve and the 91,150 acres of additional Purgatory Creek Open Space shown on the Conceptual Land Use Plan attached hereto as Exhibit "E", regardless of whether Owner conveys a perpetual conservation or other easement or fee simple title to any portion of such areas to the City, the County, or any other governmental entity or conservation organization). The total Permitted Maximum Allowable Property Impervious Cover may be distributed throughout the Property or may be clustered as necessary provided that the total impervious cover on the 2,422,996,029.02 acres of the gross area of the Property does not exceed the Permitted Maximum Allowable Property Impervious Cover. If any portion of the Property is used for the right-of-way for Centerpoint Road, then the gross area of such portion of the Property and any impervious cover placed on such portion of the Property shall be excluded from all impervious cover calculations with respect to the remainder of the Property.

Clustering Incentives in accordance with Section 5.2.8 of the City's LDC may be utilized within the Property subject to the City's approval of a Qualified Watershed Protection Plan Phase 1 and shall be subject to review and approval of all applicable City of San Marcos permits including Watershed Protection Plans, Site Preparation Permits and Environmental and Geologic Assessments and shall be subject to all City of San Marcos and TCEQ regulations for buffering and protection of sensitive features, if any such features are identified on the Property.

1.07 Environmental, Water Quality & Detention Standards

The development of the Property shall comply with Chapter 5 of the Land Development Code as amended on March 4, 2014 and the City of San Marcos Storm Water Technical Manual. No portion of the Project shall contain concrete storm water detention boxes. Development of the Property will adhere to a standard for removal of a minimum of 85% of the increase in Total Suspended Solids (TSS) after full development of the Property over the baseline existing conditions before development of the Property. The 85% TSS removal may be accomplished utilizing traditional best management practices (BMP's), approved low-impact development (LID) practices, or a combination thereof. All BMP's shall be designed and maintained by the Owner to achieve the performance standard of 85% TSS removal. BMP's for treatment and detention of stormwater proposed for development of this Property may include, but shall not be limited to traditional BMP's such as detention ponds, grass-lined swales, rain gardens, bioswales, biofiltration ponds and native drought-tolerant plants for landscaping or non-traditional, innovative BMP's. The technical design of traditional BMP's shall be in accordance with the City of San Marcos Storm Water Technical Manual. The use of innovative or non-traditional BMP's shall be approved by the City and used within the Property when accompanied by supporting documentation (i.e. product research / testing or acceptance from other jurisdictions) illustrating the effectiveness of the BMP's in achieving treatment standards identified herein. The technical design of innovative or non-traditional BMP's
shall be in accordance with supplied supporting documentation. Approved vegetative buffers and filters shall not include invasive species.

Low Impact Development (LID) techniques allow for greater development potential with less environmental impacts through the use of smarter designs and advanced technologies that achieve a better balance between conservation, growth, ecosystem protection, public health, and quality of life. Where feasible and practical to achieve maximum water quality standards, the development within the Property may incorporate various LID techniques, in one form or another, that work in conjunction with traditional BMP’s to achieve 85% TSS removal.

Development of the Property may incorporate pervious paving materials such as pervious pavers, pervious concrete (grasscrete or ecocrete) or other pervious paving materials where appropriate. For pervious paving materials used, technical documentation demonstrating the pervious nature of the specific system or systems as installed shall be provided and approved by the City. In the event that City approved pervious paving materials are utilized, the development of the Property shall receive credit towards the Permitted Maximum Allowable Impervious Cover.

During the construction process, stabilization and protection measures shall be utilized to limit site disturbance to the construction perimeter (the limits of construction). The type and adequacy of the erosion and sedimentation controls shall be subject to approval of the Director of Development Services prior to installation. All erosion and sedimentation controls shall be monitored and maintained at all times during the construction process. A combination of various approved erosion and sedimentation control measures will be implemented where appropriate.

Discharge of sediment from the construction site shall be minimized and controlled as per applicable City, State and Federal requirements. It shall be the responsibility of the Owner and its contractors to clean up any discharge of sedimentation from the Property. No construction shall begin until all required City Plans are approved and a stormwater pollution prevention plan (SWPPP) is produced by the Owner and approved by the City. An erosion and sedimentation control program shall include construction sequencing and sedimentation/erosion control measures to be implemented during construction. The type and adequacy of the erosion and sedimentation controls shall be subject to City approval prior to installation. All erosion and sedimentation controls shall be monitored and maintained at all times during the construction process, and shall be inspected on an appropriate frequency, as specified in the SWPPP, and results shall be available for inspection by the City at all times.

A full Water Pollution Abatement Plan (WPAP) including a geologic assessment and geotechnical report, prepared by a licensed third-party engineer and/or professional geologist selected by the Owner and approved by the City of San Marcos Director of Engineering and Capital Improvements, shall be provided by the Owner and approved by the City, prior to the approval of any final plat on the Property or any portion thereof. The WPAP documents shall include construction sequencing and detailed means and methods for drainage and sedimentation/erosion control measures to be implemented during construction. The type and adequacy of the erosion and sedimentation controls shall be subject to City approval prior to installation. All erosion and sedimentation controls shall be monitored and maintained at all times during the construction process, and shall be inspected on an appropriate frequency (as specified in the approved WPAP) by a qualified, third-party engineering inspector, and results shall be provided to the City following each inspection.

A maintenance agreement for the permanent BMPs on the Property written according to Sections 5.1.1.7 and 5.1.1.8 of the LDC shall be submitted. The maintenance agreement shall include provisions for testing and monitoring BMPs to make sure required volumes and other characteristics are still intact as originally designed. An easement for inspection and monitoring purposes in favor of an in a form acceptable to the City must be provided by the property owner.

1.08 Parkland and Open Space Dedication
A. In the event the Property is fully built out (i.e., the maximum 2,800,400 units under Section
1.04B is achieved across the entire property), the maximum total required parkland dedication shall be 35.6422 acres. The development of the Property will meet or exceed all applicable parkland dedication requirements of the City. Except as may otherwise be permitted by the City, dedication of all or any portion of the required parkland shall occur in conjunction with the final plat on all or any portion of the Property.

B. All parkland, open space, sidewalks and trails, and designated amenities that are not owned and maintained by the Homeowners Association shall be open and available to the public, subject to any applicable rules and regulations of the U.S. Fish and Wildlife Service and the RHCP. Access to the parkland and open space shall be provided at the time of subdivision platting.

C. In addition to the required public parkland dedication amount indicated above, a variety of private active and passive recreational facilities ranging from small neighborhood pocket parks to larger improved common areas or parks are envisioned. These facilities shall be connected through a pedestrian network consisting of sidewalks and/or trails. The Project’s network of trails will be approximately 10-14 miles and provide connectivity to the Purgatory Creek Natural Area with a small parking area at such time and in such location as determined by Owner and City.

1. The minimum width for a sidewalk shall be six feet (6’).
2. Sidewalks shall be constructed of concrete or asphalt.
3. Sidewalks may be located adjacent to the street right-of-way and incorporated into an appropriate street cross-section.
4. The minimum width for a trail shall be eight feet (8’).
5. Trails may be constructed of concrete, asphalt, crushed granite, or other material common in trail construction.
6. Trails may be located adjacent to the street right-of-way and be incorporated as part of an alternative street cross-section upon the approval by the Director of Development Services or may be constructed in open space areas or improved common areas.
7. The location of sidewalks and trails shall be determined at the time of preliminary platting and development of infrastructure construction plans and shall be included as part of a Subdivision Improvement Agreement.

1.09 Deed Restrictions and Creation of Homeowner’s Association
The Owner shall create a homeowner’s association responsible for, among other things, enforcement of deed restrictions required under this Agreement. The homeowner’s association shall be created and deed restrictions recorded before commencement of any development on all or any portion of the Property. The deed restrictions shall be submitted to the City for review to determine consistency with this Agreement before recording. The homeowner’s association shall be duly authorized, under applicable laws, to enforce the deed restrictions against all owners and developers of land within the Property. Any deed restrictions, and amendments thereto, regulating development of the Property shall be recorded in the Official Public Records of Hays County, Texas. Any deed restrictions regulating development of the Property, and any amendments thereto, shall be subject to this Agreement. Such deed restrictions shall further include a statement that they are subject to this Agreement and that, in the event of a conflict between the deed restrictions and this Agreement, this Agreement shall govern.

1.10 Hays County Regional Habitat Conservation Plan & Endangered Species Act
Prior to any development activity as defined in the City’s LDC, the Owner shall comply with the Endangered Species Act, specifically related to the golden-cheeked warbler or black-capped vireo, by either obtaining approvals from the U.S. Fish and Wildlife Service or through voluntary participation in the Hays County Regional Habitat Conservation Plan ("RHCP").

**SECTION 2: MISCELLANEOUS PROVISIONS**

2.01 Term
A. This Agreement shall commence and bind the Parties on the Effective Date and continue until
all of the Property has been annexed for full purposes by the City (the “Term”), unless sooner terminated as provided in Section 2.01.C below. If, however, no progress toward completion of the Project, as defined under Section 245.005 of the Texas Local Government Code, is made within five (5) years of the date of this Agreement, this Agreement shall expire and Owner hereby agrees that any development of the Property shall comply with the ordinances in effect at the time the first plat application for any portion of the property is filed. This written Agreement may be extended for additional terms as allowed by law upon mutual written agreement of the parties.

B. After the expiration or termination of this Agreement, this Agreement will be of no further force and effect.

C. This Agreement may be terminated or amended as to all or any portion of the Property at any time by mutual written agreement between the City and Owner.

2.02 Authority
This Agreement is entered into, in part, under the statutory authority of Section 212.172 of the Texas Local Government Code and the applicable provisions of the Texas Constitution and the laws of the State of Texas. By virtue of this Agreement, Owner agrees to authorize the full purpose annexation of the Property by the City subject to applicable provisions of Chapter 43 of the Texas Local Government Code and in accordance with the terms and conditions set forth in this Agreement.

2.03 Equivalent Substitute Obligation
If any Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, changed circumstances or subsequent conditions that would legally excuse performance under this Agreement, or any other reason beyond the Party’s reasonable and practical control, the Parties will cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party’s overall contractual benefit under this Agreement.

2.04 Cooperation
The Parties agree to execute and deliver all such other and further documents or instruments and undertake such other and further actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

2.05 Litigation
In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any action taken by the Parties hereunder, Owner agrees and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement, but only to the extent each party determines, in its sole discretion, that its interests are aligned or not in conflict with the other party’s interests. The filing of any third-party lawsuit relating to this Agreement or the development of the Property will not delay, stop, or otherwise affect the development of the Property or the City’s processing or issuance of any approvals for the development of the Property, unless otherwise required by a court of competent jurisdiction. The City agrees not to stipulate or agree to the issuance of any court order that would impede or delay the City’s processing or issuance of approvals for the development of the Property.

2.06 Default
Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other Party. Upon the passage of thirty (30) business days without cure of the default, such Party shall be deemed to have defaulted for all purposes of this Agreement. In the event of a non-cured default, the non-defaulting Party shall have all the rights and remedies
available under applicable law, including the right to institute legal action to cure any default, to
enjoin any threatened or attempted violation of this Agreement, or to enforce the defaulting Party's
obligations under this Agreement by specific performance. Nothing herein shall prevent the Parties
from extending the above specified time frames for default and/or cure by mutual written
agreement.

2.07 Governmental Powers; Waiver of Immunity
It is understood that by execution of this Agreement the City does not waive or surrender any of its
governmental powers, immunities or rights.

2.08 Governing Law and Venue
The City and Owner agree that this Agreement has been made under the laws of the State of
Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be
made under the laws of the State of Texas. The City and the Owner further agree that all actions to
be performed under this Agreement are performable in Hays County, Texas.

2.09 Attorney’s Fees
If any action at law or in equity, including an action for declaratory relief, is brought to enforce or
interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover
reasonable attorney’s fees from the other Party. The amount of fees recoverable under this
paragraph may be set by the court in the trial of the underlying action or may be enforced in a
separate action brought for that purpose, and any fees recovered shall be in addition to any other
relief that may be awarded.

2.10 Entire Agreement
This Agreement, together with any exhibits attached hereto, constitutes the entire agreement
between the Parties and supersedes any prior or contemporaneous written or oral understandings
or representations of the Parties with respect to this Agreement, including superseding the Existing
Development Agreement and that certain offer made by the City to Owner to enter into a separate
development agreement for the Additional Property made pursuant to Sections 43.035 and 212.172
of the Texas Local Government Code passed by the City in Resolution No. 2014-120R on
September 2, 2014.

2.11 Exhibits/Amendment
All exhibits attached to this Agreement are incorporated by reference and expressly made part of
this Agreement as if copied verbatim. This Agreement may be amended only by mutual agreement
of the Parties and in accordance with the applicable procedures outlined in Section 1.4.2.6(c) the
City’s LDC.

2.12 Severability
If any section, subsection, sentence, clause, phrase, paragraph, part or provision of this Agreement
be declared by a court of competent jurisdiction to be invalid, illegal, unconstitutional or
unenforceable in any respect, such unenforceability, unconstitutionality, illegality or invalidity shall
not affect any of the remaining sections, subsections, sentences, clauses, phrases, paragraphs,
parts or provisions of this Agreement as a whole, or in any part, since the same would have been
enacted by the City Council without the incorporation in this Agreement of any such invalid, illegal,
unconstitutional or unenforceable section, subsection, sentence, clause, phrase, paragraph, part or
provision.

2.13 Interpretation
Wherever required by the context, the singular shall include the plural, and the plural shall include
the singular.

2.14 Notice
Any notice, request or other communication required or permitted by this Agreement shall be in
writing and may be affected by overnight courier or hand delivery, or by sending said notice by
registered or certified mail, postage prepaid, return receipt requested, and addressed to the Parties as set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed to:

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

Any notice mailed to the County shall be addressed to:

Director of Development Services
Hays County
2171 Yarrington Road
San Marcos, TX 78666

Any notice mailed to LOR, LCSM Ph. 1-1, LCSM Ph.1-2, or La Cima Commercial or LCSM West shall be addressed to:

Lazy Oaks Ranch, LP
c/o Dubois, Bryant & Campbell, LLP
Attn: Mr. Bryan W. Lee William C. (Bill) Bryant, Manager
303 Colorado 700 Lava Street, Suite 24300
Austin, Texas 78701

2.15 Force Majeure
Owner and the City agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

2.16 Assignment
As of the Effective Date, Owner LOR owns the Property. Owner LOR may assign its rights and obligations under this Agreement to any third party (ies) only after providing written notice of assignment to the City. The terms of this Agreement shall be covenants running with the land and binding on successors and assigns.

2.17 Signatures
The City represents that this Agreement has been approved and duly adopted by the City Council of the City in accordance with all applicable public meeting and public notice requirements including, but not limited to, notices required by the Texas Open Meetings Act, and that the individual executing this Agreement on behalf of the City has been authorized to do so. Owner LOR represents and warrants that this Agreement has been approved by appropriate action of Owner LOR and that the individual executing this Agreement on behalf of Owner LOR has been authorized to do so.

2.18 Successors and Assigns and Recordation
The terms of this Agreement shall be covenants running with the land and binding on successors and assigns. Pursuant to the requirements of Section 212.172(f), Local Government Code, this Agreement shall be recorded in the official public records of Hays County, Texas. The terms of this Agreement shall be binding upon: (a) the Parties; (b) the Parties’ successors and assigns; (c) the Property; and (d) future owners of all or any portion of the Property. Notwithstanding the foregoing, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations within this Agreement that apply to specific lots, including architectural, environmental and water quality, landscaping and setback and dimensional
standards, and impervious cover limits, together with applicable rights of enforcement in this Agreement as to such land use and development regulations.

2.19 Counterpart Originals
This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

[Signature Page Follows]
EXECUTED to be effective as of the Effective Date first stated above.

CITY OF SAN MARCOS, TEXAS

By: ______________________________
Name: ______________________________
Title: ______________________________
Mr. Jared Miller, City Manager

HAYS COUNTY, TEXAS

LAZY OAKS RANCH, LP, a Texas Limited Partnership

By: Lazy Oaks GP, LLC, its general partner

By: ______________________________
Name: Bryan W. Lee
Title: Manager
William C. Bryant,
Its: Manager

LCSM PH. 1-1, LLC, a Texas Limited Liability Company

By: ______________________________
Name: Bryan W. Lee
Title: Manager

LCSM PH. 1-2, LLC, a Texas Limited Liability Company

By: ______________________________
Name: Bryan W. Lee
Title: Manager

LA CIMA COMMERCIAL, LP, a Texas Limited Partnership

By: La Commercial GP, LLC, its general partner

By: ______________________________
Name: Bryan W. Lee
Title: Manager
LCSM WEST, LP, a Texas Limited Partnership

By: LCSM West GP, LLC, its general partner

By: __________________________
Name: Bryan W. Lee
Title: Manager
Acknowledgements

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on __________, 2018, by Bryan W. Lee, William C. Bryant, Manager, of Lazy Oaks GP, LLC, general partner of Lazy Oaks Ranch, L.P., a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on __________, 2018, by Bryan W. Lee, Manager, of LCSM Ph. 1-1, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on __________, 2018, by Bryan W. Lee, Manager, of LCSM Ph. 1-2, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on __________, 2018, by Bryan W. Lee, Manager, of La Cima Commercial GP, LLC, general partner of La Cima Commercial, LP, a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas
STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on __________, 2018, by Bryan W. Lee, Manager, of LCSM West GP, LLC, general partner of LCSM West, LP, a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas
STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on September 7, 2018, by Jared Miller, City Manager of the City of San Marcos, in such capacity, on behalf of said entity.

__________________________ Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on September 7, 2018, by ________, ________ of Hays County, in such capacity, on behalf of said entity.

__________________________ Notary Public, State of Texas
TRACT DESCRIPTIONS

TRACT "A": 649.592 ACRES, SAVE AND EXCEPT 5.000 ACRES, 5.000 ACRES AND 5.000 ACRES (634.592 ACRES TOTAL)


TRACT "B": 1388.17 ACRES, SAVE AND EXCEPT 23.823 ACRES (1364.347 ACRES TOTAL)

1388.17 ACRES OF LAND SITUATED IN THE WILLIAM SMITHSON SURVEY, ABSTRACT NO. 419 AND THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, BOTH OF HAYS COUNTY, TEXAS; SAID 1388.17 ACRES DESCRIBED AS "TRACT ONE" IN THE SPECIAL WARRANTY DEED WITH VENDOR'S LIEN FROM BAT PARTNERS, LTD. TO LAZY OAKS RANCH, L.P., OF RECORD IN VOLUME 3772, PAGE 231, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

SAVE AND EXCEPT

23.823 ACRES OF LAND SITUATED IN THE WILLIAM SMITHSON SURVEY, ABSTRACT NO. 419, HAYS COUNTY, TEXAS; SAID 23.823 ACRES DESCRIBED IN GENERAL WARRANTY DEED FROM LAZY OAKS RANCH, LP, TO SAN MARCOS BAPTIST ACADEMY FOUNDATION, INC., OF RECORD IN VOLUME 5038, PAGE 689, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

TRACT "C": 8.73 ACRES, SAVE AND EXCEPT 2.467 ACRES (6.263 ACRES TOTAL)

8.73 ACRES OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490 AND THE JOHN MAXIMILIAN, JR. SURVEY NO. 15, ABSTRACT NO. 299, BOTH OF HAYS COUNTY, TEXAS; SAID 8.73 ACRES DESCRIBED AS "TRACT TWO" IN THE SPECIAL WARRANTY DEED WITH VENDOR'S LIEN FROM BAT PARTNERS, LTD. TO LAZY OAKS RANCH, L.P., OF RECORD IN VOLUME 3772, PAGE 231, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

SAVE AND EXCEPT
2.467 ACRES OF LAND SITUATED IN THE JOHN MAXIMILIAN, JR. SURVEY NO. 15, ABSTRACT NO. 299 AND THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, HAYS COUNTY, TEXAS; SAID 2.467 ACRES DESCRIBED IN GENERAL WARRANTY DEED FROM LAZY OAKS RANCH, LP, TO SAN MARCOS BAPTIST ACADEMY FOUNDATION, INC., OF RECORD IN VOLUME 5038, PAGE 689, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

TRACT “D”: 23.823 ACRES

23.823 ACRES OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, THE PATRICK McGREAL SURVEY, ABSTRACT NO. 308 AND THE WILLIAM SMITHSON SURVEY, ABSTRACT NO. 419, ALL OF HAYS COUNTY, TEXAS; SAID 23.823 ACRES DESCRIBED IN GENERAL WARRANTY DEED FROM SAN MARCOS BAPTIST ACADEMY FOUNDATION, INC. TO LAZY OAKS RANCH, L.P., OF RECORD IN VOLUME 5038, PAGE 698, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

SAVE AND EXCEPT “TRACT 1”: 5.000 ACRES

DESCRIPTION OF 5.000 ACRES OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 5.000 ACRES AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., AND SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a leaning 1/2-inch iron rod found at the south corner of a called 4.337 acre tract designated as “Tract One” and described in the Warranty Deed to the City of San Marcos of record in Volume 1080, Page 874, Official Public Records of Hays County, Texas, same being a re-entrant corner in the northwest line of the said 659.9 acre remainder tract, for an angle point in the northeast line and the POINT OF BEGINNING of the tract described herein;

THENCE through the interior of the said 659.9 acre remainder tract and with the east, southeast, southwest, and northwest lines of the tract described herein, the following four (4) courses and distances:

1. S 06°45'16" E, a distance of 189.51 feet to a calculated point for the east corner of the tract described herein,

2. S 42°59'13" W, a distance of 595.64 feet to a calculated point for the south corner of the tract described herein,

3. N 45°07'08" W, a distance of 316.85 feet to a calculated point in the east line of an electric transmission/distribution line easement of variable width described in the deed to the
Lower Colorado River Authority (LCRA), of record in Volume 242, Page 699, Deed Records of Hays County, Texas, for the west corner of the tract described herein, and

4. N 42°48'10" E, with the east line of the said LCRA easement, a distance of 708.83 feet to a calculated point in the northwest line of the said 659.9 acre remainder tract and the southwest line of the said 4.337 acre tract, being the northeast corner of the said LCRA easement, for the north corner of the tract described herein, from which a 1/2-inch iron rod found in the southeast line of that certain called 8.73 acre tract, designated as “Tract Two” and described in the Special Warranty Deed to Lazy Oaks Ranch, LP, of record in Volume 3772, Page 231, Official Public Records of Hays County, Texas, same being a north corner of the said 659.9 acre remainder tract and the north corner of the said LCRA easement, same being the west corner of the said 4.337 acre tract, bears N 46°37’22” W, a distance of 125.70 feet;

THENCE S 46°37’22” E, with the northeast line of the said 659.9 acre remainder tract, the southwest line of the said 4.337 acre tract, and the northeast line of the tract described herein, a distance of 174.33 feet to the POINT OF BEGINNING and containing 5.000 acres of land, more or less.

