City of San Marcos

Regular Meeting Agenda
City Council

Tuesday, June 19, 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

ACTION/DIRECTION FOLLOWING WORK SESSION EXECUTIVE SESSION

1. Consider action, by approval, or provide direction to Staff following the Executive Session conducted in accordance with Section §551.071 of the Texas Government Code, Consultation with Attorney, to seek advice of legal counsel regarding:

Resolution 2018-95R, a subordination agreement with Goldman Sachs Mortgage Company and JPMorgan Chase Bank that subordinates the City’s Deed of Trust lien against the Embassy Suites Hotel Property securing a note in the principal amount of $1,500,000 to the lien of such entities securing their loan to JDHQ Hotels, LLC. (a subsidiary of Atrium Hospitality) for the purchase of the hotel from JQH-San Marcos Development (a subsidiary of John Q. Hammons Hotels and Resorts); authorizing the City Manager to execute the subordination agreement on behalf of the City; and declaring an effective date.

2. Consider action, by approval, or provide direction to Staff following the Executive Session conducted in accordance with Section §551.071 of the Texas Government Code, Consultation with Attorney, to seek advice of legal counsel regarding:

Resolution 2018-96R, a loan assignment and assumption agreement between the City, JQH-San Marcos Development, LLC. (a subsidiary of John Q. Hammons Hotels and Resorts) and JDHQ Hotels LLC. (a subsidiary of Atrium Hospitality) that assigns the duties and obligations of JQH Development LLC under various loan documents with the City related to the development of the Embassy Suites Hotel and Conference Center to JDQH Hotels, LLC. in connection with the sale of the hotel from JQH-San Marcos Development, LLC to JDQH Hotels LLC.; authorizing the City Manager to execute the agreement on behalf of the City; and declaring an effective date.
V. 30 Minute Citizen Comment Period

PRESENTATIONS

3. Receive a Staff presentation of the Quarterly Investment and Financial Reports, and provide direction to City Manager.

CONSENT AGENDA

4. Consider approval, by motion, of the following meeting Minutes:
   A) May 29, 2018 - Work Session Minutes
   B) May 29, 2018 - Regular Meeting Minutes
   C) June 5, 2018 - Work Session Minutes
   D) June 5, 2018 - Regular Meeting Minutes

5. Consider approval of Resolution 2018-97R, approving a third amendment to an Interlocal Agreement for Commercial Office Lease with Hays County for the WIC office at 401C Broadway Street for the purpose of extending the lease term for one additional year; authorizing the City Manager to execute said agreement; and declaring an effective date.

6. Consider approval of Resolution 2018-98R, approving a third amendment to an Interlocal Agreement for Commercial Office Lease with Hays County for the WIC Satellite Office at 150 Lockhart Street in Kyle for the purpose of extending the lease term for one additional year; authorizing the City Manager to execute said agreement; and declaring an effective date.

7. Consider approval of Resolution 2018-99R, approving the award of a contract to DellEmc, Inc. For the Dell Servers and Hardware Licensing (#DIR-TSO-3763) with a total value estimated of $174,130.71; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

8. Consider approval of Resolution 2018-100R, authorizing the execution of an Advance Funding Agreement with the State of Texas, acting through the Texas Department of Transportation (CSJ No. 0914-33-078), for construction of a multi-use bike and pedestrian trail to begin east of the Hopkins Street Bridge and extend west of the Interstate Highway 35 southbound frontage road along the San Marcos River, with an estimated cost of participation by the City of $645,253; authorizing the City Manager to execute the Agreement on behalf of the City; and declaring an effective date.

9. Consider approval of Resolution 2018-101R, approving the award of a construction contract for Parks and Recreation Equipment and Installation (Buyboard Contract #512-16) to T.F. Harper and Associates, LP for the Dog Park Improvements Project in the estimated amount of $116,183.75, utilizing CDBG funds; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

10. Consider approval of Resolution 2018-102R, approving the award of a construction contract for Parks and Recreation Equipment and Installation (Buyboard Contract #512-16)
to T.F. Harper and Associates, LP for the Dunbar Park Improvements Project in the estimated amount of $232,468.95, utilizing CDBG funds; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

11. Consider approval of Resolution 2018-103R, approving the award of a contract for minor construction (Choice Partners Cooperative Purchasing Contract #18/029JN) to Fence Lady, Inc. for the materials and construction of a pedestrian bridge in Ramon Lucio Park in the estimated amount of $263,106.05, funded by TML Insurance; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

12. Consider approval of Resolution 2018-104R, approving the award of a professional services contract to Schrickel, Rollins and Associates, Inc. for the design of the Adult Softball Complex at the Gary Sports Complex with a total value estimated of $269,500.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

13. Consider approval of Resolution 2018-105R, approving and authorizing the termination for convenience of the agreement with Pike Electric, LLC for San Marcos Electric Utility related maintenance services (Contract Number 218-199); authorizing the City Manager or his designee to execute the said termination on behalf of the City.