SAVE AND EXCEPT “TRACT 2”: 5.000 ACRES

DESCRIPTION OF 5.000 ACRES OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 5.000 ACRES AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., AND SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 6-inch cedar fence corner post found at an angle point in the southeast line of the said 659.9 acre remainder tract, same being an angle point in the southwest line of the remainder of that called 114 acre tract described as “Tract 1” in the Executor’s Deed to Marla D. Sams and Marvin C. Wills, Jr., Co-Trustees of the Marvin C. Wills Family Trust, of record in Volume 3394, Page 424, Official Public Records of Hays County, Texas, for the most northerly corner of that called 311.74 acre tract described in the Warranty Deed to Claud Kern Wildenthal, of record in Volume 1385, Page 398, Official Public Records of Hays County, Texas, and from which an 8° dead cedar tree found at the most westerly corner of the said 114 acre remainder tract, being an angle point in the southeast line of the said 659.9 acre remainder tract, bears N 29°29’12” W, a distance of 59.58 feet;

THENCE with a portion of the southeast line of the said 659.9 acre remainder tract, also with the northwest line of the said 311.74 acre tract, the following four (4) courses and distances:

1. S 43°09’44” W, a distance of 155.92 feet to a 6-inch cedar fence post found for an angle point,
2. S 44°10'39" W, a distance of 216.46 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set for an angle point,

3. S 45°16'39" W, a distance of 951.78 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set for an angle point, and

4. S 45°32'23" W, a distance of 510.96 feet to a calculated point at the southwest corner of an electric transmission/distribution line easement of variable width described in the deed to the Lower Colorado River Authority (LCRA), of record in Volume 242, Page 699, Deed Records of Hays County, Texas, for the southeast corner and the POINT OF BEGINNING of the tract described herein;

THENENCE S 45°32'23" W, continuing with a portion of the southeast line of the said 659.9 acre remainder tract and the northwest line of the said 311.74 acre tract, also with the southeast line of the tract described herein, a distance of 325.12 feet to a calculated point for the south corner of the tract described herein, from which a 6-inch cedar fence post found at an angle point in the southeast line of the said 659.9 acre remainder tract and the northwest line of the said 311.74 acre tract, bears S 45°32'23" W, a distance of 6348.00 feet;

THENENCE leaving the northwest line of the said 311.74 acre tract and through the interior of the said 659.9 acre remainder tract, with the southwest, northwest and east lines of the tract described herein, the following three (3) courses and distances:

1. N 44°27'37" W, a distance of 400.00 feet to a calculated point for the west corner of the tract described herein,

2. N 45°32'23" E, a distance of 763.89 feet to a calculated point in the west line of the said LCRA easement, for the north corner of the tract described herein, and

3. S 03°11'10" W, with the west line of the said LCRA easement and the east line of the tract described herein, a distance of 593.73 feet to the POINT OF BEGINNING and containing 5.000 acres of land, more or less.

SAVE AND EXCEPT "TRACT 3": 5.000 ACRES

DESCRIPTION OF 5.000 ACRES OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT NO. 490, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 5.000 ACRES AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., AND SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 3-1/2 inch metal fence corner post found near the top of a bluff and the approximate location of the north bank of Purgatory Creek, being the most southerly corner of the
said 659.9 acre remainder tract and the most westerly corner of that certain called 311.74 acre tract described in the Warranty Deed to Claud Kern Wildenthal, of record in Volume 1385, Page 398, Official Public Records of Hays County, Texas, same being an angle point in the northerly line of that certain called 521.55 acre tract described in the Special Warranty Deed to Dixie C. Lenz, Rita K. Steitle, and Medora C. Pratt, in equal undivided shares, of record in Volume 4517, Page 277, Official Public Records of Hays County, Texas;

THENCE with a portion of the southeast line of the said 659.9 acre remainder tract and the northwest line of the said 311.74 acre tract, the following three (3) courses and distances:

1. N 45°43′43″ E, a distance of 606.75 feet to a 1/2-inch iron rod with plastic cap stamped “BCG” set for an angle point,

2. N 44°57′33″ E, a distance of 408.78 feet to a 6-inch cedar fence corner post found at an angle point, and

3. N 45°32′23″ E, a distance of 1466.74 feet to a calculated point for the south corner and the POINT OF BEGINNING of the tract described herein;

THENCE leaving the northwest line of the said 311.74 acre tract and through the interior of the said 659.9 acre remainder tract, with the southwest, northwest and east lines of the tract described herein, the following three (3) courses and distances:

1. N 44°27′37″ W, a distance of 400.00 feet to a calculated point for the west corner of the tract described herein,

2. N 45°32′23″ E, a distance of 678.61 feet to a calculated point in the west line of a 15 foot wide electric distribution line easement described in the deed to Pedernales Electric Cooperative, Inc., of record in Volume 401, Page 813, Deed Records of Hays County, Texas, for the north corner of the tract described herein, and

3. S 10°37′01″ E, with the west line of the said Pedernales easement, a distance of 481.60 feet to a calculated point in the southeast line of the said 659.9 acre remainder tract and the northwest line of the said 311.74 acre tract, for the southeast corner of the tract described herein, from which a 1/2-inch iron rod with plastic cap stamped “BCG” set for an angle point in the southeast line of the said 659.9 acre remainder tract and an angle point in the northwest line of the said 311.74 acre tract, bears N 45°32′23″ E, a distance of 5306.95 feet;

THENCE S 45°32′23″ W, with a portion of the southeast line of the said 659.9 acre remainder tract and the northwest line of the said 311.74 acre tract, also with the southeast line of the tract described herein, a distance of 410.39 feet to the POINT OF BEGINNING and containing 5.000 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, South Central Zone, NAD83, Grid.

BOWMAN WORD FILE: FN1574R2(dz)
HAYS COUNTY, TEXAS

A

FROST BANK (FORMERLY KNOWN AS THE FROST NATIONAL BANK), TRUSTEE OF THE FREEMAN EDUCATIONAL FOUNDATION CREATED UNDER THE WILL OF JOSEPH FREEMAN, DECEASED TO

LAZY OAKS RANCH, LP
649.592 ACRES
VOL. 4877, PG. 632
OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TX
(SHOWN AS SOLID HATCH)

B

BAT PARTNERS, LTD.
TO
LAZY OAKS RANCH, L.P.
TRACT ONE: 1388.17 ACRES
VOL. 3772, PG. 231
NOVEMBER 13, 2009
OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TX
(SHOWN AS DOT HATCH)

C

BAT PARTNERS, LTD.
TO
LAZY OAKS RANCH, L.P.
TRACT TWO: 8.73 ACRES
VOL. 3772, PG. 231
NOVEMBER 13, 2009
OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TX
(SHOWN AS SLANT HATCH)

D

SAN MARCOS BAPTIST ACADEMY FOUNDATION, INC.
TO
LAZY OAKS RANCH, L.P.
23.823 ACRES
VOL. 5038, PG. 698
OCTOBER 06, 2014
OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TX
(SHOWN AS HEX HATCH)
FIELD NOTES DESCRIPTION - TRACT 2 1.150 ACRES

DESCRIPTION OF 1.150 ACRES OF LAND SITUATED IN THE LYDIA GLASGOW SURVEY NO. 14, ABSTRACT NO. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 1.150 ACRES AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod found in the interior of R.M. Highway No. 12 (R.O.W. varies), being the common north corner of that called 4.337 acre tract described as "Tract One" in the Warranty Deed to the City of San Marcos, of record in Volume 1080, Page 874, Official Public Records of Hays County, Texas, and that called 0.464 acre tract described as "Parcel 65" in Exhibit "C" in the Special Warranty Deed to the County of Hays, of record in Volume 4264, Page 511, Official Public Records of Hays County, Texas, being the northwest corner of that called 0.14 acre tract described as "Easement Tract IV" in the Easement Agreement between The Frost National Bank, Trustee of the Joseph Freeman Testamentary Trust, and the City of San Marcos, of record in Volume 1239, Page 104, Official Public Records of Hays County, Texas;

THENCE S 66°45'57" E, through the interior of said R.M. Highway No. 12, with the north line of said 0.464 acre tract and said 0.14 acre easement tract, also with a portion of the north lines of said 6.4500 acre tract and that called 0.611 acre tract described as "Easement Tract III" in said Easement Agreement of record in Volume 1239, Page 104, passing at a distance of 451.60 feet a TXDOT type II monument found for the common north corner of said 0.464 acre tract and that called 6.4500 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3100, Page 712, Official Public Records of Hays County, Texas, continuing for a total distance of 1336.77 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the intersection of the south right-of-way line of said R.M. Highway No. 12 with the east right-of-way line of said Wonder World Drive, for the POINT OF BEGINNING, being an angle point in the northerly line of said 659.9 acre remainder tract and also an angle point in the northerly line of said 6.4500 acre tract, for the northwest corner of the tract described herein;

THENCE S 66°45'57" E, continuing with the north line of said 0.611 acre easement tract and also with the south right-of-way line of said R.M. Highway No. 12 and a portion of the north line of said 659.9 acre remainder tract, with the north line of the tract described herein, a distance of 544.90 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the intersection of the south right-of-way line of said R.M. Highway No. 12 with the north right-of-way line of Old Ranch Road 12 (R.O.W. varies), being an angle point in the northerly lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the northeast corner of the tract described herein;

THENCE leaving the south right-of-way line of said R.M. Highway No. 12 and the north line of said 0.611 acre easement tract, with the curving north right-of-way line of said Old Ranch Road 12, also with the curving northerly interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the east line of the tract described herein, the following three (3) courses and distances:

1. with the arc of a curve to the left, having a radius of 560.00 feet, an arc length of 174.70 feet, and a chord which bears S 68°05'20" W, a distance of 173.99 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found;

2. S 58°43'50" W, a distance of 47.47 feet to a TXDOT type II monument found, and

3. S 75°23'37" W, a distance of 54.82 feet to a TXDOT type II monument found at the intersection of the north right-of-way line of said Old Ranch Road 12 with the east right-of-way of said Wonder World Drive, being an angle point in the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the most southerly corner of the tract described herein;

H:\Survey\_FieldNotes\FN-1500a\FN1548B(clw).doc
FIELD NOTES DESCRIPTION - TRACT 3 2.303 ACRES

DESCRIPTION OF 2.303 ACRES OF LAND SITUATED IN THE LYDIA GLASGOW SURVEY NO. 14, ABSTRACT NO. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 653.045 ACRES BEING COMPRISED OF TRACT 1 (649.592 ACRES), TRACT 2 (1.150 ACRES) AND TRACT 3 (2.303 ACRES), AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found in the east right-of-way line of said Wonder World Drive, being an angle point in the northerly line of said 659.9 acre remainder tract and an angle point in the easterly line of that called 6.4500 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3100, Page 712, Official Public Records of Hays County, Texas, same being the most northerly corner of that called 6.8059 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3197, Page 401, Official Public Records of Hays County, Texas, same being an angle point in the westerly line of that called 114 acre tract described as "Tract 1" in the Executive's Deed to Marla D. Sams & Marvin C. Wills, Jr., Co-Trustees of the Marvin C. Wills Family Trust, of record in Volume 3394, Page 424, Official Public Records of Hays County, Texas, for the most southerly corner and POINT OF BEGINNING of the tract described herein, from which a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found in the west right-of-way line of said Wonder World Drive, being an angle point in the northerly line of said 659.9 acre remainder tract, same being the most southerly corner of said 6.4500 acre tract, same being the northwest corner of said 6.8059 acre tract, bears S 35°27'05" W, a distance of 243.79 feet;

THENCE with the east right-of-way line of said Wonder World Drive, also with the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, with the west line of the tract described herein, the following two (2) courses and distances:

1. N 19°34'42" W, a distance of 83.03 feet to a TXDOT type II monument found at the beginning of a curve to the left,

2. with the arc of said curve to the left, having a radius of 2009.86 feet, an arc length of 276.89 feet, and a chord which bears N 23°34'40" W, a distance of 276.67 feet to a 1/2 inch iron rod with plastic cap stamped "BCG" set at the intersection of the east right-of-way line of said Wonder World Drive with the south right-of-way line of said Old Ranch Road 12, being an angle point in the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the most westerly corner of the tract described herein;

THENCE leaving the east right-of-way line of said Wonder World Drive and with the south right-of-way line of said Old Ranch Road 12, also with the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, with the north line of the tract described herein, the following three (3) courses and distances:

1. N 37°48'08" E, a distance of 46.59 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found,

2. N 58°50'07" E, a distance of 47.11 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the beginning of a curve to the right, and

3. with the arc of said curve to the right, having a radius of 440.00 feet, an arc length of 390.22 feet, and a chord which bears N 84°25'07" E, a distance of 377.56 feet to a painted hole found in concrete being the most easterly corner of said 6.4500 acre tract and an angle point in the easterly
2.303 Acres
Lydia Glasgow Survey No. 14, A-188
Hays County, Texas

line of said 659.9 acre remainder tract, also being in the west line of said 114 acre remainder tract, for the most easterly corner of the tract described herein,

THENCE S 35°28'03" W, with a portion of the east line of said 659.9 acre remainder tract and also with a portion of the west line of said 114 acre remainder tract, with the east line of the tract described herein, a distance of 527.61 feet to the POINT OF BEGINNING and containing 2.303 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, South Central Zone, NAD83, Grid.

BOWMAN WORD FILE: FN1548C(clw)

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

That I, Cara L. Williams, a Registered Professional Land Surveyor, do hereby certify that the above description and the accompanying sketch is true and correct to the best of my knowledge and belief and that the property described herein was determined by a series of surveys made on the ground during the months of December 2013 and January 2014, under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 5th day of January 2014, A.D.

Bowman Consulting Group, Ltd.
Austin, Texas 78746

Cara L. Williams
Registered Professional Land Surveyor
No. 6336 – State of Texas

H:\Survey\_FieldNotes\FN-1500s\FN1548C(clw).doc
DESCRIPTION OF 390.52 ACRES, MORE OR LESS, OF LAND AREA IN THE WILLIAM BURKE SURVEY, ABSTRACT NO. 68, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS 515.964 ACRES IN A DEED FROM V & H ROBINSON RANCHES, LTD. TO W. L. WOOTAN ET UX DATED DECEMBER 9, 1998 AND RECORDED IN HAYS COUNTY DOCUMENT NO. 9920197 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an 8" Cedar fence corner post in the northeast line of the Jonathan Scott Survey, Abstract No. 430 for the approximate west corner of the William Burke Survey, Abstract No. 68 and for the south corner of the G. W. A. Colton Survey, Abstract No. 95 and for the northerly-west corner of the Wootan tract, and being in the northeast line of that 1422.46 acre tract described in a deed from Milton H. West et ux to MHW Operations Ltd. dated December 28, 2000 and recorded in Volume 1754, Page 588 of the Hays County Official Public Records, and being the south corner of the Bridlewood Ranches, Section 2, a subdivision recorded in Volume 11, Page 69 of the Hays County Plat Records;

THENCE leaving the Scott Survey, the MHW Operations 1422.46 acre tract, and the PLACE OF BEGINNING as shown on that plat numbered 27873-17-2-d dated March 22, 2017 as prepared for Wootan Family Estate by Byrn & Associates, Inc. of San Marcos, Texas with the common northwest line of the Burke Survey and the Wootan tract and southeast line of the Colton Survey and Bridlewood Ranches, Section 2, as fenced and used upon the ground, the following six courses:

1. N 47° 38' 55" E 424.80 feet to an angle point,

2. N 46° 40' 52" E 282.88 feet to a 6" Cedar post for an angle point,

3. N 44° 51' 43" E 557.74 feet to an 8" Cedar post for an angle point,

4. N 46° 16' 27" E 548.58 feet to a 4" Cedar post for an angle point,

5. N 45° 46' 36" E 604.71 feet to a 4" Cedar post for an angle point, and

6. N 45°18' 03" E 260.56 feet to a 1/2" iron rod found with a plastic cap stamped "B&G" for the north corner of this tract and the west corner of that 1388.17 acre tract described in a deed from BAT Partners, Ltd. to Lazy Oaks Ranch, LP dated November 13, 2009 and recorded in Volume 3772, Page 231 of the Hays County Official Public Records;
THENCE leaving the Colton Survey and Bridlewood Ranch tract and entering the Burke Survey with the common northeast line of the Wootan tract and southwest line of the Lazy Oaks Ranch tract as fenced, the following five courses:

1. S 21° 03' 09" E 169.44 feet to a triple 5" Elm tree for an angle point,
2. S 15° 51' 32" E 479.74 feet to a 10" Live Oak tree for an angle point,
3. S 15° 05' 56" E 382.38 feet to a 3" Cedar post for an angle point,
4. S 17° 43' 48"E 393.12 feet to an 8" Live Oak tree for an angle point, and
5. S 24°52' 31" E 288.56 feet to a 1/2" iron rod set for an angle point;

THENCE leaving fence, and continuing with said common line S 54° 00' 57" E 5744.26 feet to a 1/2" iron rod set in fence in the southeast line of the Burke Survey for the east corner of the Wootan tract and south corner of the Lazy Oaks Ranch tract and being in the northwest line of the John Williams Survey, Abstract No. 490 and that 100 acre tract described in a deed from Rita P. Steitle to Rita P. Steitle et vir dated May 27, 2015 and recorded in Volume 5249, Page 252 of the Hays County Official Public Records;

THENCE with the common southeast line of the Burke Survey and the Wootan tract and northwest line of the Williams Survey and Steitle tract, as fenced and agreed to in a boundary line agreement between J. H. Robinson and E. E. Posey dated May 24, 1942 and recorded in Volume 124, Page 496 of the Hays County Deed Records, the following four courses:

1. S 44° 50' 55" W 648.35 feet to a 4" Cedar post for an angle point,
2. S 45° 15' 06" W 472.53 feet to a 12" Live Oak tree for an angle point,
3. S 48°27' 47" W 112.04 feet to a 20" Live Oak tree for an angle point, and
4. S 41° 06' 56" W 95.25 feet to an 8" Cedar corner post for the west corner of the Williams Survey and Steitle tract and the north corner of the Isaac Lower Survey, Abstract N. 287 and that 248.18 acre tract - Exhibit A - described in a deed from George R. Williams et al to George R. Williams et al dated July 26, 2012 and recorded in Volume 4402, Page 461 of the Hays County Official Public Records;

THENCE leaving the Steitle tract with the common southeast line of the Burke Survey and the Wootan tract and northwest line of the Lowe Survey and the Williams 248.18 acre tract, as fenced and used, the following nine courses:
1. S 45° 23' 08" W 792.32 feet to a 12" Cedar tree for an angle point,

2. S 45° 44' 41" W 239.94 feet to a 24" Live Oak tree for an angle point,

3. S 61° 50' 25" W 145.68 feet to an 8" Live Oak tree for an angle point,

4. S 69° 03' 13" W 37.17 feet to a 16" Cedar tree for an angle point,

5. S 75° 18' 47" W 41.96 feet to a 10" Live Oak tree for an angle point,

6. S 64° 57' 31" W 41.05 feet to a 14" Live Oak tree for an angle point,

7. S 54° 42' 38" W 43.53 feet to a 16" Live Oak tree for an angle point,

8. S 47° 50' 55" W 38.51 feet to an 8" Live Oak tree for an angle point, and

9. S 43° 42' 13" W 143.87 feet to a 6" Cedar corner post for an interior corner in the east line of the Wootan tract and west corner of the Williams 248.18 acre tract;

THENCE crossing the Wootan tract S 44° 24' 40" W 26.23 feet to an 8" creosote post for an interior corner in the west line of the Wootan tract and the east corner of the aforereferenced MHW Operations 1422.46 acre tract, as fenced and used upon the ground, and being the south corner of this tract;

THENCE with the common southwest line of the Wootan tract and northeast line of the MHW Operations tract, as fenced and used upon the ground, the following two courses:

1. N 25° 25' 07" W 23.14 feet to an 8" creosote fence post and

2. N 44° 38' 00" W (being the Bearing Basis for this description) 7118.29 feet to the PLACE OF BEGINNING. There are contained within these metes and bounds 390.52 acres, more or less, of land area as prepared from public records and a survey made on the ground on during March, 2017 by Byrn & Associates, Inc. of San Marcos. All 1/2" iron rods set are capped with a plastic cap stamped "Byrn Survey".

David C. Williamson, R.P.L.S. #4190

Client: Wootan Family Estate
Date: April 4, 2017
Survey: Burke, William, A-68
County: Hays, Texas
Job No: 27373-17
FND 390.52 ac
<table>
<thead>
<tr>
<th>Item</th>
<th>Current Development Agreement (Res. 2014-131R)</th>
<th>Applicant’s Request</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Acres</strong></td>
<td>2,029.023 acres</td>
<td>2422.996 acres (addition of 393.973 acres)</td>
</tr>
<tr>
<td><strong>Single-Family Density</strong></td>
<td>706.59 acres (3 units/acre)</td>
<td>706.59 acre (3 units/acre)</td>
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<tr>
<td></td>
<td>249.84 acres (2 units/acre)</td>
<td>712.75 acres (2 units/acre)</td>
</tr>
<tr>
<td></td>
<td>72.39 acres (1 unit/acre)</td>
<td>Removed 1 unit/acre restriction</td>
</tr>
<tr>
<td><strong>Overall Project Density</strong></td>
<td>1.18 units/acre</td>
<td>1.16 units/acre</td>
</tr>
<tr>
<td><strong>Dwelling Units</strong></td>
<td>2,400</td>
<td>2,800 (increase of 400 dwelling units)</td>
</tr>
<tr>
<td><strong>Multifamily Residential (MF-24)</strong></td>
<td>Does not apply</td>
<td>– Up to 30 acres (max. 720 units)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Only allowed west of Old Ranch Road 12 in area depicted as Community Commercial</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Section 1.04(A)(3) excludes 3.45 acres located east of Old Ranch Road 12 – collectively described as the “La Cima Outparcels” on Page 1 of the Development Agreement)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Prohibit Purpose Built Student Housing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Multifamily Residential Design Standards (Ord. 2014-35) would apply</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Upon submittal of deed restrictions required in Section 1.09 of the agreement, Owner shall meet or exceed the Building Design Section of the Multifamily Residential Design Standards; any deviations must be approved by City Council)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Development of multifamily to occur in 2 phases:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1st Phase: no more than 15 acres developed as MF)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2nd Phase: development deferred until the 1st Phase is complete &amp; 75% occupied and at least 200 SF homes completed &amp; occupied)</td>
</tr>
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</table>

La Cima DA Amendment Comparison Chart
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<td>700.2 acres</td>
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| **Parkland**                                   | 32.4 acres dedicated parkland                        | Dedicating 35.6 acres of parkland (total amount required for both single-family and multifamily per the LDC) – their intent is that this is contained in the 91.5 acre area shown on Exhibits E and F as “Purgatory Creek Open Space”  
  o To be dedicated either with the final plat of Phase 8 or when Hays County completes extension of West Centerpoint Road to the southeastern corner of property, whichever is earliest. |

* All other changes to the Development Agreement are grammatical or formatting in nature.
Non-Consent Agenda

Item 16

Public hearing and consideration of a request by Natural Development Austin, LLC, on behalf of Lazy Oaks Ranch, LP, for amendments to an approved development agreement for land originally comprised of approximately 2,029.023 acres out of the W. Burke Survey, Abstract No. 68, the W. Smithson Survey, Abstract No. 419, the J Williams Survey, Abstract No. 430, and the J. Huffman Survey, Abstract No. 228, located off of Ranch Road 12 west of Wonder World Drive.
Context & History:

- Original Development Agreement approved in 2014
- Amendments submitted in July 2017
- Subcommittee reassembled to review
Addition of acreage and lowering of overall project density
- Discussed the addition of acreage to the project as well as lowering density from 1.18 units/acre to 1.16 units/acre

Addition of multifamily
- Discussed phasing the addition of multifamily so that it’s not all built at once and integrating it through the project rather than locating it all up front along Ranch Road 12 and including development standards, such as architectural controls

Incentivizing residential development
- Discussed Resolution 2015-165R – policy decision restricting financial incentives for residential development

Commercial development (both Neighborhood Commercial and Community Commercial)
- Discussed concern that this acreage had changed

Parkland dedication
- Discussed their request to donate money for the purchase of land in addition to dedication of the Wildenthal Tract for parkland – concern was raised that this tract was not the most suitable for active parkland
• Addition of approximately 394 acres and overall density remains at 1.16 units/acre
  – Wildenthal Tract withdrawn from revised request
• All Multifamily Design Standards (Ord. 2014-35) would apply
• Multifamily development proposed to occur in two phases:
  – 1st = no more than 15 acres developed as MF
  – 2nd = deferred until 1st phase is complete and 75% occupied and at least 200 homes completed and occupied
• No request to incentivize residential requirement
• Dedication of 35.6 acres of parkland (the total amount required for both single-family and multifamily development per the LDC) – their intent is to contain all in a 91.5 acre area shown on Exhibit E
  – Concept Plat states parkland will be dedicated at the earliest of: (a) final plat approval of Phase 8 or (b) upon Hays County completion of W. Centerpoint to the southeastern corner of property

Revised Agreement resubmitted December 4, 2017
March 9, 2018 Subcommittee Summary

Recommendations from meeting:

1. Any multifamily residential shall be located west of Old Ranch Road 12 and Wonder World Drive

2. The architectural controls of the multifamily residential shall meet the minimum of what’s required in the multifamily design standards and if there are any deviations, bring them forward to Council for approval.