14. Consider approval of Resolution 2018-106R, approving an Amended and Restated Airport Facility Lease Agreement for Commercial Fixed Base Operator (FBO) Use with Berry Aviation, Inc. for the FBO terminal facility and associated fueling facilities at the San Marcos Regional Airport; authorizing the City Manager to execute the Agreement; and declaring an effective date.

15. Consider approval of Resolution 2018-107R, approving an Amended and Restated Revised Lease of Unimproved Property for Construction and Operation of Business Facilities with Berry Aviation, Inc. for an aircraft hangar and tract of land at the San Marcos Regional Airport; authorizing the City Manager to execute the Agreement; and declaring an effective date.

16. Consider approval of Resolution 2018-108R, approving and authorizing the termination for convenience of the agreement with M2 Federal, Inc. concerning Hutchison Street Bio-Filtration Pond Improvements Project (contract number 218-153); authorizing the City Manager or his designee to execute the said termination on behalf of the City.

17. Consider approval of Resolution 2018-109R, authorizing the City Manager or his designee to apply for flood protection grant funds from the Texas Water Development Board (“TWDB”); authorizing the City Manager to enter into a contract with the TWDB to receive such flood protection grant funds; authorize the matching of City funds; authorizing the matching of flood protection grant funds received from TWDB with CBDG-DR funds or in-kind services.

18. Consider approval of Resolution 2018-110R, approving the award of a construction contract to M.A. Smith Contracting Company, Inc. for the CM Allen Parkway Improvements
19. Consider approval of Resolution 2018-111R, approving the authorized change in service to increase the value of the contract with Freese and Nichols, Inc. for the CDBG-DR Uhland Road Improvements Project in the amount of $109,570.00; authorizing the City Manager or his designee to execute the said authorized change in service on behalf of the City and declaring an effective date.

20. Consider approval of Resolution 2018-112R, approving the award of a contract to the Jacobs Project Management Company (RFQ 218-279) for Construction Project Management Services with maximum estimated contract value of $3,085,000.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

21. Consider approval of Resolution 2018-113R, approving a contract between the City and the Texas Department of State Health Services, Vital Statistics Unit, for the provision of on-line vital statistic computer services for the City; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

22. Consider approval of Resolution 2018-114R, approving the terms and conditions of a Joint Election Agreement between the City of San Marcos and Hays County for the holding of a joint election on November 6, 2018; authorizing the City Manager to execute the agreement on behalf of the City; authorizing the City Manager and City Clerk to negotiate minor revisions to this agreement; and declaring an effective date.

23. Consider approval of Resolution 2018-115R, approving an Election Services Agreement with the Hays County Election Administrator, for her provision of Election Services for the City’s General Election to be held on November 6, 2018 and, if necessary, a Runoff Election to be held in accordance with State Law; Authorizing the City Manager to execute this agreement on behalf of the City; and declaring an effective date.

24. Consider the Public Hearing Dates proposed by Staff regarding the 2018 Property Tax Rate and Fiscal Year 2018-2019 Budget, and provide direction to the City Manager.

25. Consider approval of a pay increase in the amount of $4,306.65 to City Clerk, Jamie Lee Case effective May 1, 2018.

26. Consider approval of a pay increase in the amount of $7,665.84 to City Attorney, Michael Cosentino effective May 1, 2018.

27. Consider approval of a pay increase in the amount of $5,100.00 to City Manager Bert Lumbreras effective May 1, 2018.

NON-CONSENT AGENDA

28. Consider approval of Ordinance 2018-18, on the first of two readings, amending the City’s 2017-2018 Fiscal Year budget to allocate a total of $654,000 of sales tax revenues in the general fund to the following programs in the following individual amounts: Homebuyer
Incentive Program ($60,000) Temporary Office Space in the amount of $205,000, City Hall Parking Improvements ($135,000); IT Security Review Project ($25,000), Facility Security Project ($100,000), CIS Software License Upgrade ($129,000) and adding full time equivalent positions in the Finance, Engineering, and Planning Departments to be paid with HUD Disaster Recovery funds; amending the staffing table for the Fire Department due to reclassification of positions performing the Fire Marshal function; and providing an effective date.

29. Consider approval of Resolution 2018-116R, adopting the Community Development Block Grant (CDBG) Action Plan that provides for the allocation of $649,948.00 CDBG funds for Program Year 2018; authorizing the City Manager or his designee to act as the official representative of the City in matters related to the CDBG program and action plan; and declaring an effective date.

30. Consider approval of Resolution 2018-117R, adopting the “Parking Program Framework Plan” as a guide for the development of a comprehensive and strategic approach to managing parking in and around Downtown San Marcos, identifying key program objectives, draft program vision and mission statements, a set of guiding principles, as well as a set of primary action items to guide program evolution and development; authorizing the City Manager to carry out parking management planning and operational activities on behalf of the City; and declaring an effective date.

31. Consider approval of Resolution 2018-118R, approving amendments to the Affordable/Workforce Housing Policy relating to the definition of workforce housing and the criteria for the Low Income Housing Tax Credit Policy; and declaring an effective date.

32. Consider approval of Resolution 2018-119R, approving the award of a contract to P3Works, LLC for consulting and administrative services concerning the Trace Public Improvement District; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

33. Discuss and consider the possible reassembling of the Trace Public Improvement District (PID) Project Committee, and provide direction to the City Manager.

VI. Question and Answer Session with Press and Public.

VII. Adjournment.

POSTED ON MONDAY, JUNE 11, 2018 @ 4:30PM

Tammy K. Cook, TRMC, Deputy City Clerk
Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov
AGENDA CAPTION:
Consider action, by approval, or provide direction to Staff following the Executive Session conducted in accordance with Section §551.071 of the Texas Government Code, Consultation with Attorney, to seek advice of legal counsel regarding:

Resolution 2018-95R, a subordination agreement with Goldman Sachs Mortgage Company and JPMorgan Chase Bank that subordinates the City’s Deed of Trust lien against the Embassy Suites Hotel Property securing a note in the principal amount of $1,500,000 to the lien of such entities securing their loan to JDHQ Hotels, LLC. (a subsidiary of Atrium Hospitality) for the purchase of the hotel from JQH-San Marcos Development (a subsidiary of John Q. Hammons Hotels and Resorts); authorizing the City Manager to execute the subordination agreement on behalf of the City; and declaring an effective date.

Meeting date: June 19, 2018

Department: Administration

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.
Background Information:
In April of 2018, the City of San Marcos received notice that John Q. Hammons was selling their portfolio of hotels, including their interest in the Embassy Suites Hotel, to Atrium Hospitality group. Atrium Hospitality has an extensive nationwide portfolio of hotels. JDHQ Hotels, LLC is the subsidiary of Atrium Hospitality that will be assuming the interest in and will be the owner of the San Marcos property. City staff has met with representatives of the company and are very encouraged by their hotel operating experience and excitement in taking over this property.

There are two agenda items for consideration in connection with the sale of the San Marcos property from JQH-San Marcos Development (a Hammons subsidiary) to JDHQ Hotels (Atrium). The first item is for consideration of approval of a Subordination Agreement with Goldman Sachs Mortgage and JP Morgan Chase Bank. These two entities are the lenders financing the purchase of the San Marcos property by JDHQ Hotels. The second item is for consideration of approval of a Loan Assignment and Assumption Agreement.

Subordination: As part of the original transaction with JQH (Hammons), the City has a deed of trust lien on the Embassy Suites Hotel property that secures a note in the amount of $1.5 million. The amount due under the note is forgivable as long as there are no defaults under the terms of the Conference Center Lease Agreement or related loan documents through the year 2026. As part of the original transaction, the City’s lien was subordinated to the first lien of Metropolitan National Bank. Goldman Sachs Mortgage and JP Morgan Chase Bank are now providing a loan to JDHQ Hotels (Atrium) in the amount of $63 million to finance the purchase of the San Marcos property from JQH (Hammons). JDHQ Hotels and its lenders are asking the City to subordinate the City’s $1.5 million lien to the lien of Goldman Sachs Mortgage and JP Morgan Chase Bank securing their loan to JDHQ Hotels.