- Applicant submitted a revised document addressing all comments on March 28, 2018
  - Summary chart shows changes between existing Development Agreement and this revised document
# La Cima DA Amendment Comparison Chart

<table>
<thead>
<tr>
<th>Item</th>
<th>Current Development Agreement (Res. 2014-131R)</th>
<th>Applicant’s Request</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Acres</strong></td>
<td>2,029.023 acres</td>
<td>2422.996 acres</td>
</tr>
<tr>
<td></td>
<td>(addition of 393.973 acres)</td>
<td></td>
</tr>
<tr>
<td><strong>Single-Family Density</strong></td>
<td>706.59 acres (3 units/acre)</td>
<td>706.59 acre (3 units/acre)</td>
</tr>
<tr>
<td></td>
<td>249.84 acres (2 units/acre)</td>
<td>712.75 acres (2 units/acre)</td>
</tr>
<tr>
<td></td>
<td>72.39 acres (1 unit/acre)</td>
<td>Removed 1 unit/acre restriction</td>
</tr>
<tr>
<td><strong>Overall Project Density</strong></td>
<td>1.18 units/acre</td>
<td>1.16 units/acre</td>
</tr>
<tr>
<td><strong>Dwelling Units</strong></td>
<td>2,400</td>
<td>2,800</td>
</tr>
<tr>
<td></td>
<td>(increase of 400 dwelling units)</td>
<td></td>
</tr>
<tr>
<td><strong>Multifamily Residential (MF-24)</strong></td>
<td>Does not apply</td>
<td>Up to 30 acres (max. 720 units)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Only allowed west of Old Ranch Road 12 in area depicted as Community Commercial</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Section 1.02(A)(3) excludes 3.45 acres located east of Old Ranch Road 12 – collectively described as the “La Cima Outparcels” on Page 1 of the Development Agreement)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prohibit Purpose Built Student Housing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Multifamily Residential Design Standards (Ord. 2014-35) would apply</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Upon submittal of deed restrictions required in Section 1.09 of the agreement, Owner shall meet or exceed the Building Design Section of the Multifamily Residential Design Standards; any deviations must be approved by City Council</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Development of multifamily to occur in 2 phases:</td>
</tr>
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*All other changes to the Development Agreement are grammatical or formatting in nature.*
Recommendations:

• Request to amend the Development Agreement is consistent with Chapter 2, Article 2 of the City’s Land Development Code as well as the intent of the City Council Subcommittee discussion and recommends approval of the request as presented
AGENDA CAPTION:
Receive a Staff presentation and hold a Public Hearing to receive comments for or against Resolution 2018-79R, approving a variance from the cut and fill requirements under Section 5.1.1.2 of the Land Development Code to allow fill of up to ten feet within a portion of the site for a new San Marcos Consolidated Independent School District Elementary School at Esplanade Parkway and William Moon Way in the Trace Subdivision; and declaring an effective date; and consider approval of Resolution 2018-79R.

Meeting date: May 15, 2018

Department: CIP/Engineering

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

Fiscal Note:
Prior Council Action: NA

City Council Strategic Initiative: [Please select from the dropdown menu below]
Community Partners
Goal #2 Beautify & Enhance the Quality of Place
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☒ Neighborhoods & Housing - Diversified housing options to serve citizens with varying needs and interests
☒ Parks, Public Spaces & Facilities - Well maintained public facilities that meet needs of our community
☐ Transportation - Choose an item.
☐ Not Applicable
**Master Plan:** [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]

Vision San Marcos - A River Runs Through Us

**Background Information:**

The subject site consists of approximately 11.95 acres of land as part of the Trace Subdivision and is being developed as SMCISD Elementary School #7. This project is vested under the previous code and code references are reflective of that code.

The applicant is requesting a variance from cut and fill requirements under Sections 5.1.1.2(e) and 5.1.1.2(g), respectively. Per the LDC, “Cuts on a tract of land may not exceed four feet of depth….” Similarly, “Fill on a tract of land may not exceed four feet in depth….”

Under Section 5.1.1.2(i), the Engineering Director may approve a variance from cut and fill requirements of not more than eight feet, and the City Council may approve a variance for a cut or fill greater than eight feet.

The applicant is requesting a variance to allow fill up to 10 feet, and has submitted a variance petition in accordance with LDC Chapter 1, Article 10, Division 2. The variance request is based upon the site topography, which includes approximately 30-feet of fall across the tract, and the need to have an ADA accessible drive at the front of the school. The fill variance is limited to a portion of the driveway area.

Staff has reviewed the petition and found the following:

- Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
- The degree of variance requested is the minimum amount necessary to meet the needs of the petitioner and to satisfy the standards in this Section.

There would be no change to the findings if this project had come in under the current Code SMTX. However approval by the P&Z would be required prior to Council action.

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

Click or tap here to enter text.

**Alternatives:**

The City Council may grant, grant with conditions, or deny the request.

**Recommendation:**

Staff recommends approval of the variance request
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A VARIANCE FROM THE CUT AND FILL REQUIREMENTS UNDER SECTION 5.1.1.2 OF THE LAND DEVELOPMENT CODE TO ALLOW FILL OF UP TO TEN FEET WITHIN A PORTION OF THE SITE FOR A NEW SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT ELEMENTARY SCHOOL AT ESPLANADE PARKWAY AND WILLIAM MOON WAY IN THE TRACE SUBDIVISION; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. Section 5.1.1.2 of the Land Development Code authorizes the City Council to approve a variance to allow cut and fill greater than eight feet.

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

PART 1. The City Council hereby grants a variance to allow fill of up to ten feet within a portion of the site for a new San Marcos Consolidated Independent School District Elementary School at Esplanade Parkway and William Moon Way in the Trace Subdivision in substantial accordance with the plans attached hereto.

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

ADOPTED on May 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
April 26, 2018

City of San Marcos
City Council
630 E. Hopkins
San Marcos, TX 78666

Re: Over 8’ Fill Variance request
San Marcos Elementary School #7 (at Trace Subdivision)
Esplanade & William Moon Way, San Marcos, Texas 78666

Honorable Mayor and City Council:

On behalf of our client, San Marcos CISD, we are requesting a variance to allow fill exceeding 8’. The accompany exhibit shows boundary of the area with fill over 8’ which is mainly along the main drop-off loop and sidewalk in the front of the school. The maximum fill is 10’ at the area immediately in front of the door.

The reason for this level of fill is because there is over 30’ of grade drop across the site. The building is already designed with split level to minimize the effect of the grade drop. We could not lower the building due to accessibility constraints around the site and to the adjacent streets. To provide safe and accessible access for the entire length of main entrance and cafeteria, the drop-off loop and sidewalk need to be at the same elevation. In other words, a retaining wall along the front of the building to reduce the fill would adversely impact the experience of the students, parents and school staff.

We appreciate your consideration and approval.

Sincerely,

Nhat M. Ho, PE
Date: 04/26/18
SMCISD ELEMENTARY SCHOOL SITE

REGIONAL LIFT STATION
AGENDA CAPTION:
Consider approval of Ordinance 2018-16, on first and final reading, authorizing the issuance and sale of $33,750,000 City of San Marcos, Texas, Combination Tax And Revenue Certificates of Obligation, Series 2018; providing for funding for (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2) constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the certificates.

Meeting date: May 15, 2018

Department: Finance-Heather Hurlbert, Finance Director

Funds Required:  
Account Number:  
Funds Available:  
Account Name:

CITY COUNCIL GOAL:

BACKGROUND:
On April 3, 2018 the City of San Marcos issued a Notice of Intent to sell approximately $47,065,000 in tax certificates of obligation. This sale funds the FY 2018 capital improvement plan that was approved by council during the FY 2018 budget process along with projects approved in prior capital improvement plans that were not funded during the prior year’s debt issuance. After review of the project list and available funding sources, the amount of debt to be issues was reduced to an amount not to exceed $33,750,000. A list of projects to be funded by the debt issued is attached.

These bonds are to be sold in a negotiated sale with pricing scheduled for May 24, 2018. This ordinance delegates the final approval of the sale within the parameters set forth in the ordinance including maximum term, interest rate and issuance amount to the Pricing Officer. The Pricing Officer is the City Manager, or in his
absence, the Mayor, acting as the designated Pricing Officer of the City to execute each Pricing Certificate.
ORDINANCE NO. __________

ORDINANCE
AUTHORIZING THE ISSUANCE OF

CITY OF SAN MARCOS, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION
IN ONE OR MORE SERIES

Adopted on May 15, 2018
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EXECUTION

EXHIBIT A - DESCRIPTION OF ANNUAL FINANCIAL INFORMATION
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS,
TEXAS, AUTHORIZING THE ISSUANCE AND SALE OF CERTIFICATES OF
OBLIGATION AND OTHER MATTERS RELATED THERETO

WHEREAS, the City Council (the "City Council") of the City of San Marcos, Texas (the
"City"), by resolution adopted on April 3, 2018, directed publication of notice (the "Notice") of
the City's intention to issue a maximum principal amount not to exceed $47,065,000 certificates
of obligation of the City for the purposes hereinafter set forth;

WHEREAS, such notice was published in the manner and to the extent required by law;

WHEREAS, there has not been filed with the City Secretary or any other officer of the
City a petition protesting the issuance of such certificates of obligation and requesting an election
on same;

WHEREAS, the City Council has determined that it is in the best interest of the City to
issue less than the maximum principal amount included in the Notice, as set for the herein;

WHEREAS, the Issuer is an "Issuer" under Section 1371.001(4)(P), Texas Government
Code, having (i) a principal amount of at least $100 million in outstanding long-term
indebtedness, in long-term indebtedness proposed to be issued, or a combination of outstanding
or proposed long-term indebtedness and (ii) some amount of long-term indebtedness outstanding
or proposed to be issued that is rated in one of the four highest rating categories for long-term
debt instruments by a nationally recognized rating agency for municipal securities, without
regard to the effect of any credit agreement or other form of credit enhancement entered into in
connection with the obligation;

WHEREAS, it is affirmatively found and determined that the City is authorized to
proceed with the issuance and sale of such certificates of obligation as authorized by the
Constitution and laws of the State of Texas, including, particularly, Tex. Loc. Gov't Code Ann.
ch. 271, subch. C, and Tex. Gov't Code Ch. 1502, as amended; 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:

"Accreted Value" means, with respect to a Premium Compound Interest Certificate, as of any particular date of calculation, the original principal amount thereof, plus all interest accrued and compounded to the particular date of calculation, as determined in accordance with the Pricing Certificate and the Accretion Table attached as an exhibit to the Pricing Certificate relating to the respective Certificates that shows the Accreted Value per $5,000 maturity amount on the calculation date of maturity to its maturity.

"Accretion Table" means the exhibit attached to the Pricing Certificate that sets forth the rounded original principal amounts at the Original Issue Date for the Premium Compound Interest Certificates and the Accreted Values and maturity amounts thereof as of each Compounding Date until final maturity.

"Certificate" means any of the Certificates.

"Certificates" means one or more series of the City's certificates of obligation entitled "City of San Marcos, Texas, Combination Tax and Revenue Certificates of Obligation" authorized to be issued by Section 3.01 of this Ordinance and a Pricing Certificate.

"Closing Date" means the date of the initial delivery of and payment for the Certificates.

"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions relating thereto.

"Current Interest Certificates" means the Certificates paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in each Pricing Certificate.

"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 Certificates 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 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 Certificates, 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 State law that may be used to defease obligations such as the Certificates.
"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named herein, its designated 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.

"DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" means any broker, dealer, bank, trust company, clearing corporation or certain other organizations with Certificates credited to an account maintained on its behalf by DTC.

"Event of Default" means any Event of Default as defined in Section 10.01 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).

"Initial Certificate" means the Certificate described in Section 3.04(d) and 6.02(d).

"Interest and Sinking Fund" means the interest and sinking fund established by Section 8.01(a) of this Ordinance.

"Interest Payment Date" means the date or dates upon which interest on the Certificates is scheduled to be paid until the maturity or prior redemption of the Certificates, as provided in a Pricing Certificate.

"MSRB" means the Municipal Securities Rulemaking Board.

"Ordinance" means this Ordinance.

"Original Issue Date" means the date of the Certificates designated in a Pricing Certificate.

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

"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 and the Pricing Certificate.

"Premium Compound Interest Certificates" means the Certificates on which no interest is paid prior to maturity, maturing in various amounts and in the aggregate principal amount as set forth in each Pricing Certificate.
"Pricing Certificate" means the Pricing Certificate of the City's Pricing Officer to be executed and delivered pursuant to Section 3.02 hereof in connection with the issuance of a series of Certificates.

"Pricing Officer" means the City Manager, or in his absence, the Mayor, acting as the designated Pricing Officer of the City to execute each Pricing Certificate.

"Purchaser" means the person, firm or entity (whether one or more) initially purchasing a series of the Certificates from the City as set forth in each Pricing Certificate.

"Record Date" means the date specified in each Pricing Certificate.

"Redemption Date" means a date fixed for redemption of any Certificate pursuant to the terms of each Pricing Certificate.

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

"Representation Letter" means the Blanket Issuer Letter of Representations with respect to the Certificates and other obligations of the City, between the City and DTC.

"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.

"Special Record Date" means the new record date for interest payment established in the event of a nonpayment of interest on a scheduled payment date, and for 30 days thereafter, as described in Section 3.03(b) of this Ordinance.

"Surplus Revenues" means the revenues of the City's waterworks and sewer system, not to exceed $1,000, available after deduction of the reasonable expenses of said waterworks and sewer system and the payment of all debt service, reserve and other requirements with respect to all of the City's revenue bonds and other obligations, now outstanding or hereafter issued, that are payable in whole or in part from a pledge of all or part of the revenues of said waterworks and sewer system.

"Term Certificates" means the Certificates, if any, subject to mandatory sinking fund redemption as described in Section 4.02 and as set forth in a Pricing Certificate.
"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Certificates as the same become due and payable or money set aside for the payment of Certificates 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 meaning 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 CERTIFICATES

Section 2.01. Tax Levy for Payment of the Certificates.

(a) The City Council hereby declares and covenants that it will provide and levy a tax legally and fully sufficient for payment of the Certificates, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations of the City.
(b) In order to provide for the payment of the debt service requirements on the Certificates, being (i) the interest on the Certificates and (ii) a sinking fund for their payment at maturity or a sinking fund of two percent (whichever amount is the greater), there is hereby levied for the current year and each succeeding year thereafter, while the Certificates or interest thereon remain outstanding and unpaid, a tax within legal limitations on each $100 valuation of taxable property in the City that is sufficient to pay such debt service requirements, full allowance being made for delinquencies and costs of collection.

(c) The tax levied by this Section shall be assessed and collected each year and applied to the payment of the debt service requirements on the Certificates, and the tax shall not be diverted to any other purpose.

Section 2.02. Surplus Revenue Pledge.

The Certificates are additionally secured by and shall be payable from a pledge of the Surplus Revenues.

Section 2.03. Perfection of Security Interest.

Chapter 1208, Texas Government Code applies to the issuance of the Certificates and the pledge of the taxes and revenues granted by the City under Sections 2.01 and 2.02 of this Ordinance, and such pledge, therefore, is valid, effective, and perfected. If Texas law is amended at any time while the Certificates are outstanding and unpaid such that the pledge of the taxes or revenues granted by the City under Sections 2.01 and 2.02 of this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business and Commerce Code, then in order to preserve to the registered owners of the Certificates 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 CERTIFICATES

Section 3.01. Authorization.

The City's certificates to be designated "City of San Marcos, Texas, Combination Tax and Revenue Certificates of Obligation," are hereby authorized to be issued in one or more series and delivered in accordance with the Constitution and laws of the State of Texas, including Subchapter C of Chapter 271 of the Texas Local Government Code, as amended and Chapters 1502 and 1371, Texas Government Code, as amended, in the aggregate principal amount not to exceed $33,750,000 for the purposes of (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2)
constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates.

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

(a) Initially there shall be issued, sold and delivered hereunder fully registered certificates, without interest coupons, which may be in the form of Current Interest Certificates or Premium Compound Interest Certificates, numbered consecutively from R-1 upward, in the case of Current Interest Certificates, and from PC-1 upward, in the case of Premium Compound Interest Certificates (except the Initial Certificate delivered to the Attorney General of the State of Texas which shall be numbered T-1 and TPC-1, respectively) payable to the respective initial Registered Owners thereof, or to the registered assignee or assignees of said Certificates or any portion of portions thereof, in Authorized Denominations, maturing not later than August 15, 2048, serially or otherwise on the dates, in the years and in the principal amounts, respectively, and dated, all as set forth in each Pricing Certificate to be executed and delivered by the Pricing Officer pursuant to subsection (b) of this section. Each Pricing Certificate is hereby incorporated in and made a part of this Ordinance. Each series of the Certificates shall be designated by the year in which they are awarded with a letter as necessary to designate each series as provided in each Pricing Certificate. The authority of the Pricing Officer to execute a Pricing Certificate shall expire at 5:00 p.m. C.D.T. on May 15, 2019. Certificates priced on or before May 15, 2019 may be delivered to the Purchasers after such date.

(b) As authorized by Chapter 1371, Texas Government Code, as amended, the Pricing Officer is hereby authorized to act on behalf of the City in selling and delivering one or more series of the Certificates and carrying out the other procedures specified in this Ordinance, including determining the date of the Certificates, any additional or different designation or title by which a series of the Certificates shall be known, the price at which each series of the Certificates will be sold, the years in which the Certificates will mature, the principal amount to mature in each of such years, the aggregate principal amount of Current Interest Certificates and Premium Compound Interest Certificates, the rate or rates of interest to be borne by each such maturity, the interest payment periods, the dates, price, and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, and all other matters relating to the issuance, sale, and delivery of the Certificates, all of which shall be specified in the Pricing Certificate; provided that (i) the price to be paid for each series of the Certificates shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest thereon from its date to
its delivery, (ii) none of the Certificates of a series shall bear interest at a rate, or yield in the case of Premium Compound Interest Certificates, greater than the maximum authorized by law, and (iii) each series of the Certificates shall be rated by a nationally recognized rating agency in one of the four higher rating categories unless a series of Certificates is issued through a private placement, as determined by the Pricing Officer, in which case no rating will be required. In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not to exceed the amount authorized in Section 3.01, which shall be sufficient to provide for the purposes for which the Certificates are authorized and to pay the costs of issuing the Certificates.

(c) To achieve advantageous borrowing costs for the City, the Certificates shall be sold on a negotiated, placement or competitive basis as determined by the Pricing Officer in the Pricing Certificate. In determining whether to sell the Certificates by negotiated, placement or competitive sale, the Pricing Officer shall take into account any material disclosure issues which might exist at the time, the market conditions expected at the time of the sale and any other matters which, in the judgment of the Pricing Officer, might affect the net borrowing costs on the Certificates.

If the Pricing Officer determines that a series of the Certificates should be sold at a competitive sale, the Pricing Officer shall cause to be prepared a notice of sale and official statement in such manner as the Pricing Officer deems appropriate, to make the notice of sale and official statement available to those institutions and firms wishing to submit a bid for the Certificates, to receive such bids, and to award the sale of the Certificates to the bidder submitting the best bid in accordance with the provisions of the notice of sale.

If the Pricing Officer determines that a series of the Certificates should be sold by a negotiated sale or placement, the Pricing Officer shall designate the placement purchaser or the senior managing underwriter for the Certificates and such additional investment banking firms as the Pricing Officer deems appropriate to assure that the Certificates are sold on the most advantageous terms to the City. The Pricing Officer, acting for and on behalf of the City, is authorized to enter into and carry out a Bond Purchase Agreement or other agreement for the Certificates to be sold by negotiated sale or placement, with the underwriters or placement purchasers at such price, with and subject to such terms as determined by the Pricing Officer pursuant to Section 3.02(b) above. Each Bond Purchase Agreement or other agreement shall be substantially in the form and substance previously approved by the City in connection with the authorization of waterworks and sewer system debt with such changes as are acceptable to the Pricing Officer.

In satisfaction of Section 1201.022(a)(3), Texas Government Code, the City hereby determines that the delegation of the authority to the Pricing Officer to approve the final terms and conditions of each series of the Certificates as set forth in this Ordinance and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated in each Pricing Certificate will be, in the best interests and shall have the same force and effect as if such determination were made by the Pricing Officer and the Pricing Officer is hereby authorized to make and include in each Pricing Certificate an appropriate finding to that effect.
(d) The Current Interest Certificates shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM OF CERTIFICATES set forth in this Ordinance to their respective dates of maturity or redemption at the rates per annum set forth in the Pricing Certificate.

The Premium Compound Interest Certificates shall bear interest from the Original Issue Date, calculated on the basis of a 360-day year composed of twelve 30-day months (subject to rounding to the Compounded Amounts thereof), compounded on the Compounding Dates as set forth in the Pricing Certificate, and payable, together with the principal amount thereof, in the manner provided in the Form of Certificates at the rates set forth in the Pricing Certificate. Attached to the Pricing Certificate, if Premium Compound Interest Certificates are to be issued, shall be the Accretion Table. The Accreted Value with respect to any date other than a Compounding Date is the amount set forth on the Accretion Table with respect to the last preceding Compounding Date, plus the portion of the difference between such amount and the amount set forth on the Accretion Table with respect to the next succeeding Compounding Date that the number of days (based on 30-day months) from such last preceding Compounding Date to the date for which such determination is being calculated bears to the total number of days (based on 30-day months) from such last preceding Compounding Date to the next succeeding Compounding Date.

Section 3.03. Medium, Method and Place of Payment.

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

(b) Interest on the Certificates 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 Certificate 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 Certificates 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.
(d) The principal of each Certificate shall be paid to the person in whose name such Certificate 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 Certificate at the Designated Payment/Transfer Office.

(e) If a date for the payment of the principal of or interest on the Certificates 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 required or 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 Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to any applicable escheat, abandoned property, or similar law.

Section 3.04. Execution and Initial Registration.

(a) The Certificates shall be executed on behalf of the City by the Mayor and City Secretary 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 Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates 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 Certificate 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 by an officer or duly authorized representative 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 Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate 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 Certificate 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 of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and City Secretary 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 as set forth in the Pricing Certificate. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel the Initial Certificate and deliver to DTC on behalf of the Purchaser one registered definitive Certificate for each year of maturity of the Certificates in the aggregate principal amount of all Certificates for such maturity, registered in the name of Cede & Co., as nominee for DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, pursuant to an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Certificates 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 Certificate is registered as the absolute owner of such Certificate 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 Certificate is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Certificate 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 Certificate 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 Certificate to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Certificates 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 Certificates in accordance with this Ordinance.

(b) Registration of any Certificate 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 Certificates, 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 Certificate or any portion thereof registered in the name of such assignee or assignees. No transfer of any Certificate shall be effective until entered in the Register. Upon assignment and transfer of any Certificate or portion thereof, a new Certificate or Certificates will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned Certificate. To the extent possible the Paying Agent/Registrar will issue such new Certificate or Certificates in not more than three business days after receipt of the Certificate to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Certificate 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 Certificate or Certificates 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 Certificate presented for exchange. If a portion of any Certificate is redeemed prior to its scheduled maturity as provided herein, a substitute Certificate or Certificates 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 Certificate or Certificates shall be delivered by the Paying Agent/Registrar to the Owner of the Certificate or Certificates in not more than three business days after receipt of the Certificate to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Certificate issued in exchange for any Certificate or portion thereof assigned, transferred or converted shall have the same principal maturity date and bear interest at the same rate as the Certificate for which it is being exchanged. Each substitute Certificate shall bear a letter and/or number to distinguish it from each other Certificate. The Paying Agent/Registrar shall convert and exchange the Certificates as provided herein, and each substitute Certificate 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 Certificate or Certificates in lieu of which such substitute Certificate 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 Certificates, 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 Certificate. In addition, the City hereby covenants with the Owners of the Certificates 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 Certificates, 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 Certificates as provided herein.
Section 3.07. Cancellation and Authentication.

(a) All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates 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 Certificates.

(b) Each substitute Certificate 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 Certificate or Certificates 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 Certificate, manually sign and date such Certificate, and no such Certificate 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 Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificates in the manner prescribed herein. Pursuant to Title 9, Tex. Gov't Code Ann., as amended, and particularly Chapter 1201, Subchapter D thereof, the duty of conversion and exchange or replacement of Certificates 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 Certificates shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial Certificate which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) Certificates issued in conversion and exchange or replacement of any other Certificate or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates 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 Certificates, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) shall be payable as to principal of and interest, all as provided, and in the manner required or indicated, in the Form of Certificates set forth in this Ordinance.

Section 3.08. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar, at the Designated Payment/Transfer Office, of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate 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 Certificate to pay a sum sufficient to cover any tax or
other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate 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 Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate 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 Certificate;

(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 Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate 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 Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate if it has become due and payable or may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate 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 Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.09. Book-Entry-Only System.

(a) The definitive Certificates shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate 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 Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates 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 Certificates, 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 Certificates, (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 Certificates, 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 Certificates. 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 Certificate is registered in the Register as the absolute Owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on the Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Certificates 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 Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the register, shall receive a 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 word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The execution and delivery of the Representation Letter is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Certificates.

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

In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, and that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify
DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts, as identified by DTC. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates 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 Certificates 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 Certificates, and all notices with respect to such Certificates, shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV and each Pricing Certificate.

Section 4.02. Optional and Mandatory Redemption.

(a) The City reserves the option to redeem Certificates as provided in each Pricing Certificate.

(b) The City, at least forty-five (45) days before the redemption date (unless a shorter period shall be satisfactory to the Paying Agent/Registrar), shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Certificates to be redeemed.

Section 4.03. Partial Redemption.

(a) If less than all of the Certificates from a series are to be redeemed pursuant to its respective Pricing Certificate, the City shall determine the maturities and amounts thereof to be redeemed and shall direct the Paying Agent/Registrar (or DTC or a successor securities depository, as applicable, if the Certificates are in Book-Entry-Only form) to call by lot Certificates, or portions thereof within such maturity and in such principal amounts, for redemption.
(b) A portion of a single Certificate of a denomination greater than $5,000 may be redeemed, but only in a principal amount equal to $5,000 or any integral multiple thereof. The Paying Agent/Registrar shall treat each $5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(c) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06, shall authenticate and deliver in exchange a Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice by United States mail, first class postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each Certificate (or part thereof) to be redeemed, at the address shown on the Register.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and, if less than all the Certificates outstanding are to be redeemed, an identification of the Certificates or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the Paying Agent/Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust an amount from the Interest and Sinking Fund or otherwise received by the Paying Agent/Registrar from the City sufficient to pay the redemption price of such Certificates.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the redemption price of such Certificate to the date of redemption from the money set aside for such purpose.
Section 4.06. **Effect of Redemption.**

(a) Notice of redemption having been given as provided in Section 4.04 or 4.06, the Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the redemption price thereof, such Certificates or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Certificates are presented and surrendered for payment on such date.

(b) If any Certificate or portion thereof called for redemption is not so paid upon presentation and surrender of such Certificate for redemption, such Certificate or portion thereof shall continue to bear interest at the rate stated on the Certificate until paid or until due provision is made for the payment of same.

Section 4.07. **Conditional Notice of Redemption.**

With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates 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 Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

**ARTICLE V**

**PAYING AGENT/REGISTRAR**

Section 5.01. **Appointment of Initial Paying Agent/Registrar.**

(a) The City hereby appoints Regions Bank, Houston, Texas, 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 Certificate to which payments with respect to the Certificates 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 Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates, and of all conversions, exchanges and replacements of such Certificates, as provided in this Ordinance.

(c) The execution and delivery of a Paying Agent/Registrar Agreement, specifying the duties and responsibilities of the City and the Paying Agent/Registrar, is hereby approved with such changes as may be approved by the Pricing Officer and the Pricing Officer is hereby authorized to execute such agreement.

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 Certificates 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; provided that no such termination shall be effective until a successor Paying Agent/Registrar has accepted the duties of Paying Agent/Registrar for the Certificates.

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 the Pricing Certificate 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 Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.01. Form Generally.

(a) The Certificates, 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 Certificates, (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 each Pricing Certificate, 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 Certificates, as evidenced by their execution thereof.

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

(c) The Certificates 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 Certificates, as evidenced by their execution thereof, except that the Initial Certificate submitted to the Attorney General of Texas, the definitive Certificates delivered to DTC and any temporary Certificates may be typewritten or photocopied or otherwise produced.

Section 6.02. Form of Certificates.

The form of Certificates, 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 Certificates, shall be substantially
as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance and the Pricing Certificate:

(a) [Form of Certificate]

REGISTERED

No. R-__

United States of America
State of Texas

CITY OF SAN MARCOS, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES __________

<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>__________<strong>, 20</strong>*</td>
<td>__________<strong>, 20</strong>*</td>
<td>__________*</td>
</tr>
</tbody>
</table>

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

_________________________________________________

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

_________________________________________________

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 consisting of twelve 30-day months, such interest to be paid semiannually on __________* and __________* of each year, commencing __________*, 20__*.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the designated office in Houston, Texas (the "Designated Payment/Transfer Office"), of the Paying Agent/Registrar executing the registration certificate appearing hereon,

_________________________________________________

*As provided in each Pricing Certificate. To the extent that the Pricing Certificate relating to the Certificates is inconsistent with any provisions in this Form of Certificate or contains information to complete missing information in this Form of Certificate, the language in the Pricing Certificate shall be used in the executed Certificates.

SAN MARCOS CTRCO&GOB 2018. Ordinance
or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Certificate 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. For the purpose of the payment of interest on this Certificate, the registered owner shall be the person in whose name this Certificate is registered at the close of business on the "Record Date," which shall be the 15th 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 registered owner of a Certificate 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.

If a date for the payment of the principal of or interest on the Certificates 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 Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of $__________*(herein referred to as the "Certificates"), issued pursuant to a certain Ordinance of the City Council of the City (the "Ordinance") for the purpose of providing funds to (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2) constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system.

*As provided in each Pricing Certificate. To the extent that the Pricing Certificate relating to the Certificates is inconsistent with any provisions in this Form of Certificate or contains information to complete missing information in this Form of Certificate, the language in the Pricing Certificate shall be used in the executed Certificates.
master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates.

The Certificates and the interest thereon are payable from the levy of a direct and continuing ad valorem tax, within the limit prescribed by law, against all taxable property in the City and by a limited pledge of certain Surplus Revenues of the City's waterworks and sewer system.

[Redemption Provisions]

The City has reserved the option to redeem the Certificates maturing on and after __________, 20__, before their respective scheduled maturity in whole or in part in integral multiples of $5,000 on __________, 20__*, or on any date thereafter, at a price equal to the principal amount of the Certificates so called for redemption plus accrued interest to the redemption date. If less than all of the Certificates are to be redeemed, the City shall determine the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar (or DTC or a successor securities depository, as applicable, if the Certificates are in Book-Entry form) to call by lot Certificates, or portions thereof within such maturity or maturities and in such amounts, for redemption.

The Certificates maturing on __________, 20__* (the "Term Certificates") are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts, on the following dates and at a price of par plus accrued interest to the redemption date.

Certificates Maturing __________, 20__*

<table>
<thead>
<tr>
<th>Redemption Date</th>
<th>Principal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>________<strong>, 20</strong></td>
<td>$_________</td>
</tr>
<tr>
<td>________<strong>, 20</strong>*</td>
<td>$_________.]***</td>
</tr>
</tbody>
</table>

*Final Maturity

The principal amount of the Term Certificates required to be redeemed pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option of the City by the principal amount of any Term Certificates of the stated maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the City, at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with monies in the Interest and Sinking Fund at a price not exceeding the principal amount of the Term Certificates plus accrued interest to the date of purchase thereof, or (3) shall have been

*As provided in each Pricing Certificate. To the extent that the Pricing Certificate relating to the Certificates is inconsistent with any provisions in this Form of Certificate or contains information to complete missing information in this Form of Certificate, the language in the Pricing Certificate shall be used in the executed Certificates.

**Use of Term Certificates, if any, to be determined by the Pricing Officer.
redeemed pursuant to the optional redemption provisions and not theretofore credited against a mandatory sinking fund redemption requirement.

Notice of such redemption or redemptions shall be sent by United States mail, first-class postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Certificates to be redeemed in whole or in part. Notice having been so given, the Certificates or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice, and from and after such date, notwithstanding that any of the Certificates or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Certificates or portions thereof shall cease to accrue.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate 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 Certificates 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 Certificate 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 Certificate is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Certificate 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 Certificate 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 Certificates 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 Certificates, does not exceed any constitutional or statutory limitation.

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

___________________________________ ____________________________________
City Secretary, City of San Marcos, Texas Mayor, 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 Certificates referred to in the within mentioned Ordinance. The series of Certificates of which this Certificate is a part was originally issued as one Initial Certificate 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 Certificate and all rights hereunder and hereby irrevocably constitutes and appoints ____________________ attorney to transfer the within Certificate on the books kept for registration hereof, with full power of substitution in the premises.

Dated: __________________
________________________
Signature Guaranteed By:

________________________
Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.
(d) Initial Certificate Insertions.

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

A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As Shown Below" and "CUSIP Number ____" deleted;

B. in the first paragraph:

the words "on the Maturity Date specified above" shall be deleted and the following will be inserted (with all blanks to be completed with information included in the Pricing Certificate): "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>Principal Years</th>
<th>Interest Installs</th>
<th>Rates</th>
</tr>
</thead>
</table>

(Information to be inserted from the Pricing Certificate)

C. In the second paragraph of the Initial Certificate, "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 Certificate shall be numbered T-1.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Certificate 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 §

*As provided in each Pricing Certificate. To the extent that the Pricing Certificate relating to the Certificates is inconsistent with any provisions in this Form of Certificate or contains information to complete missing information in this Form of Certificate, the language in the Pricing Certificate shall be used in the executed Certificates.
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 Certificate, and that this Certificate 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, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section 6.04. Legal Opinion.

The approving legal opinion of Bond Counsel for the City, may be printed on the back of each Certificate or, in the case of the definitive Certificates delivered to DTC, attached to each definitive Certificate, over the certification of the City Secretary, which may be executed in facsimile.

Section 6.05. Municipal Bond Insurance.

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

In connection with the sale of one or more series of the Certificates, the City may obtain municipal bond insurance policies from one or more Bond Insurers to guarantee the full and complete payment required to be made by or on behalf of the City on the Certificates. The Pricing Officer is hereby authorized to sign a commitment letter or insurance agreement with the Bond Insurer or Bond Insurers and to pay the premium for the bond insurance policies at the time of the delivery of the Certificates to the underwriter out of the proceeds of sale of the Certificates or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as the Pricing Officer may deem appropriate. Printing on the Certificates covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to the Bond Insurer and the Pricing Officer, is hereby approved and authorized. The Pricing Certificate may contain provisions related to the bond insurance policies, including payment provisions thereunder, and the rights of
the Bond Insurer or Bond Insurers, and any such provisions shall be read and interpreted as an integral part of this Ordinance.

ARTICLE VII

APPROVAL OF OFFERING DOCUMENTS
AND PAYING AGENT/REGISTRAR AGREEMENT;
CONTROL AND DELIVERY OF THE CERTIFICATES

Section 7.01. Approval of Offering Documents and Paying Agent/Registrar Agreement. The Pricing Officer is hereby authorized to approve the Preliminary Official Statement, the Official Statement relating to the Certificates and any addenda, supplement or amendment thereto and to deem such documents final in accordance with Rule 15c2-12 and such Preliminary Official Statement and Official Statement shall be deemed to be approved by the City Council. The City further approves the distribution of such Official Statement in the reoffering of the Certificates by the Purchaser in final form, with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof.

The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar ("Paying Agent Agreement") in substantially the form and substance previously approved by the City in previous transactions. The Pricing Officer is hereby authorized and directed to complete, amend, modify and execute the Paying Agent Agreement as necessary.

(a) 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 Certificates in accordance with the Bond Purchase Agreement.

Section 7.02. Control and Delivery of Certificates.

(a) The Mayor of the City is hereby authorized to have control of the Initial Certificate 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 of the State of Texas, delivery of the Certificates 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
CREATION OR CONFIRMATION OF CREATION OF FUNDS AND ACCOUNTS;
DEPOSIT OF PROCEEDS; INVESTMENTS

Section 8.01. Creation of Funds.

(a) The City hereby establishes or confirms the establishment of the following special funds or accounts and the Pricing Officer is hereby authorized to complete such fund or account names with the appropriate series designation for each Series of Bonds:

(i) the City of San Marcos, Texas, Combination Tax and Revenue Certificates of Obligation, Series [______], Interest and Sinking Fund (the "Interest and Sinking Fund").

(ii) the City of San Marcos, Texas, Combination Tax and Revenue Certificates of Obligation, Series [______], Construction Fund (the "Construction Fund").

(b) The Interest and Sinking Fund and the Construction Fund shall be maintained at an official depository of the City.

Section 8.02. Interest and Sinking Fund.

(a) The taxes levied and surplus revenues pledged under Article II shall be deposited to the credit of the Interest and Sinking Fund at such times and in such amounts as necessary for the timely payment of the principal of and interest on the Certificates.

(b) Money on deposit in the Interest and Sinking Fund shall be used to pay the principal of and interest on the Certificates as such become due and payable.

Section 8.03. Construction Fund.

(a) Money on deposit in the Construction Fund, including investment earnings thereof, shall be used for the purposes specified in Section 3.01 of this Ordinance.

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

Section 8.04. 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 8.05. Deposit of Proceeds.

(a) All amounts received on the Closing Date as accrued interest on the Certificates from the Dated Date to the Closing Date, shall be deposited to the Interest and Sinking Fund.

(b) The remainder of the proceeds of the Certificates shall be deposited to the Construction Fund and used for the purposes specified in Section 3.01 hereof and for paying the costs of issuance with respect to the Certificates.

Section 8.06. Investments.

(a) Money in the funds provided by this Ordinance, at the option of the City, may be invested in such securities or obligations as permitted under applicable law.

(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 8.07. Investment Income.

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

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of the Certificates.

While any of the Certificates 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 Certificates, as applicable, as will accrue or mature on each applicable Interest Payment Date.

Section 9.02. 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 Certificate; the City will promptly pay or cause to be paid the principal of, interest on, and premium, if any, with respect to, each Certificate on the dates and at the places and manner prescribed in such Certificate; 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 Certificates; all action on its part for the creation and issuance of the Certificates has been duly
and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 9.03. Covenants Regarding Tax Exemption of Interest on the Certificates.

(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 Tax-Exempt 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 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt Bonds, other than investment property acquired with --
(A) proceeds of the Tax-Exempt Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the Bonds are issued,

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

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

(7) to otherwise restrict the use of the proceeds of the Tax-Exempt Bonds or amounts treated as proceeds of the Tax-Exempt Bonds, as may be necessary, so that the Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Obligations 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 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 Tax-Exempt Bonds. This Ordinance is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

(d) **Disposition of Project.** The City covenants that the property constituting the project financed by the Refunded Obligations will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Tax-Exempt Bonds. For purposes of this subsection, 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 of this subsection, 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) **Reimbursement.** This Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

**ARTICLE X**

**DEFAULT AND REMEDIES**

Section 10.01. **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 Certificates when the same becomes due and payable;

(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; or

(iii) the City declares bankruptcy.

Section 10.02. **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 Certificates then outstanding.

Section 10.03. 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 Certificates 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 Certificates 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 XI

DISCHARGE AND DEFEASANCE

Section 11.01. Defeasance of Certificates.

(a) Any Certificate and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Certificate") 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 Certificate, 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 Certificate s shall have become due and payable or (3) any combination of (1)
and (2). At such time as a Certificate shall be deemed to be a Defeased Certificate hereunder, as
aforesaid, such Certificate 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
Certificate as aforesaid when proper notice of redemption of such Certificates 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 Certificate 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
Certificates and premium, if any, and interest thereon, shall be applied to and used solely for the
payment of the particular Certificates 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
Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the
services of Paying Agent/Registrar for such Defeased Certificates 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 Certificates and such
Certificates 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 Certificate
affected thereby.

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

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ARTICLE XII
CONTINUING DISCLOSURE UNDERTAKING

12.01  Annual Reports.

The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within the period stated on Exhibit “A”, hereto, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 7.02(b) of this Ordinance, being the information described in Exhibit "A" hereto. 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.

12.02  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 Certificates:

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 Certificates, or other events affecting the tax status of the Certificates;

G. Modifications to rights of holders of the Certificates, 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 Certificates, 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.

12.03. 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 Certificates within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section 12.02 of this Ordinance that causes the Certificates no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial
owners of the Certificates, 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 Certificates 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 Certificates 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 Certificates in the primary offering of the Certificates 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 Certificates 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 Certificates. 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

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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 Certificates in the primary offering of the Certificates.

ARTICLE XIII

AMENDMENTS; FURTHER PROCEDURES; AND SEVERABILITY

Section 13.01. Amendments.

(a) This Ordinance shall not be amended or repealed by the City while any Certificate remains outstanding, except as permitted by this Section and with the consent of, and prior notice to, the Insurer. 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 Certificates 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 Certificates, no such amendment, addition, or recission shall (i) extend the time or times of payment of the principal of and interest on the Certificates, 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 Certificates, (ii) give any preference to any Certificate over any other Certificate, or (iii) reduce the aggregate principal amount of Certificates required for consent to any such amendment, addition, or recission. Copies of all amendments consented to by the Insurer shall also be sent to Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

Section 13.02. 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 Certificates, the Paying Agent/Registrar Agreement, and the Official Statement. In addition, prior to the initial delivery of the Certificates, the Mayor, the Interim City Manager or Director of Finance of the City, and Certificate 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 Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Certificates 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 13.03. 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 13.04. No Personal Liability.

No covenant or agreement contained in the Certificates, 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 Certificates 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 Certificates.

Section 13.05. 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 Certificates 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 Certificates.

Section 13.06. Appropriation.

To pay the debt service coming due on the Certificates, if any (as determined by the Pricing Certificate) prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.
FINALLY PASSED, APPROVED AND EFFECTIVE ON FIRST READING IN ACCORDANCE WITH Section 1201.028 Texas Government Code this May 15, 2018.

______________________________
Mayor, City of San Marcos, Texas

ATTEST:

______________________________
City Secretary, City of San Marcos, Texas

[CITY SEAL]

APPROVED AS TO FORM:

______________________________
City Attorney, City of San Marcos, Texas
EXHIBIT A

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

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

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The portions of the financial statements of the City appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.