Loan Assignment and Assumption: As part of the original transaction for development of the Embassy
Hotel and Conference Center, JQH (Hammons) entered into various agreements with the City, including a Chapter 380 Economic Development Grant and Loan Agreement, a Note and Deed of Trust. Collectively, these loan agreements secure the $1.5 million loan from the City to JQH and establish performance obligations for JQH in relation to operation of the Hotel and Conference Center. The Loan Assignment and Assumption Agreement assigns the obligations of JQH under the various loan agreements over to JDHQ (Atrium). The City’s consent to the Loan Assumption and Assignment is necessary to allow JDHQ to step into the shoes of JQH and continue to operate the Hotel and Conference Center without interruption. The agreement provides that JDHQ will assume all of the duties and obligations under the original loan agreements, as amended from time to time.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

City staff recommends approval of both JDHQ Hotels, LLC agenda items.
JQH - SAN MARCOS DEVELOPMENT, LLC
300 John Q. Hammons Parkway, Suite 900
Springfield, Missouri 65806

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8100
Facsimile: (512) 396-4656
Attn: City Manager

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8100
Facsimile: (512) 396-4656
Attn: City Attorney

RE: Transfer of Embassy Suites, San Marcos, TX (the "Property")

To Whom It May Concern:

JQH - San Marcos Development, LLC ("Assignor") intends to transfer its interest in the Property to JDHQ Hotels LLC. In connection therewith please find attached the below documents.

1. Lessor Consent to that Certain Assignment and Assumption of Conference Center Lease Agreement
2. Assignment and Assumption of Conference Center Lease Agreement (for reference only, no signature required)
3. Conference Center Lessor Estoppel
4. Consent to that Certain Assignment and Assumption of Master Development Agreement
5. Assignment and Assumption of Master Development Agreement (for reference only, no signature required)
6. Estoppel Certificate (for Master Development Agreement)
7. Corrective Memorandum of Lease for Conference Center Lease Agreement
8. Release of Lien

At your earliest convenience, please execute the documents listed above, as applicable, and return the original signed documents to Kirkland & Ellis LLP, 300 N LaSalle, Chicago, IL 60654, Attn: Michael Shultz. If you have any questions or comments, please contact Michael Shultz of Kirkland & Ellis LLP at (312) 862-2833 or michael.shultz@kirkland.com. Thank you.

Sincerely,

[Signature]

JQH - San Marcos Development, LLC

KR 53005647.1
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A SUBORDINATION AGREEMENT WITH GOLDMAN SACHS MORTGAGE COMPANY AND JPMORGAN CHASE BANK THAT SUBORDINATES THE CITY’S DEED OF TRUST LIEN AGAINST THE EMBASSY SUITES HOTEL PROPERTY SECURING A NOTE IN THE PRINCIPAL AMOUNT OF $1,500,000 TO THE LIEN OF SUCH ENTITIES SECURING THEIR LOAN TO JDHQ HOTELS, LLC (A SUBSIDIARY OF ATRIUM HOSPITALITY) FOR THE PURCHASE OF THE HOTEL FROM JQH-SAN MARCOS DEVELOPMENT (A SUBSIDIARY OF JOHN Q. HAMMONS HOTELS AND RESORTS); AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBORDINATION AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The City Council of the City of San Marcos hereby approves the Subordination Agreement attached hereto.

PART 2. The City Manager is authorized to execute the Subordination 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 June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
SUBORDINATION AGREEMENT

Property Commonly Known As
The San Marcos Embassy Suites

This SUBORDINATION AGREEMENT (this “Agreement”) is made as of __________, 2018, between THE CITY OF SAN MARCOS, TEXAS, a municipal corporation of the State of Texas (“Landlord”) and GOLDMAN SACHS MORTGAGE COMPANY and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with their respective successors and assigns, collectively, “Lender”).

RECITALS

A. The Landlord and JQH - San Marcos Development, LLC, a Missouri limited liability company (together with its successors and assigns, the “Original Lessee”), have entered into that certain Conference Center Lease Agreement, dated as of September 10, 2007 (the “Lease”). Lessee has transferred its interest in the Lease to JDHQ HOTELS LLC, a Delaware limited liability company, whose address is 2398 East Camelback Road, Suite 1000, Phoenix, Arizona 85016 (“Purchaser”). Landlord executed that certain Conference Center Lessor Estoppel, as of April 17, 2018 for the benefit of Purchaser and Lender (the “Estoppel”).