2. Statistical and financial data set forth in Tables 1 through 4, inclusive, and 6 through 10, inclusive.

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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<tr>
<td>492</td>
<td>Airport - CAF Hanger Rehabilitation</td>
<td>City match for grant funds to rehabilitate the last remaining WWII hangar on the airport. The rehab will protect a historical landmark, provide opportunities for redevelopment and improve curb appeal at the airport.</td>
<td></td>
<td>General</td>
<td></td>
<td>25,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>653</td>
<td>Airport - City Facilities</td>
<td>Improvements to city owned facilities at airport; including roof, HVAC and other upgrades.</td>
<td>10</td>
<td>General</td>
<td></td>
<td>50,000</td>
<td>50,000</td>
<td></td>
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</tr>
<tr>
<td>606</td>
<td>Airport - FM 110 Connection Drive</td>
<td>New roadway to connect the airport to FM 110. Design funds in 1st year, Construction funds in 2nd year. TxDOT has a 50/50 match on new roadways, with a cap of $100K</td>
<td></td>
<td>General</td>
<td></td>
<td>100,000</td>
<td>100,000</td>
<td></td>
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<tr>
<td>159</td>
<td>Airport - Routine Maintenance Grant Match</td>
<td>S5/S0 match with TxDOT for routine airport maintenance; move into operating cost in 2019</td>
<td>5</td>
<td>General</td>
<td></td>
<td>50,000</td>
<td>50,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>524</td>
<td>Airport - Taxiway System, Ramp Rehab Design and Stormwater Master Plan</td>
<td>PCI analysis in 2013 indicates failure of pavement on various taxiways and ramps. TxDOT recommends an analysis and rehab based upon its results. Stormwater will also be a component to insure pavement life. This amount reflects the City’s 10% project match.</td>
<td>5</td>
<td>General</td>
<td></td>
<td>50,000</td>
<td></td>
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<td></td>
<td>Stormwater</td>
<td></td>
<td>15,000</td>
<td></td>
<td></td>
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<tr>
<td>491</td>
<td>Airport Landscaping-Hanger Maintenance</td>
<td>Short term repairs such as; Roof, kennels, paint, relocation &amp; expansion of euthanasia room, HVAC, ceiling tile replacement is required for state compliance. Long Term improvements; Expand current facilities to meet growth and continue to serve as a regional facility. The existing 9,000 sq. ft. will be renovated and an additional 10,500 sq. ft. will be added. Expansion could be delayed pending regional determination.</td>
<td>15</td>
<td>General</td>
<td></td>
<td>80,000</td>
<td>80,000</td>
<td></td>
<td></td>
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<tr>
<td>12</td>
<td>Animal Shelter - Roof, Design, Construction, Rehab and Remodel</td>
<td></td>
<td>20</td>
<td>General</td>
<td></td>
<td>275,000</td>
<td>130,000</td>
<td></td>
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<tr>
<td>183</td>
<td>Bishop Street Improvements</td>
<td>Stormwater, Water (per master plan) and Wastewater improvements along Belvin &amp; S. Bishop to improve Stormwater issues downstream along San Antonio Street. Includes a sidewalk on Bishop between Belvin and Hopkins. The needs on this project will be determined with the Belvin Street Imp PER. DMP #35. Design funds in first year, construction in second year.</td>
<td>20</td>
<td>General</td>
<td></td>
<td>200,000</td>
<td>200,000</td>
<td></td>
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<td>20</td>
<td>Stormwater</td>
<td></td>
<td>420,000</td>
<td>420,000</td>
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<td>20</td>
<td>Wastewater</td>
<td></td>
<td>40,000</td>
<td>40,000</td>
<td></td>
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<td></td>
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<tr>
<td>Project ID</td>
<td>Project Name</td>
<td>Project Description</td>
<td>Maximum Bond Term</td>
<td>Department</td>
<td>FY 17 Deferred Project</td>
<td>FY 18 Approved CIP Projects</td>
<td>Debt to be sold in FY18</td>
<td>GO Bond Funded</td>
<td>Cash Funded</td>
<td>ARWA Funded</td>
<td>Defer to a future period</td>
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<td>20</td>
<td>Water</td>
<td>20,000</td>
<td>20,000</td>
<td></td>
<td></td>
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<tr>
<td>616</td>
<td>Cemetery Land Acquisition</td>
<td>The City's cemetery is nearing capacity. Acquisition of adjacent property or the development of an additional cemetery is required. Funding will come from cemetery perpetual fund.</td>
<td></td>
<td>General</td>
<td>500,000</td>
<td></td>
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<td>500,000</td>
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<tr>
<td>475</td>
<td>City Facilities HVAC Replacement</td>
<td>HVAC Replacement for City Facilities at multiple locations. Activity Center, Price Center in 2018. 2020 will begin replacement of SECO units installed 2011/12.</td>
<td>10</td>
<td>General</td>
<td>150,000</td>
<td></td>
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<tr>
<td>169</td>
<td>City Facility Parking Lots</td>
<td>Repave/restore all City parking facilities based upon condition, with drainage improvements as needed. Locations include; Activity Center, Grant Harris, Cock House, Nature Center, CVB and park parking lots. Includes WQ ponds. Will coordinate with project #385 - Downtown SmartCode. Funding for this project is split over multiple years.</td>
<td>10</td>
<td>General</td>
<td>200,000</td>
<td>85,000</td>
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<tr>
<td>526</td>
<td>City Facility Renovations</td>
<td>Renovate/construct – Activity Ctr. (Restrooms, flooring); Municipal Bldg. (first floor training room, restrooms, hallways, lobby and utility billing); Public Services Bldg. (restrooms, hallways, flooring, ceilings); City Hall (foundation repair, restrooms); Grant Harris (foundation repair, restrooms, lobby, offices); Library (Restrooms, painting, flooring); Dunbar (Restrooms, flooring); Fleet Maintenance Bay; Roofs – (Municipal Bldg., Public Services, Grant Harris, SMEU, Library gutter system, Metal roof)</td>
<td>10</td>
<td>General</td>
<td>400,000</td>
<td>495,500</td>
<td></td>
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<tr>
<td>597</td>
<td>Coers Drive Improvements</td>
<td>In 2016, City Council approved $500K in drainage funds with the Old RR 12 project to assist with stormwater for areas impacted by this project. A PER was completed 2015 which identified Coers Drive as an area impacted by the Old RR 12 project. The Coers Drive Improvements will be constructed in advance of the Old RR 12 project and will use $200k in stormwater funds from Old RR12. Coers Drive Improvements will install a box culvert along Coers from Owens towards Old RR12. The project includes a water quality pond. DMP #23 Replace water and sewer within project limits due to anticipated conflicts. Add Sidewalk from Old RR12 to Owens. This project includes full depth pavement reconstruction.</td>
<td>Electric</td>
<td>20,000</td>
<td></td>
<td>20,000</td>
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<td>20</td>
<td>General</td>
<td>600,000</td>
<td>600,000</td>
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FY 2018 CIP Project List
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<td>20</td>
<td>Stormwater</td>
<td>1,300,000</td>
<td>1,300,000</td>
<td></td>
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<td>20</td>
<td>Wastewater</td>
<td>350,000</td>
<td>350,000</td>
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<td>20</td>
<td>Water</td>
<td>350,000</td>
<td>350,000</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>31</td>
<td>Comprehensive Plan</td>
<td>Implement items in Vision San Marcos. $100K in HUD-DR funds will be used to update the comprehensive plan to reflect new flood information. Additional 2018 funds will be used for the Historic Resource survey and neighborhood character studies.</td>
<td>100,000</td>
<td>Electric</td>
<td>$100,000</td>
<td>$100,000</td>
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<td></td>
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<td>100,000</td>
<td>General</td>
<td></td>
<td>$100,000</td>
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<td>100,000</td>
<td>Water</td>
<td></td>
<td>$100,000</td>
<td></td>
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<td>$100,000</td>
</tr>
<tr>
<td>622</td>
<td>Corps of Engineers Flood Project Participation</td>
<td>Local funding match to get to Chief's Report on Blanco River Flood Control options. Funding could come from grants, general or stormwater funds. Initial $500,000 eligible for HUD-DR funding as unmet need.</td>
<td>80,000</td>
<td>Stormwater</td>
<td>80,000</td>
<td>80,000</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>667</td>
<td>Critical Utility Security</td>
<td>Security cameras and gate controls at 12 water station and booster station sites around town.</td>
<td>50,000</td>
<td>Electric</td>
<td>50,000</td>
<td>50,000</td>
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<td>50,000</td>
<td>50,000</td>
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<td>50,000</td>
<td>50,000</td>
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AGENDA CAPTION:
Consider approval of Ordinance 2018-17, on first and final reading, authorizing the issuance of City of San Marcos, Texas General Obligation Bonds in an amount not to exceed $28,000,000 for one or more of the purposes of providing funds for (i) constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs, (ii) constructing, improving, extending, expanding, upgrading and/or developing City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking infrastructure and (iii) paying the legal fees and other such costs incurred in connection therewith including the costs of issuing the Bonds; levying an ad valorem tax in support of the bonds; approving a paying agent/registrar agreement, an official statement, and a purchase agreement; establishing procedures for selling and delivery of one or more series of the bonds; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the bonds.

Meeting date: May 15, 2018

Department: Finance-Heather Hurlbert, Finance Director

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

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

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

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
Background Information:
In May 2017, voters approved two bond propositions totaling $32.2M. Proposition 1 included renovation of the Police Station and training facilities, construction and relocation of Fire Station #2, construction of a Fire training facility, and construction of Fire Station #8. Proposition 2 was for the expansion for the current library. The City is issuing debt to cover the projects we expect to begin in the next three years, which are all the projects in both propositions with the exception of construction of Fire Station #8. Fire Station #8 is not expected to begin in the next couple of years and the debt will be issued once the project is ready to move forward.

These bonds are to be sold in a negotiated sale with pricing scheduled for May 24, 2018. This ordinance delegates the final approval of the sale within the parameters set forth in the ordinance including maximum term, interest rate and issuance amount to the Pricing Officer. The Pricing Officer is the City Manager, or in his absence, the Mayor, acting as the designated Pricing Officer of the City to execute each Pricing Certificate.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Click or tap here to enter text.
ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF SAN MARCOS, TEXAS GENERAL OBLIGATION BONDS; LEVYING AN AD VALOREM TAX IN SUPPORT OF THE BONDS; APPROVING A PAYING AGENT/REGISTRAR AGREEMENT, AN OFFICIAL STATEMENT, AND A PURCHASE AGREEMENT; ESTABLISHING PROCEDURES FOR SELLING AND DELIVERY OF ONE OR MORE SERIES OF THE BONDS; AND AUTHORIZING OTHER MATTERS RELATING TO THE BONDS

Adopted May 15, 2018
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EXHIBIT "A" DEFINITIONS
EXHIBIT "B" DESCRIPTION OF ANNUAL FINANCIAL INFORMATION
ORDINANCE NO. __________

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF SAN MARCOS, TEXAS GENERAL OBLIGATION BONDS; LEVYING AN AD VALOREM TAX IN SUPPORT OF THE BONDS; APPROVING A PAYING AGENT/REGISTRAR AGREEMENT, AN OFFICIAL STATEMENT, AND A PURCHASE AGREEMENT; ESTABLISHING PROCEDURES FOR SELLING AND DELIVERY OF ONE OR MORE SERIES OF THE BONDS; AND AUTHORIZING OTHER MATTERS RELATING TO THE BONDS

THE STATE OF TEXAS  
COUNTIES OF HAYS, CALDWELL AND GUADALUPE  
CITY OF SAN MARCOS

WHEREAS, at an election held within the City of San Marcos, Texas (the "City") on May 6, 2017 the voters of the City authorized the City Council of the City to issue in one or more series the bonds set forth in proposition numbers 1 and 2, which aggregate $32,200,000 in aggregate principal amount; and

WHEREAS, the City Council deems it to be in the best interest of the City to issue all or a portion of the $17,450,000 in aggregate principal amount of the bonds authorized by Proposition Number 1 for the purpose of constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, construction of a new Fire Station No. 8 and replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs and reserves the right to issue the remaining authorized but unissued bonds at such time as determined by the City Council; and

WHEREAS, the City Council deems it to be in the best interest of the City to issue all or a portion of the $14,750,000 in aggregate principal amount of the bonds authorized by Proposition Number 2 for the purpose of constructing, renovating, improving, and equipping existing and/or additional City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other costs and reserves the right to issue the remaining authorized but unissued bonds at such time as determined by the City Council; and

WHEREAS, the City Council deems it to be in the best interest of the City for the Pricing Officer, as designated herein, to determine the amount to be used from each of the propositions described in the above recitals and the amount of remaining authorized but unissued bonds remaining from each proposition following the issuance of a series of Bond pursuant to this Ordinance, all as set for the in a Pricing Certificate; and
WHEREAS, the Bonds authorized by this Ordinance are being issued and delivered pursuant to the City Charter and Chapters 1207, 1331 and 1371 of the Texas Government Code, as amended, and other applicable laws: and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, Texas Government Code.

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

Section 1. RECITALS. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

Section 2. DEFINITIONS. For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Exhibit "A" to this Ordinance have the meanings assigned to them in Exhibit "A".

Section 3. AMOUNT, NAME, PURPOSE AND AUTHORIZATION. The Bonds, each to be designated the "CITY OF SAN MARCOS, TEXAS GENERAL OBLIGATION BONDS, SERIES 2018" unless such other similar designation shall be deemed more appropriate for a series of Bonds as determined by the Pricing Officer and described in the Pricing Certificate," in one or more Series are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, particularly Chapters 1331 and 1371, Texas Government Code, as amended, and the Charter of the City. The Bonds shall be issued in an aggregate principal amount not to exceed $28,000,000, and each series of Bonds shall be issued for one or more of the purposes of providing funds for (i) constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, and replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs, (ii) constructing, improving, extending, expanding, upgrading and/or developing City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking infrastructure and (iii) paying the legal fees and other such costs incurred in connection therewith including the costs of issuing the Bonds. The Pricing Officer may determine whether a particular Series of Bonds will include refunding bonds, new money bonds, or a combination thereof, whether any such series of Bonds is issued as Taxable Bonds or Tax-Exempt Bonds, and whether the title and designation of a series of Bonds shall be revised to appropriately reflect the series of Bonds being issued, all as described in the Pricing Certificate.

Section 4. DATE, DENOMINATION, MATURITIES, NUMBERS, INTEREST AND REDEMPTION. (a) Initially there shall be issued, sold, and delivered hereunder one or more Series of fully registered Bonds, without interest coupons, which may be in the form of Current Interest Bonds or Premium Compound Interest Bonds, numbered consecutively from R-1 upward, in the case of Current Interest Bonds, and from PC-1 upward, in the case of Premium Compound Bonds.
Interest Bonds (except the Initial Bond delivered to the Attorney General of the State of Texas which shall be numbered T-1 and TPC-1 respectively) payable to the respective initial Registered Owners thereof, or to the registered assignee or assignees of said Bonds or any portion or portions thereof, in Authorized Denominations, maturing not later than August 15, 2038, serially or otherwise on the dates, in the years and in the principal amounts, respectively, and dated, as all set forth in the Pricing Certificate to be executed and delivered by the Pricing Officer pursuant to subsection (b) of this section. The Pricing Certificate is hereby incorporated in and made a part of this Ordinance. The Bonds shall be designated by the year in which they are awarded as set forth in the Pricing Certificate. The authority for the Pricing Officer to execute and deliver the Pricing Certificate for the Bonds shall expire at 5:00 p.m. C.S.T. on May 15, 2019. Bonds priced on or before May 15, 2019 may be delivered to the initial purchaser after such date.

(b) As authorized by Chapters 1331 and 1371, Texas Government Code, as amended, the Pricing Officer is hereby authorized to act on behalf of the City in selling and delivering one or more Series of the Bonds, and carrying out the other procedures specified in this Ordinance, including determining the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of Current Interest Bonds and Premium Compound Interest Bonds, the rate or rates of interest to be borne by each such maturity, the interest payment periods, the dates, price, and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, whether any series of Bonds shall be issued as Taxable Bonds or Tax-Exempt Bonds, the amount of authorization to use from a respective proposition authorizing the sale of Bonds approved by the City's voters and the amount of authorized but unissued bonds remaining from a proposition following the issuance of a series of Bond pursuant hereto and all other matters relating to the issuance, sale, and delivery of the Bonds, all of which shall be specified in the Pricing Certificate; provided that (i) the price to be paid for the Bonds shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest thereon from its date to its delivery, and (ii) none of the Bonds shall bear interest at a rate, or yield in the case of Premium Compound Interest Bonds, greater than the maximum authorized by law. In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not to exceed the amount authorized in Section 3, which shall be sufficient to provide for the purposes for which the Bonds are authorized and to pay the costs of issuing the Bonds.

In satisfaction of Section 1201.022(a)(3), Texas Government Code, the City Council determines that the delegation of the authority to the Pricing Officer to approve the final terms and conditions of each Series of the Bonds as set forth in this Ordinance is, and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated in the Pricing Certificate will be, in the best interests and shall have the same force and effect as if such determination were made by the City Council and the Pricing Officer is hereby authorized to make and include in a Pricing Certificate an appropriate finding to that effect.

(c) To achieve advantageous borrowing costs for the City, the Bonds shall be sold on a negotiated, placement or competitive basis as determined by the Pricing Officer in the Pricing Certificate. In determining whether to sell the Bonds by negotiated, placement or competitive sale,
the Pricing Officer shall take into account any material disclosure issues which might exist at the
time, the market conditions expected at the time of the sale and any other matters which, in the
judgment of the Pricing Officer, might affect the net borrowing costs on the Bonds.

If the Pricing Officer determines that the Bonds should be sold at a competitive sale, the
Pricing Officer shall cause to be prepared a notice of sale and official statement in such manner as
the Pricing Officer deems appropriate, to make the notice of sale and official statement available to
those institutions and firms wishing to submit a bid for the Bonds, to receive such bids, and to award
the sale of the Bonds to the bidder submitting the best bid in accordance with the provisions of the
notice of sale.

If the Pricing Officer determines that the Bonds should be sold by a negotiated sale or
placement, the Pricing Officer shall designate the placement purchaser or the Underwriter(s) for the
Bonds as the Pricing Officer deems appropriate to assure that the Bonds are sold on the most
advantageous terms to the City. The Pricing Officer, acting for and on behalf of the City, is
authorized to enter into and carry out a Bond Purchase Contract or other agreement for the Bonds to
be sold by negotiated sale or placement, with the Underwriter(s) or placement purchasers at such
price, with and subject to such terms as determined by the Pricing Officer pursuant to Section 3(b)
above. Each Bond Purchase Contract or other agreement shall be substantially in the form and
substance previously approved by the City in connection with the authorization of ad valorem tax
debt with such changes as are acceptable to the Pricing Officer.

(d) The Current Interest Bonds shall bear interest calculated on the basis of a 360-day
year composed of twelve 30-day months from the dates specified in the FORM OF BONDS set forth
in this Ordinance to their respective dates of maturity or redemption at the rates per annum set forth
in the Pricing Certificate.

The Premium Compound Interest Bonds shall bear interest from the Issuance Date, calculated
on the basis of a 360-day year composed of twelve 30-day months (subject to rounding to the
Compounded Amounts thereof), compounded on the Compounding Dates as set forth in the Pricing
Certificate, and payable, together with the principal amount thereof, in the manner provided in the
Form of Bonds at the rates set forth in the Pricing Certificate. Attached to the Pricing Certificate, if
Premium Compound Interest Bonds are to be issued, shall be the Accretion Table. The Accreted
Value with respect to any date other than a Compounding Date is the amount set forth on the
Accretion Table with respect to the last preceding Compounding Date, plus the portion of the
difference between such amount and the amount set forth on the Accretion Table with respect to the
next succeeding Compounding Date that the number of days (based on 30-day months) from such
last preceding Compounding Date to the date for which such determination is being calculated bears
to the total number of days (based on 30-day months) from such last preceding Compounding Date
to the next succeeding Compounding Date.

(e) Right of Redemption. The City reserves the right, at its option, to redeem the Bonds
as set forth in the FORM OF BOND and the Pricing Certificate. The City, at least thirty (30) days
before the date of any optional redemption, shall notify the Paying Agent/Registrar of such
redemption date and of the amount and maturity of the Bonds to be redeemed.
(f) **Notice of Redemption to Bondholder.** The Paying Agent/Registrar shall give notice of any redemption of the Bonds by sending notice by first class United States mail, postage prepaid, not less than twenty (20) days before the date fixed for redemption, to the Bondholder at the address shown in the Register. The notice shall state among other things, the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and that the Bonds so called for redemption shall cease to bear interest after the redemption date. Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Bondholder receives such notice. With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by or this 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.

(g) **Effect of Redemption.** Notice of redemption having been given as provided in this Section, the Bonds called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the principal thereof or accrued interest thereon, such Bonds thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bond is presented and surrendered for payment on such date. If the Bonds thereof called for redemption are not so paid upon presentation and surrender thereof for redemption, such Bonds thereof shall continue to bear interest at the rate stated on the Bond until paid or until due provision is made for the payment of same.

(h) **Conditional Notice of Redemption.** With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of the premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent 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.

**Section 5. CHARACTERISTICS OF THE BONDS.** (a) **Registration, Transfer, Conversion and Exchange; Authentication.** The City shall keep or cause to be kept at Regions Bank, in Houston, Texas or such other legally qualified entity designated by the Pricing Officer in a Pricing Certificate for a series of Bonds (the "Paying Agent/Registrar") books or records for the registration
of the transfer, conversion and exchange of the Bonds (the "Registration Books"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Registered Owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided; but it shall be the duty of each Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The City shall have the right to inspect the Registration Books 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. The Paying Agent/Registrar shall make a copy of the Registration Books available in the State of Texas. The City shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Bond or Bonds. Registration of assignments, transfers, conversions and exchanges of Bonds shall be made in the manner provided and with the effect stated in the FORM OF BOND set forth in this Ordinance. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond.

Except as provided in Section 5(c) hereof, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign the Bond, and no such Bond shall be deemed to be issued or outstanding unless such Bond is so executed. The Paying Agent/Registrar promptly shall cancel all paid Bonds and Bonds surrendered for conversion and exchange. No additional orders, ordinances, or resolutions need be passed or adopted by the governing body of the City or any other body or person so as to accomplish the foregoing conversion and exchange 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 the Bonds shall be of type composition printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Chapter 1206, Texas Government Code, as amended, and particularly Subchapter B thereof, the duty of conversion and exchange of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the Bond, the converted and exchanged Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(b) Payment of Bonds and Interest. 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, all as provided in this Ordinance. 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 and exchanges of Bonds, and all replacements of Bonds, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (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
Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(c) In General. The Bonds (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 transferred and assigned, (iii) may be converted and exchanged for other Bonds, (iv) shall have the characteristics, (v) shall be signed, sealed, executed and authenticated, (vi) the principal of and interest on the Bonds shall be payable, and (vii) shall be administered and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Bonds, all as provided, and in the manner and to the effect as required or indicated, in the Pricing Certificate and the FORM OF BOND set forth in this Ordinance. The Bonds initially issued and delivered pursuant to this Ordinance are not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Bond issued in conversion of and exchange for any Bond or Bonds issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF BOND.

(d) Substitute Paying Agent/Registrar. The City covenants with the Registered Owners of the Bonds that at all times while the Bonds are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 30 days written notice to the Paying Agent/Registrar, to be effective at such time which will not disrupt or delay payment on the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) Book-Entry-Only System. Unless a series of Bonds are sold pursuant to a private placement, the Bonds issued in exchange for the Bonds initially issued as provided in Section 4(i) shall be issued in the form of a separate single fully registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York.
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 securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC participants (the "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner, as shown on the Registration Books, of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any person, other than a Registered Owner, as shown on the Registration Books of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, but to the extent permitted by law, 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 Registration Books as the absolute owner of such Bond for the purpose of payment of principal of and interest, with respect to such Bond, for the purposes of registering transfers with respect to such Bond, and for all other purposes of registering transfers with respect to such Bonds, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective Registered Owners, as shown in the Registration Books 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 principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Bond evidencing the obligation of the City to make payments of principal, and interest 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 being mailed to the registered owner at the close of business on the Record Date the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(f) Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the City determines to discontinue the book-entry system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bond, 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 Registration Books 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 the
Registered Owner transferring or exchanging Bond shall designate, in accordance with the provisions of this Ordinance.

(g) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Letter of Representations of the City to DTC.

(h) DTC Blanket Letter of Representations. The City confirms execution of a Blanket Issuer Letter of Representations with DTC establishing the Book-Entry-Only System which will be utilized with respect to the Bonds.

(i) Cancellation of Initial Bond. On the closing date, one Initial Bond representing the entire principal amount of the Bonds, payable in stated installments to the order of the Underwriter of the Bonds or its designee, executed by manual or facsimile signature of the Mayor or Mayor Pro-tem and City Clerk, 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 such Underwriters 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 such Underwriters one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all the Bonds for such maturity.

Section 6. FORM OF BOND. The form of the Bond, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment, the form of initial Bond and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Bonds initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance including any reproduction of an opinion of counsel and information regarding the issuance of any bond insurance policy.

FORM OF BOND

(All blanks and any appropriate or necessary insertions or deletions, to be completed as determined by the Pricing Officer in the Pricing Certificate.)

NO. R- UNITED STATES OF AMERICA PRINCIPAL
STATE OF TEXAS AMOUNT
HAYS, CALDWELL AND GUADALUPE COUNTIES $__________

CITY OF SAN MARCOS, TEXAS
GENERAL OBLIGATION BOND,
SERIES ____*

*To be completed as determined by the Pricing Officer in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in the Form of Bond or contains information to complete missing information in this Form of Bond, the language in the
[FORM OF FIRST PARAGRAPHS OF CURRENT INTEREST BONDS]

INTEREST RATE   DATE OF BOND   MATURITY DATE   CUSIP NO.

REGSTERED OWNER:

PRINCIPAL AMOUNT:   DOLLARS

ON THE MATURITY DATE specified above, SAN MARCOS, TEXAS (the "City"), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the "Registered Owner") the principal amount set forth above, and to pay interest thereon from Date of Delivery, on __________, 20___* and semiannually thereafter on each __________* and __________* to the maturity date specified above, or the date of redemption prior to maturity, at the interest rate per annum specified above calculated on the basis of a 360-day year of twelve 30-day months; except that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged or converted from is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full. 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 AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity or upon the date fixed for its redemption prior to maturity, at Regions Bank, (the "Paying Agent/Registrar") at their office for payment in Houston, Texas (the "Designated Payment/Transfer Office"). The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the ordinance authorizing the issuance of this Bond (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered Owner hereof, at its address as it appeared on the close of business on the last day of the month next preceding each such date (the "Record Date")

Pricing Certificate shall be used in the executed Bonds.

SanMarcosGOB2018: OrdinanceGO
on the registration books kept by the Paying Agent/Registrar (the "Registration Books"). In addition, interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. In the event of a non-payment of interest on a scheduled 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 (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 Registration Books at the close of business on the last business day next preceding the date of mailing of 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.

**[FORM OF FIRST PARAGRAPHS OF PREMIUM COMPOUND INTEREST BOND]**

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**REGISTERED OWNER:**

**MATURITY AMOUNT:**

**ON THE MATURITY DATE SPECIFIED ABOVE, CITY OF SAN MARCOS, TEXAS** (the "City"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the "Registered Owner") the Maturity Amount set forth above, representing the principal amount hereof and accrued and compounded interest hereon. Interest shall accrue on the principal amount hereof from the Issuance Date at the interest rate per annum specified above, calculated on the basis of a 360 day year comprised of twelve 30 day months, compounded semiannually on __________ * and __________ * of each year commencing __________, 20___*. For convenience of reference a table

*To be completed as determined by the Pricing Officer in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in the Form of Bond or contains information to complete missing information in this Form of bond, the language in the Pricing Certificate shall be used in the executed Bonds.
of the "Accreted Value" per $5,000 Maturity Amount is printed on the reverse side of this Bond. The term "Accreted Value" as set forth in the table on the reverse side hereof shall mean the original principal amount plus initial premium per $5,000 Maturity Amount compounded semiannually on __________* and __________* at the yield shown on such table.

THE MATURITY AMOUNT of this Bond is payable in lawful money of the United States of America, without exchange or collection charges. The Maturity Amount of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity, at the designated office for payment of Regions Bank, Houston, Texas, which is the "Paying Agent/Registrar" for this Bond, and shall be drawn by the Paying Agent/Registrar on, and solely from, funds of the City required by the order authorizing the issuance of the Bonds (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided, payable to the Registered Owner hereof, as it appears on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. The City covenants with the Registered Owner of this Bond that on or before the Maturity Date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds of the Maturity Amount, when due. 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.

[FORM OF REMAINDER OF EACH BOND]

ANY ACCRUED INTEREST due at maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Bond for payment at the Designated Payment/Transfer Office of the Paying Agent/Registrar. The City covenants with the Registered Owner of this Bond that on or before each payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City where the principal corporate trust office of the Paying Agent/Registrar 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 such a Saturday, Sunday, legal holiday, or day on which 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 Bonds dated __________, 20___*, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of

*To be completed as determined by the Pricing Officer in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in the Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.
$___________*, TO PROVIDE FUNDS FOR THE FOLLOWING: (I) CONSTRUCTING, IMPROVING, RENOVATING AND EQUIPPING PUBLIC SAFETY FACILITIES TO INCLUDE THE POLICE AND FIRE DEPARTMENTS AND RELATED EMERGENCY AND TRAINING FACILITIES, INCLUDING IMPROVEMENTS TO THE POLICE STATION, REPLACING EXISTING FIRE STATION NO. 2 AND THE ACQUISITION OF ANY NECESSARY SITES AND RELATED WATER, WASTEWATER, DRAINAGE, STREETS, SIDEWALKS, PARKING, INFRASTRUCTURE AND OTHER RELATED COSTS, (II) CONSTRUCTING, IMPROVING, EXTENDING, EXPANDING, UPGRAADING AND/OR DEVELOPING CITY LIBRARY FACILITIES INCLUDING ACQUISITION OF ANY NECESSARY SITES AND RELATED WATER, WASTEWATER, DRAINAGE, STREETS, SIDEWALKS, PARKING INFRASTRUCTURE AND (III) PAYING THE LEGAL FEES AND OTHER SUCH COSTS INCURRED IN CONNECTION THEREWITH INCLUDING THE COSTS OF ISSUING THE BONDS.

ON __________, 20___*, or on any date thereafter, the Bonds of this Series maturing on and after __________, 20___* may be redeemed prior to their scheduled maturities, at the option of the City, with funds derived from any available and lawful source, at par plus accrued interest to the date fixed for redemption as a whole, or from time to time in part, and, if in part, the particular maturities to be redeemed shall be selected and designated by the City and if less than all of a maturity is to be redeemed, the Paying Agent/Registrar shall determine by lot the Bonds, or a portion thereof, within such maturity to be redeemed (provided that a portion of a Bond may be redeemed only in an integral multiple of $5,000).

THE BONDS MATURING ON __________, 20___* are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts on the following dates and at a price of par plus accrued interest to the redemption date ("Term Bonds").

<table>
<thead>
<tr>
<th>Term Bonds Maturing on _______<em><strong>, 20</strong></em>*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Redemption Date</strong></td>
</tr>
<tr>
<td>--------, 20__</td>
</tr>
<tr>
<td>--------, 20__†</td>
</tr>
</tbody>
</table>

† Final Maturity

THE PRINCIPAL AMOUNT of the Term Bonds required to be redeemed pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option of the City by the principal amount of any Term Bonds of the stated maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with monies in the Interest and Sinking Fund at a price not exceeding the principal amount of the Term Bonds plus accrued interest to the date of
purchase thereof, or (3) shall have been redeemed pursuant to the optional redemption provisions and
not theretofore credited against a mandatory sinking fund redemption requirement.]

NO LESS THAN 30 days prior to the date fixed for any such redemption, the City shall
cause the Paying Agent/Registrar to send notice by United States mail, first-class postage prepaid to
the Registered Owner of each Bond to be redeemed at its address as it appeared on the Registration
Books of the Paying Agent/Registrar at the close of business on the 45th day prior to the redemption
date and to major securities depositaries, national bond rating agencies and bond information
services; provided, however, that the failure to send, mail or receive such notice, or any defect
therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the
proceedings for the redemption of any Bonds.  By the date fixed for any such redemption due
provision shall be made with the Paying Agent/Registrar for the payment of the required redemption
price for the Bonds or portions thereof which are to be so redeemed.  If due provision for such
payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed
thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall
not bear interest after the date fixed for redemption, and they shall not be regarded as being
outstanding except for the right of the Registered Owner to receive the redemption price from the
Paying Agent/Registrar out of the funds provided for such payment.  If a portion of any Bonds shall
be redeemed a substitute Bonds or Bonds having the same maturity date, bearing interest at the same
rate, in any denomination or denominations in any integral multiple of $5,000, at the written request
of the Registered Owner, and in aggregate principal amount equal to the unredeemed portion thereof,
will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of
the City, all as provided in the Bond Ordinance.

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.

ALL BONDS OF THIS SERIES are issuable solely as fully registered Bonds, without
interest coupons, in the denomination of any integral multiple of $5,000.  As provided in the Bond
Ordinance, this Bond, or any unredeemed portion hereof, may, at the request of the Registered
Owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged
for a like aggregate principal amount of fully registered Bonds, without interest coupons, payable to
the appropriate Registered Owner, assignee or assignees, as the case may be, having the same
denomination or denominations in any integral multiple of $5,000 as requested in writing by the

**Use of Term Bonds, if any, to be determined by the Pricing Officer.
appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of $5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Bond may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Bond or portion thereof will be paid by the City. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange during the period commencing on the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date.

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.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Bond Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Bonds.

IT IS HEREBY certified, recited, and covenanted that this Bond has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Bond have been performed, existed, and been done in accordance with law; and that ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Bond, as such interest comes due, and as such principal matures, have been levied and ordered to be levied against all taxable property in the City, and have been pledged for such payment, within the limit prescribed by law.

BY BECOMING the Registered Owner of this Bond, the Registered Owner thereby acknowledges all of the terms and provisions of the Bond Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Bond Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City, and agrees that the terms and provisions of this Bond and the Bond Ordinance constitute a contract between each Registered Owner hereof and the City.
IN WITNESS WHEREOF, the City has caused this Bond to be signed with the manual or facsimile signature of the Mayor of the City and countersigned with the manual or facsimile signature of the City Clerk and has caused the official seal of the City to be duly impressed, or placed in facsimile, on this Bond.

___________________________________  ___________________________________
City Clerk          Mayor

[CITY SEAL]

FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE
(To be executed if this Bond is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Bond has been issued under the provisions of the Bond Ordinance described in the text of this Bond; and that this Bond has been issued in conversion or replacement of, or in exchange for, a Bond, Bonds, or a portion of a Bond or Bonds of a Series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: _________________.      Regions Bank
Houston, Texas
Paying Agent/Registrar

By____________________________
Authorized Representative

FORM OF ASSIGNMENT

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

________________________________________________________________________
________________________________________________________________________
Please insert Social Security or Taxpayer
Identification Number of Transferee

_______________________________________________________________________
_______________________________________________________________________

(Please print or typewrite name and address, including zip code, of Transferee)

_______________________________________________________________________

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_______________________________________________________________________

, attorney, to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: __________________________

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

FORM OF REGISTRATION CERTIFICATE OF THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE INITIAL BOND ONLY:

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this ________________.

Comptroller of Public Accounts of the State of Texas

[COMPTROLLER’S SEAL]

INSERTIONS FOR THE INITIAL BONDS
(i) The initial Current Interest Bonds shall be in the form set forth in this Exhibit, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURE DATE" shall both be completed with the words "As shown below" and "CUSIP NO." shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"ON THE MATURITY DATE SPECIFIED ABOVE, the City of San Marcos, Texas (the "Issuer"), being a political subdivision, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on __________ in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date</th>
<th>Interest Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Information for the Current Interest Bonds from the Pricing Certificate to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from __________, 20___* at the respective Interest Rate per annum specified above.  Interest is payable on __________, 20___* and semiannually on each __________* and __________* thereafter to the date of payment of the principal installment specified above; except, that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full."

C. The initial Bond shall be numbered "T-1."

(ii) The Initial Compound Interest Bond shall be in the form set forth in this Section, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURE DATE" shall both be completed with the words "As shown below" and "CUSIP NO. _____ " shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:
"THE CITY OF SAN MARCOS, TEXAS" (the "City"), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the "Registered Owner") the Payment at Maturity on __________∗ in each of the years and in installments of the respective Maturity Amounts set forth in the following schedule:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date (____)</th>
<th>Interest Rate</th>
</tr>
</thead>
</table>

(Information for the Premium Compound Interest Bonds from the Pricing Certificate to be inserted)

The amount shown above as the respective Maturity Amounts represent the principal amount hereof and accrued and compounded interest hereon. Interest shall accrue on the principal amount hereof from the Issuance Date at the interest rate per annum specified above, compounded semiannually on __________∗ and __________∗ of each year commencing ________, 20___∗ For convenience of reference, a table appears on the back of this Bond showing the "Compounded Amount" of the original principal amount plus initial premium, if any, per $5,000 Maturity Amount compounded semiannually at the yield shown on such table."

C. the Initial Premium Compound Interest Bond shall be numbered "TPC-1."

Section 7. TAX LEVY. A special Interest and Sinking Fund (the "Interest and Sinking Fund") is hereby created solely for the benefit of the Bonds, and the Interest and Sinking Fund shall be established and maintained by the City at an official depository bank of the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Bonds. All ad valorem taxes levied and collected for and on account of the Bonds shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Bonds or interest thereon are outstanding and unpaid, the governing body of the City shall compute and ascertain a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required to pay the interest on the Bonds as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Bonds as such principal matures (but never less than 2% of the original principal amount of the Bonds as a sinking fund each year); and the tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. The rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while any of the Bonds or interest thereon are outstanding and unpaid; and the tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund. The ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Bonds, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law. Accrued interest on the Bonds shall be deposited in the Interest and Sinking Fund.

∗To be completed as determined by the Pricing Officer in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in the Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

SanMarcosGOB2018: OrdinanceGO
Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of the ad valorem taxes granted by the City under this Section, and is therefore 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 ad valorem taxes granted by the City under this Section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the 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 & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 8. **ESTABLISHMENT OF PROJECT FUND.** (a) **Project Fund.** The Project Fund is hereby created and shall be established and maintained by the City at an official depository bank of the City. Proceeds from the sale of the Bonds minus any amounts deposited into the Interest and Sinking Fund and any Escrow Fund, shall be deposited in the Project Fund.

(b) **Investment of Funds.** The City hereby covenants that the proceeds of the sale of the Bonds will be used as soon as practicable for the purposes for which the Bonds are issued. Obligations purchased as an investment of money in any fund shall be deemed to be a part of such fund. Any money in any fund created by this Ordinance may be invested in Permitted Investments as permitted by the Public Funds Investment Act, as amended and the City's Investment Policy.

(c) **Security for Funds.** All funds created by this Ordinance shall be secured in the manner and to the fullest extent required by law for the security of funds of the City.

(d) **Maintenance of Funds.** Any funds created pursuant to this Ordinance, other than the Escrow Fund, may be created as separate funds or accounts or as subaccounts of the City's General Fund held by the City's depository, and, as such, not held in separate bank accounts, such treatment shall not constitute a commingling of the monies in such funds or of such funds and the City shall keep full and complete records indicating the monies and investments credited to each such fund.

(e) **Interest Earnings.** Interest earnings derived from the investment of proceeds from the sale of the Bonds shall be used along with the Bond proceeds for the purpose for which the Bonds are issued as set forth in Section 3 hereof or to pay principal or interest payments on the Bonds; provided that after completion of such purpose, if any of such interest earnings remain on hand, such interest earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any interest earnings on bond proceeds which are required to be rebated to the United States of America pursuant to Section 12 hereof in order to prevent the Bonds from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

Section 9. **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 ad valorem taxes herein levied 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 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.

(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
dertermining the sufficiency of the provisions made for the payment of the Defeased Bond.

Section 10. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED
BONDS. (a) Replacement Bonds. In the event any outstanding Bond is damaged, mutilated, lost,
sten, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a
new Bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost,
stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged,
mutilated, lost, stolen, or destroyed Bonds shall be made by the Registered Owner thereof to the
Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the Registered Owner
applying for a replacement bond shall furnish to the City and to the Paying Agent/Registrar such
security or indemnity as may be required by them to save each of them harmless from any loss or
damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the
Registered Owner shall furnish to the City and to the Paying Agent/Registrar evidence to
their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every case of
damage or mutilation of a Bond, the Registered Owner shall surrender to the Paying Agent/Registrar
for cancellation the Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the
event any such Bond shall have matured, and no default has occurred which is then continuing in the
payment of the principal of, redemption premium, if any, or interest on the Bond, the City may
authorize the payment of the same (without surrender thereof except in the case of a damaged or
mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished
as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement
Bond, the Paying Agent/Registrar shall charge the Registered Owner of such Bond with all legal,
printing, and other expenses in connection therewith. Every replacement Bond issued pursuant to the
provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall
constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Bond shall
be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this
Ordinance equally and proportionately with any and all other Bonds duly issued under this
Ordinance.

(e) Authority for Issuing Replacement Bonds. In accordance with Subchapter B of Texas
Government Code, Chapter 1206, this Section of this Ordinance shall constitute authority for the
issuance of any such replacement Bond without necessity of further action by the governing body of
the City or any other body or person, and the duty of the replacement of such Bonds is hereby
authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall
authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 4(a) of this Ordinance for Bonds issued in conversion and exchange for other Bonds.

Section 11.  **CUSTODY, APPROVAL, AND REGISTRATION OF BONDS; BOND COUNSEL'S OPINION; CUSIP NUMBERS AND CONTINGENT INSURANCE PROVISION, IF OBTAINED.** The Pricing Officer is hereby authorized to have control of the Bonds initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Bonds pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bonds the Comptroller of Public Accounts (or a deputy designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Bonds, and the seal of the Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the City's Bond Counsel and the assigned CUSIP numbers may, at the option of the City, be printed on the Bonds issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the Registered Owners of the Bonds. In addition, if bond insurance or other credit enhancement is obtained, the Bonds may bear an appropriate legend.

Section 12.  **COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON BONDS ISSUED AS TAX-EXEMPT 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 Tax-Exempt 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 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt Bonds, other than investment property acquired with --

(A) proceeds of the Tax-Exempt Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the Bonds are issued,

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

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

(7) to otherwise restrict the use of the proceeds of the Tax-Exempt Bonds or amounts treated as proceeds of the Tax-Exempt Bonds, as may be necessary, so that the Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Obligations 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 Tax-Exempt 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 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 Tax-Exempt Bonds. This Ordinance is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

(d) Disposition of Project. The City covenants that the property constituting the project financed by the Refunded Obligations will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Tax-Exempt Bonds. For purposes of this subsection, 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 of this subsection, 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.

Section 13. APPROVAL OF OFFERING DOCUMENTS, PAYING AGENT/REGISTRAR AGREEMENT. In the event of a negotiated sale with the Underwriter(s), the Pricing Officer is hereby authorized to approve any Preliminary Official Statement and Official Statement relating to the Bonds and any addenda, supplement or amendment thereto and to deem such documents final in accordance with Rule 15c2-12. The City further approves the distribution of such Official Statement in the reoffering of the Bonds by the Underwriter(s) in final form, with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof.

The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar ("Paying Agent Agreement") in substantially the form and substance previously approved by the City Council is hereby approved and the Pricing Officer is hereby authorized and directed to complete, amend, modify and execute the Paying Agent Agreement as necessary.
The Pricing Officer is hereby authorized to execute any and all subscriptions, purchase agreements, commitments, letters of authorization and other documents necessary to effectuate the issuance of Bonds authorized herein, and any actions heretofore taken for such purpose are hereby ratified and approved.

Section 14. **INSURANCE PROVISIONS.** In connection with the sale of the Bonds, the City may obtain municipal bond insurance policies from one or more recognized municipal bond insurance organizations (the "Bond Insurer" or "Bond Insurers") to guarantee the full and complete payment required to be made by or on behalf of the City on the Bonds. The Pricing Officer is hereby authorized to sign a commitment letter or insurance agreement with the Bond Insurer or Bond Insurers and to pay the premium for the bond insurance policies at the time of the delivery of the Bonds to the Underwriter out of the proceeds of sale of the Bonds or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as the Pricing Officer may deem appropriate. Printing on the Bonds covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to the Bond Insurer and the Pricing Officer, is hereby approved and authorized. The Pricing Certificate may contain provisions related to the bond insurance policies, including payment provisions thereunder, and the rights of the Bond Insurer or Insurers, and any such provisions shall be read and interpreted as an integral part of this Ordinance.

Section 15. **CONTINUING DISCLOSURE UNDERTAKING.** (a) **Annual Reports.** The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within twelve months after the end of any fiscal year, financial information and operating data with respect to the City as determined by the Pricing Officer at the time the Bonds are sold. The Pricing Certificate shall specify such financial and operating data of the general type included in the final Official Statement authorized by Section 13 of this Ordinance. Any financial statements to be so provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "B" 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.
(b) Certain 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.

(c) 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 Section 8 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.

Section 16. **AMENDMENT OF ORDINANCE.** The City hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The City may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in Ordinance to (i) cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (iv) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, (v) obtain insurance or ratings on the Bonds, (vi) obtain the approval of the Attorney General of the State Texas, or (vii) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not in the opinion of the City's Bond Counsel materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the holders of Bonds aggregating in principal amount 51% of the aggregate principal amount of then outstanding Bonds that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the City; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Bonds, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Bonds so as to:

1. Make any change in the maturity of any of the outstanding Bonds;
2. Reduce the rate of interest borne by any of the outstanding Bonds;
(3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Bonds;

(4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Bonds or any of them or impose any condition with respect to such payment; or

(5) Change the minimum percentage of the principal amount of any series of Bonds necessary for consent to such amendment.

(c) If at any time the City shall desire to amend this Ordinance under this Section, the City shall send by U.S. mail to each registered owner of the affected Bonds a copy of the proposed amendment and cause notice of the proposed amendment to be published at least once in a financial publication published in The City of New York, New York or in the State of Texas. Such published notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the office of the City for inspection by all holders of such Bonds.

(d) Whenever at any time within one year from the date of publication of such notice the City shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Bonds then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the City may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the City and all holders of such affected Bonds shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the publication of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after six months from the date of the publication of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the City, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Bonds then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

Section 17. DEFAULT AND REMEDIES. (a) 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:

(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 Registered Owners of the Bonds, 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 Registered Owner to the City.

(b) Remedies for Default.

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the Registered 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 Registered Owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Bonds then outstanding.

(c) Remedies Not Exclusive.

(i) 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.

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

(iii) By accepting the delivery of a Bond authorized under this Ordinance, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the City or the City Council.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the Registered Owners with any liability, or be held personally liable to the Registered Owners under any term or provision of this Ordinance, or because of any Event of Default or alleged Event of Default under this Ordinance.
Section 18.  **NO RECOUSE AGAINST CITY OFFICIALS.**  No recourse shall be had for the payment of principal of or interest on the Bonds or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bonds.

Section 19.  **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.

Section 20.  **FURTHER ACTIONS.**  The officers and employees of the City are hereby authorized, empowered 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 under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in Ordinance to carry out the terms and provisions of this Ordinance, the Bonds, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Bond Purchase Agreement and the Official Statement. In addition, prior to the initial delivery of the Bonds, the Mayor, Director of Finance and Bond Counsel are hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in Ordinance 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 Official Statement or (ii) obtain the approval of the Bonds by the Texas Attorney General's office.

In case any officer of the City whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 21.  **INTERPRETATIONS.**  All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The 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. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and the validity of the lien on and pledge to secure the payment of the Bonds.

Section 22.  **INCONSISTENT PROVISIONS.**  All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provisions of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.
Section 23. **INTERESTED PARTIES.** Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City and the registered owners of the Bonds.

Section 24. **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 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 25. **SEVERABILITY.** The provisions of this Ordinance are severable; and in case any one or more of the provisions of this Ordinance or the application thereof to any person or circumstance should be held to be invalid, unconstitutional, or ineffective as to any person or circumstance, the remainder of this Ordinance nevertheless shall be valid, and the application of any such invalid provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

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IN ACCORDANCE WITH SECTION 1201.028, Texas Government Code, passed and approved on the first and final reading on the 15th day of May, 2018.