B. Original Lessee entered into that certain Deed of Trust (so called herein) dated as of January 17, 2007 in favor of Landlord, recorded at Volume 3109, Page 365 of the Real Property Records of Hays County, Texas, and evidenced by that certain Financing Statement recorded at Volume 3109, Page 383 of the Real Property Records of Hays County, Texas, to secure the payment and performance of the obligations described in said Deed of Trust, including, without limitation, the terms of that certain Deed of Trust Note dated July 15, 2005 by John Q. Hammons, as Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated, in the original principal amount of One Million Five Hundred Thousand and No/100 Dollars ($1,500,000.00) as said note has heretofore been modified and amended, (said lien and security interests created under the Deed of Trust being herein collectively the “City Lien”).

C. Purchaser is mortgaging its interest in the Lease to Lender pursuant that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “Mortgage”) dated as of May 17, 2018, by Purchaser, as grantor to DAVID M. RATCHFORD, an individual, having an address at 601 Travis Street, Suite 1875, Houston, TX 77002, as trustee, in trust of the benefit of Lender to secure debt in the amount of $63,000,000 (the “Loan”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby agree as follows:

AGREEMENT

Landlord does hereby agree to subordinate and make inferior the City Lien to the lien held by Lender on Tenant’s hotel in San Marcos, Texas, and no other property, pursuant to the Mortgage. It is hereby expressly acknowledged that the Mortgage is paramount and superior to the City Lien.
2. Lender hereby represents to Landlord that the Mortgage creates a lien on Tenant’s hotel property in San Marcos, Texas, currently known as the San Marcos Embassy Suites, and no other property.

3. Landlord and Lender acknowledge and agree as follows: (i) so long as any portion of the Loan remains outstanding, Landlord shall not demand payment under or seek foreclosure of the City Lien, except with the prior written consent of Lender, and acknowledges that any such exercise without the prior written consent of Lender is an event of default under the Loan entitling Lender to foreclose on the Mortgage (for the avoidance of doubt, the foregoing clause (i) shall not affect Landlord’s rights pursuant to the terms and conditions of the Lease, including, but not limited to, its exercise of remedies, under the Lease); (ii) Landlord will accept the exercise of rights by Lender under the City Lien (including a cure of any default thereunder) as if they had been exercised by Purchaser; (iii) the Landlord shall not, directly or indirectly, transfer, pledge or assign the City Lien or any of the rights or beneficial, economic or other interests of Landlord therein to any Person; (iv) the terms of the City Lien will not be amended or otherwise modified in any respect without the consent of Lender, which consent may be withheld in Lender’s sole discretion; (v) a copy of all notices with respect to the City Lien delivered by Landlord to Tenant shall be promptly delivered to Lender; (vi) Landlord shall give prompt notice to Lender of any default under the City Lien; (vii) the Mortgage may be extended and modified without notice to Landlord and that any such extension or modification will not affect the priority of the Mortgage or this subordination of the City Lien to the Mortgage; (viii) so long as any portion of the Loan remains outstanding, Landlord shall not initiate any bankruptcy or similar proceeding in respect of Tenant; (ix) upon any insolvency of Tenant or the commencement of any bankruptcy or similar proceeding by or against the Tenant, Landlord shall cooperate with Lender in any action for the liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Loan or the City Lien, or the application of the assets of Tenant to the payment or liquidation thereof to make elections with respect to the assets of Tenant, including, without limitation, elections with respect to any proposed plan of reorganization; (x) Lender agrees that upon any insolvency of Tenant or the commencement of any bankruptcy or similar proceeding by or against the Tenant, Landlord shall not take any action that would impair the continued operation of the Conference Center or any other rights of the Landlord under the terms of the Lease; and (xi) Landlord hereby further agrees that it shall not take any action in bad faith, to frustrate, delay or hinder the recovery or payment of Lender under the Loan. Furthermore, Landlord consents to, and agrees that in the future it shall consent to and shall not object to or take any other action to oppose any motion or request seeking (1) relief for Lender against any stay or injunction therein against collection of the Loan, including, but not limited to, any motion made by or on behalf of Lender therein to lift such stay or injunction for the purposes of foreclosing the Mortgage and (2) use of cash collateral pledged in favor of Lender. Notwithstanding anything to the contrary contained in the Estoppel, any transfer of the Lease or the equity interest in Purchaser, as applicable, by Lender (or anyone whose title derives directly or indirectly from a Lender, including a purchaser at any foreclosure sale) following the acquisition of the Lease or such equity interest through foreclosure or assignment in lieu of foreclosure, shall be subject to the terms and provisions of Section 7.1(a) of the Lease.