CITY OF SAN MARCOS:

___________________________________
By: John Thomaides, Mayor
City of San Marcos, Texas

ATTEST:

_______________________________
Jamie Lee Case, City Clerk

APPROVED AS TO FORM:

_______________________________
Michael Cosentino, City Attorney
EXHIBIT "A"

DEFINITIONS

As used in this Ordinance, the following terms and expressions shall have the meanings set forth below, unless the text hereof specifically indicates otherwise:

"Accountant" means an independent certified public accountant or accountants or a firm of an independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

"Accreted Value" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof, plus all interest accrued and compounded to the particular date of calculation, as determined in accordance with the Pricing Certificate and the Accretion Table attached as an exhibit to the Pricing Certificate relating to the respective Bonds that shows the Accreted Value per $5,000 maturity amount on the calculation date of maturity to its maturity.

"Accretion Table" means the exhibit attached to the Pricing Certificate that sets forth the rounded original principal amounts at the Issuance Date for the Premium Compound Interest Bonds and the Accreted Values and maturity amounts thereof as of each Compounding Date until final maturity.

"Authorized Denominations" means the denomination of $5,000 or any integral multiple thereof with respect to the Current Interest Bonds and in the denomination of $5,000 in maturity amount or any integral multiple thereof with respect to the Premium Compound Interest Bonds.

"Bond Insurer" or "Insurer" means the provider of a municipal bond insurance policy, if any, for the Bonds as determined by the Pricing Officer in the Pricing Certificate or any other entity that insures or guarantees the payment of principal and interest on any Bonds.

"Bonds" means one or more Series of the Bonds and includes collectively any Premium Compound Interest Bonds and Current Interest Bonds initially issued and delivered pursuant to this Bond order and the Pricing Certificate and all substitute Bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term "Bond" shall mean any Tax-Exempt Bonds or Taxable Bonds.

"Book-Entry-Only System" means the book-entry system of bond registration provided in Section 5, or any successor system of book-entry registration.

"Business Day" means any day which is not a Saturday, Sunday or a day on which the Paying Agent/Registrar is authorized by law or executive order to remain closed.
"Cede & Co." means the designated nominee and its successors and assigns of The Depository Trust Company, New York.

"City" and "Issuer" mean the City of San Marcos, Texas, and where appropriate, the City Council.

"City Council" means the governing body of the City.

"Closing Date" means the date of initial delivery of and payment for the Bonds.

"Compounded Amount" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof plus all interest accrued and compounded to the particular date of calculation.

"Compounding Dates" means the dates on which interest is compounded on the Premium Compound Interest Bonds as set forth in the Accretion Table attached to the Pricing Certificate.

"Current Interest Bonds" means the Bonds paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in the Pricing Certificate.

"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 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 no less than "AAA" or its equivalent, and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"Depository" means one or more official depository banks of the City.

"DTC" means The Depository Trust Company, New York, New York and its successors and assigns.

"DTC Participant" means securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.
"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 the twelve-month accounting period used by the City in connection with the operation of the System, currently ending on September 30 of each year, which may be any twelve consecutive month period established by the City, but in no event may the Fiscal Year be changed more than one time in any three calendar year period.

"Holder," "Holders," "Owners" or "Registered Owners" means any person or entity in whose name a Bond is registered in the Register, for any Bonds.

"Initial Bonds" means the Bonds authorized, issued, and initially delivered as provided in Section 4 of this Ordinance.

"Insurance Policy" means an insurance policy issued by any Insurer guaranteeing the scheduled principal of and interest on the Bonds when due.

"Interest and Sinking Fund" means the special fund maintained by the provisions of Section 6 of this Ordinance.

"Interest Payment Date" means a date on which interest on the Bonds is due and payable.

"Issuance Date" means the date of delivery of the related Series of the Bonds.

"MSRB" means the Municipal Securities Rulemaking Board.

"Ordinance" means this ordinance finally adopted by the City Council on May 15, 2018.

"Outstanding", when used with respect to Bonds, means, as of the date of determination, all Bonds theretofore delivered under this Ordinance, except:

1. Bonds theretofore cancelled and delivered to the City or delivered to the Paying Agent/Registrar for cancellation;

2. Bonds deemed paid pursuant to the provisions of Section 9 of this Ordinance;

3. Bonds upon transfer of or in exchange for and in lieu of which other Bonds have been authenticated and delivered pursuant to this Ordinance

4. Bonds under which the obligations of the City have been released, discharged or extinguished in accordance with the terms thereof.
"Permitted Investments" means any security or obligation or combination thereof permitted under the Public Funds Investments Act, Chapter 2256, Texas Government Code, as amended or other applicable law.

"Premium Compound Interest Bonds" means the Bonds on which no interest is paid prior to maturity, maturing in various amounts and in the aggregate principal amount as set forth in the Pricing Certificate.

"Pricing Certificate" means each Pricing Certificate of the City's Pricing Officer to be executed and delivered pursuant to Section 4 hereof in connection with the issuance of one or more Series of the Bonds.

"Pricing Officer" means the City Manager, acting as the designated pricing officer of the City to execute the Pricing Certificate. In the absence of the City Manager, the Mayor may act as the designated pricing officer of the City to execute the Pricing Certificate.

"Rating Agency" means any nationally recognized securities rating agency which has assigned, at the request of the City, a rating to the Bonds.

"Record Date" means Record Date as defined in Section 6 the Form of Bonds and each Pricing Certificate.

"Redemption Date" means a date fixed for redemption of any Bond pursuant to the terms of this Ordinance and each Pricing Certificate.

"Register" or "Registration Books" means the registry system maintained on behalf of the City by the Registrar in which are listed the names and addresses of the Registered Owners and the principal amount of Bonds registered in the name of each Registered Owner.

"Replacement Bonds" means the Bonds authorized by the City to be issued in substitution for lost, apparently destroyed, or wrongfully taken Bonds as provided in Section 10 of this Ordinance.

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

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

"Taxable Bonds" means any Bonds designated by the Pricing Officer in the Pricing Certificate as Taxable Bonds, the interest on which is includable in the gross income of the owner thereof for federal income tax purposes.

"Tax-Exempt Bonds" means any of the Bonds designated by the Pricing officer as Tax-Exempt Bonds, the interest on which is excludable from the gross income of the owner thereof for federal income tax purposes, pursuant to Section 103 of the Code.
"Underwriters" means the Senior Managing Underwriter and any additional investment banking firms designated by the Pricing Officer in the Pricing Certificate. In the event a series of Bonds is sold pursuant to a private placement or competitive sale, references to the Underwriter shall mean the initial purchaser of such series of Bonds.
EXHIBIT "B"

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 14 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The annual audited financial statements of the City of San Marcos, Texas or the unaudited financial statements of the City of San Marcos, Texas in the event audited financial statements are not completed within six months after the end of any Fiscal Year.

2. All quantitative financial information and operating data with respect to the City of the general type included in the Official Statement under certain tables as more fully described in a Pricing Certificate for a series of Bonds.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements contained in the Official Statement.
**AGENDA CAPTION:**
Consider approval of Resolution 2018-76R, approving the award of an Engineering Services Contract to MWM DesignGroup, Inc. for the Hills of Hays Neighborhood Drainage Improvements Project for the estimated purchase amount of $80,160.00, contingent upon the provision of sufficient insurance; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City; and declaring an effective date.

**Meeting date:** 5/15/2018

**Department:** Engineering & CIP

**Amount & Source of Funding**
- **Funds Required:** $80,160
- **Account Number:** C681
- **Funds Available:** $300,000
- **Account Name:** Hills of Hays Drainage Improvements

**Fiscal Note:**
Prior Council Action: NA

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

Choose an item.

**Comprehensive Plan Element(s):** [Please select the Plan element(s) and Goal # from dropdown menu below]
- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- ☒ Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- ☒ Not Applicable
**Master Plan:** [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.

**Background Information:**
The work to be performed will consist of an evaluation of the drainage characteristics of the Hills of Hays neighborhood and recommendation of drainage improvements to alleviate local, non-FEMA floodplain related, flooding of streets and homes.

The goal of the project is to bring the stormwater system up to current City standards with location specific solutions. The construction of a complete piped system with full curb, gutter, and inlets is not anticipated but will be an option evaluated. Proposed improvements will focus on addressing flooding problem areas.

After approval of the Preliminary Engineering Report (PER) a Change in Service will come to Council prior to proceeding with the design and construction phases. Completion of the PER is expected in November.

PER major tasks include:

- Task 1 - Project Management
- Task 2 - Data Collection
- Task 3 - Public Meeting (1)
- Task 4 - Proposed Conditions Analysis
  - a. Hydrologic Analysis
  - b. Hydraulic Analysis
  - c. Assessment for Compliance with Criteria
  - d. Detention Pond Analysis
- Task 5 - Alternative Analysis
- Task 6 - Water Quality Analysis
- Task 7 - Opinion of Probable Cost (Estimate)
- Task 8 - Preliminary Engineering Report

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

**Alternatives:**
NA

**Recommendation:**
Staff recommends approval of design contract
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF AN ENGINEERING SERVICES CONTRACT TO MWM DESIGNGROUP, INC. FOR THE HILLS OF HAYS NEIGHBORHOOD DRAINAGE IMPROVEMENTS PROJECT FOR THE ESTIMATED PURCHASE AMOUNT OF $80,160.00, CONTINGENT UPON THE PROVISION OF SUFFICIENT INSURANCE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE PURCHASE DOCUMENTS ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of an engineering services contract to MWM Designgroup, Inc. for the Hills of Hays Neighborhood drainage improvements project for the estimated purchase amount of $80,160.00, contingent upon the provision of sufficient insurance, is approved.

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

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

ADOPTED this the 15th day of May 2018.

John Thomaides
Mayor

Attest:

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

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

The Owner: The City of San Marcos, Texas

and

The Professional Firm: MWM DesignGroup

for

The Project: Hills of Hays Drainage Improvements

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

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM’S SERVICES

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

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional Firm agrees to use Professional Firm's best efforts, skill, judgment, and abilities so as to perform Professional Firm's Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.
Professional Firm agrees to perform Professional Firm's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

Professional Firm's Services shall be reasonably accurate and free from material errors or omissions. Professional Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Professional Firm without any additional cost or expense to Owner.

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

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

**ARTICLE 3**

**THE OWNER'S RESPONSIBILITIES**

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

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

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

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Firm's Services.
The Owner designates John Espinoza, PE, CFM, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

Name: John Espinoza, PE, CFM  
Title: Project Engineer  
630 East Hopkins  
San Marcos, Texas 78666  
Ph. 512-393-8241  
E-mail: jespinoza@sanmarcostx.gov

ARTICLE 4
OWNERSHIP AND USE OF DOCUMENTS

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

ARTICLE 5
DISPUTE RESOLUTION

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

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Professional Firm agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Professional Firm will share the mediator’s fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
ARTICLE 6
PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

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

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

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

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

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

Independent Contractor. Professional Firm recognizes that Professional Firm is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. Professional Firm will neither hold itself out as no: claim to be an officer, partner, employee or agent of Owner.

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

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

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

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

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

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

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.
Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

(1) Prior to commencing performance under this Agreement, Professional Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm’s services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm’s list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it. and;

(2) Any payment made by the Owner to Professional Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Professional Firm’s use of any such subconsultant, subcontractor or agent of Professional Firm under this Agreement.

Limitation of Liability. In recognition of the relative risks and benefits of the Agreement to both the Owner and Professional Firm, to the fullest extent permitted under applicable law, Owner agrees that Professional Firm's total liability for any and all claims, losses, costs, damages, or expenses including, without limitation, reasonable attorneys' fees and costs, of any nature whatsoever, shall not exceed the Professional Firm's total fee under the Agreement. It is intended that this limitation of liability shall apply to any and all liability or cause of action, whether in contract, warranty, tort, or otherwise, however alleged or arising.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner may terminate the Agreement at any time upon 30-calendar days notice in writing to Professional Firm. Upon receipt of such notice, Professional Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Professional Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:
If to Owner: The City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Attn: Engineering & Capital Improvements
EngInfo@sanmarcostx.gov

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

If to Professional Firm MWM DesignGroup
305 E. Huntland Drive, Suite 200
Austin, Texas 78752
tonyb@mwmdesigngroup.com

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

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

ARTICLE 8
REIMBUSABLE EXPENSES

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

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

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

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Professional Firm.
Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

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

**ARTICLE 9**  
**ADDITIONAL SERVICES**

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

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

**ARTICLE 10**  
**PAYMENTS TO PROFESSIONAL FIRM**

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

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

Owner shall have the right to withhold from payments due Professional Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of Professional Firm to perform its obligations under this Agreement.
ARTICLE 11
PROFESSIONAL FIRM'S ACCOUNTING RECORDS

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

ARTICLE 12
INSURANCE

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

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

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

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

Upon request Professional Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in Exhibit 1.

ARTICLE 13
INDEMNITY

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

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

Service Fees: The maximum fee for Professional Firm's Services shall not exceed seventy nine thousand four hundred twenty five dollars ($ 79,425.00 ).

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

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

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

OWNER:

THE CITY OF SAN MARCOS

By: ____________________________

Name: __________________________

Title: City Manager

Date: ___________________________

PROFESSIONAL FIRM:

MWM DESIGNGROUP

By: ____________________________

Name: Julia Harrod, P.E.

Title: President

Date: April 13, 2018

Exhibits:
EXHIBIT 1 – Scope of Services and Deliverables
EXHIBIT 2 – Authorization of Change in Service Form
EXHIBIT 3 – Detailed Fee Schedule
EXHIBIT 4 – Project Schedule
EXHIBIT 5 – Other Language as Required by Federal, State, or Local Laws
EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES
Date: April 6, 2018 (Revised April 11, 2018)
Project: Hills of Hays Drainage Improvements
Proposal: Preliminary Engineering Phase Services
Owner: City of San Marcos
Contact: John Espinoza, Project Manager
Phone: 512.393.8241
Email: jespinoza@sanmarcostx.gov
Attachments: Exhibit A: Fee Breakdown, dated April 6, 2018

BACKGROUND

The City of San Marcos (COSM) requested MWM DesignGroup (MWM) to perform Preliminary Engineering Phase Services for the Hills of Hays Drainage Improvements project. The project includes evaluation of the drainage characteristics of the Hills of Hays neighborhood and recommendation of drainage improvements to alleviate local, non-FEMA floodplain related, flooding of streets and homes. Compliance with the COSM drainage criteria is preferred, specifically, keeping the 100-yr floodplain within the rights-of-way. Location specific solutions are preferred; a complete collection system with full curb, gutter, and inlets is not the preferred solution but both options will be evaluated for completeness. Proposed improvements will focus on flooding problem areas and evaluation results. MWM understands that recommendations from the Preliminary Engineering Report (PER) are anticipated to proceed to design and construction phases to alleviate flooding issues in the neighborhood.

SCOPE OF SERVICES

The Scope of Services includes preliminary engineering phase services for the proposed drainage improvements as follows:

Phase A: Preliminary Design Services

1. Project Management
   a. The MWM project manager will provide a point of contact for COSM and design team staff, attend meetings with COSM staff, manage prime and subconsultant contracts, and maintain a project schedule.
   b. MWM will submit monthly project update reports, attend monthly project update meetings with COSM staff, and prepare and distribute meeting minutes. Meeting time includes agenda and minute preparation. This proposal assumes that the project duration will not exceed eight months.

2. Data Collection
   a. Obtain and review available COSM GIS data
      i. One-foot LIDAR
      ii. Planimetrics
      iii. Aerial Photography
      iv. Existing storm drain system files
v. Existing utility files (water, wastewater, electric, telecom, etc.)

vi. Location of previous reported flooding areas

b. Hydrologic soil shapefiles

c. Perform site visit to confirm data

3. Public Meeting

The purpose of the public meeting is to solicit input from the community regarding flooding problem areas including those previously reported to the COSM and those that may have not been reported.

a. MWM will prepare two (2) existing conditions exhibits mounted on foam-core board and in pdf format (for projecting) suitable for use at a public meeting. At a minimum, the exhibit will include streets, existing drainage systems, and location of known flooding areas.

b. MWM will attend and assist with a public meeting. Up to two (2) MWM employees will be present for the public meeting.

c. All facility coordination, public outreach, and advertisement for the public meeting shall be performed by the COSM.

4. Proposed Conditions Analysis

For this PER, the Proposed Conditions Analysis will be based on installation of complete curb and gutter and reconstructing driveways to provide a 6" rise on the downslope side of the street with full stormwater collection and conveyance of the entire study area/neighborhood. Existing culverts and ditches on the upslope side of roadways are assumed to be ineffective. Regrading of streets or gutters will not be included in the proposed conditions due to the asphalt being replaced recently. This will give an upper end to what is feasible based on current roadway grades and right of way slopes.

In addition, the analysis will evaluate existing drainage issues at Lift Station #28 located at the southeast corner of the Hills of Hays subdivision (off of Staples Road near the intersection of Lago Vista and Benning Streets).

a. Hydrologic Analysis

i. Drainage Areas

1. Delineate drainage areas for each street or part of street, inlet, channel, or culvert as appropriate for modeling.

2. Perform site visit to confirm drainage area delineations

ii. Times of Concentration

1. Delineate and map times of concentration flow paths for each drainage area and identify components of each flow path. Drainage areas less than 1.0 acre will be assumed to have a time of concentration of 5 minutes and will not be delineated.

2. Perform site visit to confirm time of concentration flow path delineation.
3. Calculate times of concentration.
   iii. Curve Numbers
       1. Import drainage areas into GIS
       2. Sample hydrologic soil shapefiles
       3. Calculate runoff curve number (CN) parameters for each drainage area
   iv. Input proposed hydrology into CivilStorm

b. Hydraulic Analysis
   i. Prepare preliminary locations for curb and gutter, inlets, and stormdrain alignments, in CivilStorm.
   ii. Establish tailwater depth for each storm event. There is not a FEMA 100-year floodplain in the vicinity of the outfall so tailwater will be based on normal depths.
   iii. Run the CivilStorm model for the 2-, 10-, 25-, and 100-year using the SCS runoff method.

c. Assess the proposed storm drain system for compliance with current drainage criteria and adjust the proposed conditions CivilStorm model to achieve compliance (iterative process). Containment within the right-of-way will be based on containment within the curb on the downslope side of the roadway.

d. Detention Pond Analysis
   i. Prepare Pondpack model for the existing detention pond and evaluate impact of the proposed storm drain system on the performance of the pond. Model will be prepared based on as-build drawings and GIS contours. Field survey will not be performed.
   ii. Site visit to confirm conditions.
   iii. Provide recommendations to bring the pond performance into compliance to support the proposed storm drain system.
   iv. Analysis will consider hydraulic performance of the pond only and will not include any dam evaluation.

5. Alternate Analysis
   a. Alternate Collection System Analysis
      i. Prepare preliminary storm drain collection system in CivilStorm that limits improvements where possible while achieving criteria compliance as follows.
         1. Alleviate flooding for areas having previous reported flooding.
         2. If gutter flow is less than 1" in depth, utilize existing laydown curb and revise drainage areas and hydrology as appropriate to represent flow passing over the roadway.
3. Evaluate and modify system for portions that do not require full collection system.
   ii. Input updated proposed hydrologic and hydraulic storm drain system data for the alternate system into CivilStorm.
   iii. Run the CivilStorm model for the 2-, 10-, 25-, and 100-year using the SCS runoff method.
   iv. Assess the proposed storm drain system for compliance with drainage criteria and adjust to achieve compliance (iterative process).

b. Detention Pond Analysis
   i. Update the Pondpack model prepared above to evaluate the impact of the alternate storm drain system on the performance of the pond.
   ii. Provide recommendations to bring the pond performance into compliance to support the alternate storm drain system.
   iii. Analysis will consider hydraulic performance of the pond only and will not include any dam safety evaluation.

6. Water Quality Analysis
   a. MWM will recommend locations suitable for proposed water quality controls. The locations will be based on hydrologic characteristic and site conditions. Water quality controls are anticipated to be limited to inlet-type treatment systems and a large-scale rain garden at the top end of the detention pond.

7. Opinion of Probable Construction Value
   a. Prepare an opinion of probable construction value ("estimate") for the proposed storm drain improvements. The estimate will be based on contract unit prices obtained from recent City bid tabulations and/or sources for comparable projects.
   b. Prepare estimate for the alternate collection system and present the net difference from the base proposed storm drain system.
   c. Prepare estimates for water quality alternates and present the net difference from the base proposed storm drain systems.

8. Preliminary Engineering Report
   a. Prepare a preliminary engineer report (PER) including discussions of the following:
      i. Data collection
      ii. Discussion of the existing stormwater collection and conveyance systems.
      iii. Proposed conditions storm drain analysis, including alternate system
      iv. Water quality analysis
      v. Opinion of probable construction value
b. MWM anticipates the PER will include the following exhibits:
   i. Limits of hydrologic and hydraulic study
   ii. Existing storm drain system
   iii. Proposed storm drain system
   iv. Proposed drainage areas and times of concentration flow paths
   v. Soil map with proposed drainage areas
   vi. Alternate storm drain system
   vii. Alternate system drainage areas and times of concentration flow paths
   viii. Soil map with alternate system drainage areas

c. MWM anticipates the PER will include the following appendices:
   i. Tabulation of data collection
   ii. Unformatted model input and output

9. Deliverables

   For each of the following deliverables, MWM will produce a draft deliverable for the City’s review and comment, prepare written responses to comments, and produce a final deliverable. Each interim deliverable will be included in the subsequent technical memorandum, and each technical memorandum will be included in the preliminary engineering report. For those deliverables noted with an asterisk (*), MWM anticipates meeting with the City to review comments prior to addressing the comments (4 meetings), including preparation of meeting exhibits and meeting minutes.

   a. Public Meeting
      i. Existing conditions exhibits (2) on foam-core board and in pdf format

   b. Proposed hydrology and hydraulics analysis
      i. Drainage areas
      ii. Times of concentration flow paths
      iii. Times of concentration calculations
      iv. Proposed system map exhibit
      v. Technical memorandum with CivilStorm and Pondpack models*

   c. Alternate Analysis
      i. Drainage areas
      ii. Times of concentration flow paths
      iii. Times of concentration calculations
      iv. Alternate system map exhibit
      v. Technical memorandum with CivilStorm and Pondpack models*
d. Water quality analysis
   i. Water quality locations and controls assessment technical memorandum

e. Opinion of probable construction value

f. Preliminary engineering report (PER)*

10. Quality Control / Quality Assurance

MWM will provide Quality Control for each task and will provide Quality Assurance reviews for each deliverable.

Phase B: Design Services

Not included in this scope of services.

Phase C: Bidding Phase Services

Not included in this scope of services.

Phase D: Construction Phase Services

Not included in this scope of services.

Schedule

- Data collection, will be completed within 2 weeks of notice to proceed and receipt of data to be obtained from the COSM.
- Public meeting exhibits will be completed within 2 weeks after completion of data collection.
- Draft Proposed Conditions technical memorandum will be submitted 8 weeks after the public meeting.
- Draft Alternate Analysis technical memorandum will be submitted 4 weeks after meeting to discuss the proposed conditions technical memorandum.
- Draft Water Quality technical memorandum will be submitted 3 weeks after meeting to discuss the alternate analysis technical memorandum.
- Draft PER will be submitted 4 weeks after meeting to discuss the alternate analysis technical memorandum.
- Please note that we do not have any control over the scheduling of the public meeting.

Assumptions and Exclusions

1. All calculations will be based on peak flows using the SCS method. Rational method calculations and/or routing of the hydrograph through the system will not be performed.

2. Impervious cover will be estimated based on aerial imagery and available planimetrics.

3. Existing street geometry (including gutter lines, roadway crowns, etc.) and general site
topography will be based on GIS contour data. No field survey will be performed.

4. Drainage areas less than 1.0 acre will be assumed to have a time of concentration of 5 minutes and will not be delineated. For this proposal, we assume that approximately 50% of the drainage areas will be less than 1.0 acres.

5. 2D storm drain modeling will not be performed.

SCHEDULE OF COMPENSATION:

Fee Schedule

Compensation for Phase A, Preliminary Engineering Phase, will be on a time and materials basis, in accordance with the summary below and the fee breakdown included as Exhibit A of this proposal.

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*Phase Total*  
$79,425.00

Reimbursable Expenses (with 5% markup)  
$735.00

*Project Total*  
$80,160.00

GENERAL CONDITIONS

Validity of Proposal

This proposal is valid for a period of 30 days from the date of proposal. If you concur, please include this proposal as part of the task order for the above referenced project.

Approved:  

[Signature]

Julia Harrod, P.E.  
President

MWM DesignGroup  
305 E Huntland Dr., Suite 200  
Austin, Texas 78752

April 11, 2018  
Date
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1 of 1
EXHIBIT 2

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

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

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: $_________
Net increase/decrease in contract amount: $_____ -0-_
Revised annual Agreement amount: $_________ (NTE annual fee)

Contractor Name
By: ____________________________ Date: ______________________

Printed Name, Title

Approved by:

City of San Marcos:
By: ____________________________ Date: ______________________

Printed Name, Title

City Department (PM, etc.) only below this line.
Account Number(s): ____________________________
Previous Changes in Service:
#_____; date; amount
#_____; date; amount
#_____; date; amount
EXHIBIT 3
DETAILED FEE SCHEDULE
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**Preliminary Engineering Phase Services**

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**Public Meeting**

| Public Meeting Exhibits and Participation | 1 | 8 | 4 | 4 | 17 | $2,800.00 |

**Proposed Conditions Analysis**

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**Detention Pond Analysis**

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**Technical Memorandum**

| Technical Memorandum | 2 | 16 | 8 | 26 | $4,060.00 |

**Alternates Analysis**

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**Water Quality Analysis**

| Water Quality Analysis | 2 | 20 | 22 | $2,690.00 |

**Technical Memorandum**

| Technical Memorandum | 1 | 6 | 4 | 13 | $2,290.00 |

**Opinion of probable construction value**

| Opinion of probable construction value (2 systems+WQ) | 3 | 30 | 33 | $4,035.00 |

**Preliminary Engineering Report**

| Preliminary Engineering Report | 1 | 20 | 4 | 26 | $4,680.00 |
| Exhibit Preparation | 4 | 2 | 16 | 20 | $2,620.00 |

**Appendix Preparation**

| Appendix Preparation | 2 | 4 | 6 | $910.00 |

**BASIC SERVICES SUBTOTAL**

| BASIC SERVICES SUBTOTAL | 16 | 169 | 260 | 74 | 519 | $79,420.00 |

**REIMBURSABLE EXPENSES SUBTOTAL**

| Reimbursable Expenses | $ |
| Mileage | 200.00 |
| Exhibit Production | 500.00 |
| Markup | 916 |

**REIMBURSABLE EXPENSES SUBTOTAL**

| REIMBURSABLE EXPENSES SUBTOTAL | 735.00 |
| TOTAL | $60,160.00 |
EXHIBIT 4
PROJECT SCHEDULE

- Data collection, will be completed within 2 weeks of notice to proceed and receipt of data to be obtained from the COSM.
- Public meeting exhibits will be completed within 2 weeks after completion of data collection.
- Draft Proposed Conditions technical memorandum will be submitted 8 weeks after the public meeting.
- Draft Alternate Analysis technical memorandum will be submitted 4 weeks after meeting to discuss the proposed conditions technical memorandum.
- Draft Water Quality technical memorandum will be submitted 3 weeks after meeting to discuss the alternate analysis technical memorandum.
- Draft PER will be submitted 4 weeks after meeting to discuss the alternate analysis technical memorandum.
- Please note that we do not have any control over the scheduling of the public meeting.
EXHIBIT 5
FEDERAL, STATE, AND LOCAL REQUIRED PROVISIONS
AGENDA CAPTION:
Consider approval of Resolution 2018-77R, supporting the Cultural Arts District Application of the P2P Movement to be submitted to the Texas Commission on the Arts seeking designation of the Dunbar Cultural Arts District; declaring an effective date.

Meeting date: May 15, 2018

Department: Community Services - PARD

Amount & Source of Funding
Funds Required: 0
Account Number: 0
Funds Available: 0
Account Name: 0

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Vision San Marcos - A River Runs Through Us

**Background Information:**
Dr. Shetay Ashford of The P2P Movement formed a group of individuals and organizations who are interested in restoring the old First Baptist Church on MLK Street. Through their meetings, a vision to create a Dunbar Arts, Cultural, and Innovation District emerged. The application process for the Texas Commission on the Arts Cultural District Designation program requires a letter or resolution of support from the city.

City Council was briefed on cultural arts districts at a work session on May 1, 2018 and directed staff to prepare a resolution for the May 15 council agenda supporting The P2P Movement's application.

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

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

**Recommendation:**
Click or tap here to enter text.
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS SUPPORTING THE CULTURAL ARTS DISTRICT APPLICATION OF THE P2P MOVEMENT TO BE SUBMITTED TO THE TEXAS COMMISSION ON THE ARTS SEEKING DESIGNATION OF THE DUNBAR CULTURAL ARTS DISTRICT; DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The Texas Commission on the Arts can designate cultural arts districts in cities as authorized by Section 444.031 of the Texas Government Code and cultural arts districts can attract tourists, stimulate cultural and economic activities and help support community revitalization.

2. The P2P Movement, which is a 501(c)(3) community and workforce development corporation headquartered in San Marcos, has submitted a letter of intent to the Texas Commission on the Arts expressing interest in seeking a cultural arts district designation in the historic Dunbar neighborhood in the City of San Marcos.

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

PART 1. The San Marcos City Council supports the Cultural Arts District application of The P2P Movement, a 501(c)(3) organization, to be submitted to the Texas Commission on the Arts seeking designation of the Dunbar Cultural Arts District.

PART 2. The support of the San Marcos City Council is conditioned on the cultural arts district application being limited to the boundaries depicted in the map attached hereto and incorporated for all purposes as Attachment A.

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

ADOPTED on May 15, 2018.

John Thomasides
Mayor

Attest:

Jamie Lee Case
City Clerk
Cultural District Map, Option C

Boundaries:
- MLK/LBJ Cross Roads
- MLK Dr.
- Comanche St.
- Centre St.
- S Fredericksburg St.

Walking Distance:
2,348.37 ft
The First Baptist Church has been standing in the historically African-American Dunbar Neighborhood for 129 years.

Dunbar Arts, Cultural, & Innovation District

PROPOSAL TO THE CITY OF SAN MARCOS, TX

Spring 2018

Photo Credit: DAILY RECORD PHOTO BY RACHEL WILLIS. The First Baptist Church has been standing in the historically African-American Dunbar Neighborhood for 129 years.
Table of Contents

- Vision and Mission
- Cultural District Map, Options A-C
- Cultural Assets
- Dunbar Arts, Cultural, & Innovation Committee
- Actions & Next Steps
- Contact Information
- Copyright Notice
Vision:
• To restore the vitality of the Dunbar neighborhood while preserving the arts, culture, and innovation of African Americans in San Marcos.

Mission:
• To harness African American arts and cultural assets in the Dunbar neighborhood to promote business and job creation, preserve and reuse historic buildings/sites, and promote tourism.
Cultural District Map, Option A (preferred*)

Boundaries:
- MLK/LBJ Crossroads
- MLK Dr.
- Mitchell St.
- Gravel St.
- Grove St.

Walking Distance: 1.87 miles

*This map is preferred because it best aligns with the commitment made to 120+ supporters who signed the “Petition to Create a Dunbar Arts and Cultural District”.

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Cultural District Map, Option B

Boundaries:
- MLK/LBJ Cross Roads
- MLK Dr.
- Endicott St.
- Centre St.
- Fredericksburg St.

Walking Distance: 1.14 miles
Cultural District Map, Option C

Boundaries:
- MLK/LBJ Cross Roads
- MLK Dr.
- Comanche St.
- Centre St.
- S Fredericksburg St.

Walking Distance: 2,348.37 ft
Cultural Assets

Arts, Culture & Music
- The Calaboose African American History Museum
- Historic First Baptist Church
- Dunbar Heritage Association
- The Cephas House
- Eddie Durham Jazz Park
- Dunbar Recreation Center
- The Mitchell Center

Historic Faith-based Institutions
- Wesley Chapel AME Church
- First Baptist Church NBC
- Jackson Chapel UMC
- Pentecostal Temple COGIC
- Greater Bethel Baptist Church
- Antioch Church of Our Lord
The Dunbar Arts, Cultural, & Innovation Committee consisting of nonprofit and for-profit minority arts organizations will be managed by The P2P Movement, which is a 501(c)(3) community and workforce development corporation headquartered in San Marcos, TX.

** The City of San Marcos’ Parks and Recreation Department is invited to serve as an affiliate member of the Governance Committee to contribute to the cultural district calendar of events and to facilitate facility rentals of key cultural assets.
☑ Submitted a letter of intent to Texas Commission on the Arts on 1/30, which was accepted.

☑ Present initial plan to Texas Commission on the Arts – Jim Bob McMillian – *Thursday, April 5, 10 am at Centro Cultural Hispano de San Marcos*

- Obtain a letter of support/resolution from City Council – *May 1st working session/ May 15th agenda*
- Submit full application to Texas Commission on the Arts - *June 15*
Cultural District Management Entity (CDME): The P2P Movement
www.thep2pmovement.org
info@theP2PMovement.org
Office: 512.814.8845

Contact Person:
Dr. Shetay Ashford, Ph.D.
President, The P2P Movement
Owner, K Empowerment Group LLC
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• For reprint permission and information, please direct your inquiry to info@kempowermentgroup.com.
AGENDA CAPTION:
Consider approval of Resolution 2018-78R, approving a Lease Agreement with Becerra Corp. for the year to year lease of approximately 9,817 square feet of space at 201 South LBJ (the site of the former Dixie Cream Donut Shop); authorizing the City Manager to execute said lease; and declaring an effective date.

Meeting date: May 15, 2018

Department: City Manager's Office

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

Fiscal Note:

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
**Background Information:**
This agenda item is to approve a ground lease of 9,817 square feet of property located at 201 South LBJ. The annual rent for this property in 2018 will be $3,446.68 which will be broken down into 4 equal installments of $861.67 to be paid over the next 4 months. The annual lease amount will automatically increase by 3% each year and can be reset to market not more than once every 3 years.

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

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

**Recommendation:**
Per Council Direction, this item was asked to be brought back for approval at the earliest possible City Council meeting.
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A LEASE AGREEMENT WITH BECERRA CORP. FOR THE YEAR TO YEAR LEASE OF APPROXIMATELY 9,817 SQUARE FEET OF SPACE AT 201 SOUTH LBJ (THE SITE OF THE FORMER DIXIE CREAM DONUT SHOP); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Lease of Property is hereby approved.

PART 2. The City Manager is hereby authorized to sign the Lease of Property on behalf of the City.

PART 3. This resolution shall become effective immediately from and after its passage.

ADOPTED on May 15, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
LEASE OF PROPERTY
(YEAR TO YEAR)

This Lease is entered into on May 15, 2018, between the City of San Marcos, Texas, 630 East Hopkins Street (“Lessor”) and Becerra Corp, 208 East Mimosa Circle, San Marcos, TX 78666 (“Lessee”).

SECTION 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises (“Premises”) in San Marcos, Texas, shown in Exhibit A, attached hereto and made a part hereof, subject to the terms and conditions in this Lease. The Premises may be used for maintenance and operation of one Lessee-owned building in connection with a retail food service operation, restaurant or bakery, and other purposes incidental thereto, only, and for no other purpose. Any other use shall be subject to approval of Lessor’s City Manager in writing.

SECTION 2. TERM.

The term of this Lease shall commence effective as of February 1, 2018, and, unless sooner terminated as provided in this Lease, shall extend for one year and, thereafter, shall automatically be extended from year to year.

SECTION 3. FIXED RENT.

A. The annual 2018 ground lease rent is $3,446.68 and will be paid in the following manner: Within 10 days upon the execution of this Lease by both parties, a payment of $861.67 will be due payable to the City of San Marcos and three equal payments of the same amount each due on the first of the month of each month thereafter. Each year thereafter, Lessee shall pay to Lessor, in advance (on or before February 1), fixed rent annually. The fixed rent shall be automatically increased by three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

SECTION 4. INSURANCE.

A. Before commencement of the term of this Lease, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under Exhibit B attached hereto and made a part hereof.

B. Not more frequently than one every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices of Lessor.

C. All insurance correspondence, certificates and endorsements shall be directed to: Risk Manager, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.
SECTION 5. SPECIAL PROVISION-CANCELLATION.

Effective upon the commencement of the term of this Lease, the prior lease between the parties by virtue of the assignment of such lease by Union Pacific Railroad Company shall be cancelled and superseded by this Lease.

SECTION 6. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

SECTION 7. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit placement of signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, fences, communication facilities, roadways and utilities) upon, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

SECTION 8. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

SECTION 9. TAXES AND ASSESSMENT'S.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on real property and improvements comprising the Premises, together with all personal property and improvements on the Premises.

SECTION 10. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.
SECTION 11. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, together with any public right-of-way abutting the Premises, free and clear from any obstructions or conditions which might create a hazard, or from any litter and debris. Lessee shall also be responsible for mowing the Premises and areas of public right-of-way abutting the Premises on a regular basis, but no less often than necessary to ensure that grass and weeds do not exceed 12 inches in height in accordance with Chapter 34, Division 2 of the San Marcos City Code.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business that are authorized by permit from the Lessor.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease.

SECTION 12. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended (“RCRA”) onto the Premises, (iii) install or use on the Premises any underground storage tanks.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 17, Lessee shall be responsible for
all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 17), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure, notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by; or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent lands of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable; and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 12, the term “Hazardous Substance" shall mean (i) those substances included within the definitions of “hazardous substance,” pollutant,” “contaminant,” or “hazardous waste,” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 960 et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

SECTION 13. UTILITIES.
A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

SECTION 14. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

SECTION 15. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its property and utilities and to such other conditions as Lessor determines to impose. In all events, such consent shall be conditioned upon strict conformance with all applicable governmental requirements.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Any actual or implied knowledge of Lessor of a violation of the requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

SECTION 16. AS IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

SECTION 17. RELEASE AND INDEMNITY,

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees (“Indemnified Parties”) from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, “Loss”) incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any
invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 17.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 17.

SECTION 18. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the term of this Lease set forth in Section 2, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 20A, at which time Lessor shall refund to Lessee, on a pro-rata basis, any unearned rental paid in advance. Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 20A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 20A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.

C. This Lease shall automatically terminate without notice effective as of the date of termination of Lessee’s current or future lease with Union Pacific Railroad Company for the approximately 4,500 square feet of land upon which the balance of Lessee’s building sits. Upon such termination, rent shall be prorated and Lessor shall refund to Lessee, on a pro-rata basis, any unearned rental paid in advance, subject to Lessee’s compliance with Section 20A and less any other offsets and amounts owed to Lessor under this Lease.

SECTION 19. LESSOR’S REMEDIES.

Lessor's remedies for Lessee’s default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate
this Lease as provided in Section 18 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

SECTION 20. VACATION OF PREMISES; REMOVAL OF LESSEE’S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

SECTION 21. UNDERGROUND FACILITIES.

Lessee shall, before conducting any excavation or installing any improvements, arrange for a cable, pipe, or utility locator, and make arrangements for relocation or other protection of any underground facilities. Notwithstanding compliance by Lessee with this Section 21, the release and indemnity provisions of Section 17 above shall apply fully to any damage or destruction of any telecommunications or utility system.

SECTION 22. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing and personally served, sent: (1) by email to citymanagerinfo@sanmarcostx.gov; or (2) by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: City of San Marcos, Attn: City Manager, 630 East Hopkins Street, San Marcos, TX 78666; and to Lessee by email to ruben@becerra.us; or, sent by certified mail, postage prepaid, return receipt requested, at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

SECTION 23. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which
consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee. Notwithstanding the foregoing, Lessee may sublease the Premises to Suenos and Rezo, LLC for the operation of a frozen yogurt shop, subject to: 1) written approval by Lessor's City Manager of the form of sublease, and any amendments or renewals to it, under which Lessee and such sublessee shall each be bound by all terms and conditions under this Lease; 2) and such sublessee's execution of a written acknowledgment, in a form approved by Lessor, regarding the requirements for disposition of the building and any other personal property on the Premises, as specified under Section 20, upon termination of this Lease.

B. Subject to this Section 23, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

SECTION 24. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

SECTION 25. DISPUTES; ATTORNEY’S FEES; VENUE.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney’s fees. Venue for any dispute arising under this Lease shall be in the state courts having appropriate jurisdiction in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

SECTION 26. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent; then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

SECTION 27. ENTIRE AGREEMENT; AMENDMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease, except as waived by Lessor in writing. This Lease may be amended only by a written instrument signed by Lessor and Lessee.
LESGO:

By: ______________
Bert Lumbreras, City Manager

LESSEE:

By: ______________
Name: ______________
Title: ______________
EXHIBIT B
Insurance Requirements
(Lease of Land)

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

C. **Pollution Liability Insurance.** If the permitted use under this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials, pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

D. **Umbrella or Excess Insurance.** If Lessee utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

E. All policy(ies) required above must include Lessor as an “Additional Insured” using ISO Additional Insured Endorsement CO 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

F. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers’ liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by the state of Texas.
H. Prior to execution of this Lease, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.

I. All insurance policies must be written by a reputable insurance company acceptable to Lessor, and authorized to do business in the state of Texas.

J. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.
A) I move on Item 18 A that the City Council waive all rent due from the current and former lessees of 201 S LBJ Drive for the years 2013 through 2016; accept the sum of $2063.21 in payment of rent under the lease for 2017; and direct staff to bring back on a future agenda a lease with Ruben Becerra for rental of 201 S LBJ Drive at a lease rate for 2018 in the total sum of $3,446.68 with rent to be paid as follows:

1. A payment of $861.67 within 10 days of the execution of the new lease; and three equal payments of the same amount each due on the first of the month of each month thereafter.

2. For any extension beyond the initial one year term, the annual rent shall be paid in full on February 1st of the year, subject to a 3% annual rent increase and subject to the City’s right to redetermine the annual rent upon notice to lessee.

3. Prior to the City’s execution of the lease, Mr. Becerra shall provide a signed acknowledgement from the lessee of the building of the provisions of the Becerra lease regarding disposition of the building upon termination of the ground lease.

4. All other lease terms shall be substantially the same as the terms of the lease of 201 South LBJ Drive partially assigned to the city by Union Pacific Railroad in December of 2013.
AGENDA CAPTION:
Hold discussion regarding City Council's participation in the Cultural Arts District Designation efforts, and direction to the City Manager.
Meeting date: May 15, 2018

Department: City Manager's Office

Amount & Source of Funding
Funds Required: n/a
Account Number: n/a
Funds Available: n/a
Account Name: n/a

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Vision San Marcos - A River Runs Through Us
**Background Information:**
During the May 1, 2018 Cultural District Designation work session, Council provided direction to staff to place this item on the May 15, 2018 agenda to discuss the City Council’s participation in the Cultural District Designation efforts.

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

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

**Recommendation:**
Click or tap here to enter text.
AGENDA CAPTION:
Discuss and consider appointments to the following Council Committees and the GSMP Board of Directors to fill a vacancy, and provide direction to Staff:

a) Joint Partnership Committee of the City Council, Hays County Commissioners, and San Marcos Consolidated Independent School District Board of Trustees (2 Council Members)
b) Transit Committee (3 Council Members)
c) Workforce Housing Committee (3 Council Members)
d) Rental Registration Council Committee (3 Council Members)
e) Greater San Marcos Partnership (GSMP) Board of Directors (1 Council Member to fill vacancy)

Meeting date: May 15, 2018

Department: City Clerk's Office

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

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

City Council Strategic Initiative: [Please select from the dropdown menu below]
Community Partners
Workforce Housing
Public Transit

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

☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
File #: ID#18-273, Version: 1

☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☒ Not Applicable

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

Background Information:
The City Council previously directed for the above committees to come back for appointment.

Council Committee, Board/Commission Action:
N/A

Alternatives:
N/A

Recommendation:
N/A
The following Items were added following posting of the Agenda on May 7, 2018:

**Item #19:** Consider approval of Ordinance 2018-16, on first and final reading, authorizing the issuance and sale of $33,750,000 City of San Marcos, Texas, Combination Tax And Revenue Certificates of Obligation, Series 2018; providing for funding for (1) constructing, improving, extending and expanding City streets, bridges, sidewalks, bike lanes, pedestrian lanes, bus stops, parking, and related traffic improvements including acquiring any necessary rights-of-way and equipment; (2) constructing, improving and extending the City’s water and waste water system including acquiring equipment; (3) constructing, improving and equipping City parks; (4) constructing, improving and designing municipal buildings to include the Animal Shelter, Municipal Services Complex, Public/Community Services Building and related equipment purchases; (5) constructing, designing, equipping and renovating City parking facilities; (6) constructing and improving the City’s drainage and flood control facilities; (7) constructing, improving and equipping the City’s airport; (8) constructing, designing, equipping and renovating public safety facilities to include vehicle and equipment purchases; (9) replacing, improving, and developing network infrastructure equipment; (10) preparation and completion of the electric utility system master plan; and (11) the payment of professional services in connection therewith including legal, fiscal and engineering fees and the costs of issuing the Certificates; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the certificates.

**Item #20:** Consider approval of Ordinance 2018-17, on first and final reading, authorizing the issuance of City of San Marcos, Texas General Obligation Bonds in an amount not to exceed $28,000,000 for one or more of the purposes of providing funds for (i) constructing, improving, renovating and equipping Public Safety Facilities to include the police and fire departments and related emergency and training facilities, including improvements to the police station, replacing existing Fire Station No. 2 and the acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking, infrastructure and other related costs, (ii) constructing, improving, extending, expanding, upgrading and/or developing City library facilities including acquisition of any necessary sites and related water, wastewater, drainage, streets, sidewalks, parking infrastructure and (iii) paying the legal fees and other such costs incurred in connection therewith including the costs of issuing the Bonds; levying an ad valorem tax in support of the bonds; approving a paying agent/registrar agreement, an official statement, and a purchase agreement; establishing procedures for selling and delivery of one or more series of the bonds; providing for adoption of this Ordinance on one reading only in accordance with State Law; and authorizing other matters relating to the bonds.

**The following Item was removed:**

Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Local Government Code Section §551.087 - Economic Development: to receive an update and deliberate regarding Project World Series.