4. Notices. Any notice, communication, request or other document or demand required or permitted under this Agreement with respect to Landlord or Lender shall be in writing.
and shall be deemed delivered on the earlier to occur of (i) receipt or (ii) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to (or to such other addresses as such party may hereafter designate by written notice to Lessor):

If the case of the Lender:

Goldman Sachs Mortgage Company  
Attention: General Counsel  
200 West Street  
New York, NY 10282

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza  
New York City, NY 10006  
Attention: John V. Harrison  
Email: jharrison@cgsh.com

JPMorgan Chase Bank, National Association  
383 Madison Avenue  
New York, New York 10179  
Attention: Thomas Nicholas Cassino

In the case of the Landlord:

Attn: City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Telephone: (512) 393-8100  
Facsimile: (512) 396-4656

With a copy to:

Attn: City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Telephone: (512)393-8000
2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

3. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Lessor and delivered to the Lender.

[Remainder of page intentionally left blank.]
IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be duly executed and delivered as of the day and year first above written.

LANDLORD:

THE CITY OF SAN MARCOS, TEXAS, a municipal corporation of the State of Texas and a home rule city,

By: ______________________________
Name: __________________________
Title: __________________________
ACKNOWLEDGMENTS

STATE OF ____________ )

COUNTY OF ____________ )

On the _____ day of ____________ in the year 2018, before me, the
undersigned, personally appeared ________________, personally known to me or proved to me
on the basis of satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his capacity, and that by his
signature on the instrument, the individual, or the person upon behalf of which the individual acted,
executed the instrument.
LENDER:

GOLDMAN SACHS MORTGAGE COMPANY, a New York limited partnership

By: ________________________________
   Name: ____________________________
   Title: ____________________________
ACKNOWLEDGMENTS

STATE OF ______________ )
    : ss.: 
COUNTY OF ______________ )

On the _____ day of ______________ in the year 2018, before me, the undersigned, personally appeared ______________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a banking association chartered under the laws of the United States

By: ______________________________

Name: __________________________

Title: ___________________________
ACKNOWLEDGMENTS

STATE OF ______________ )
                         : ss.: 
COUNTY OF ______________ )

On the _____ day of ______________ in the year 2018, before me, the undersigned, personally appeared _________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.
AGENDA CAPTION:
Consider action, by approval, or provide direction to Staff following the Executive Session conducted in accordance with Section §551.071 of the Texas Government Code, Consultation with Attorney, to seek advice of legal counsel regarding:

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Meeting date: June 19, 2018

Department: Administration

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

Choose an item.

Background Information:
In April of 2018, the City of San Marcos received notice that John Q. Hammons was selling their portfolio of hotels, including their interest in the Embassy Suites Hotel, to Atrium Hospitality group. Atrium Hospitality has an extensive nationwide portfolio of hotels. JDHQ Hotels, LLC is the subsidiary of Atrium Hospitality that will be assuming the interest in and will be the owner of the San Marcos property. City staff has met with representatives of the company and are very encouraged by their hotel operating experience and excitement in taking over this property.

There are two agenda items for consideration in connection with the sale of the San Marcos property from JQH-San Marcos Development (a Hammons subsidiary) to JDHQ Hotels (Atrium). The first item is for consideration of approval of a Subordination Agreement with Goldman Sachs Mortgage and JP Morgan Chase Bank. These two entities are the lenders financing the purchase of the San Marcos property by JDHQ Hotels. The second item is for consideration of approval of a Loan Assignment and Assumption Agreement.

Subordination: As part of the original transaction with JQH (Hammons), the City has a deed of trust lien on the Embassy Suites Hotel property that secures a note in the amount of $1.5 million. The amount due under the note is forgivable as long as there are no defaults under the terms of the Conference Center Lease Agreement or related loan documents through the year 2026. As part of the original transaction, the City’s lien was subordinated to the first lien of Metropolitan National Bank. Goldman Sachs Mortgage and JP Morgan Chase Bank are now providing a loan to JDHQ Hotels (Atrium) in the amount of $63 million to finance the purchase of the San Marcos property from JQH (Hammons). JDHQ Hotels and its lenders are asking the City to subordinate the City’s $1.5 million lien to the lien of Goldman Sachs Mortgage and JP Morgan Chase Bank securing their loan to JDHQ Hotels.

Loan Assignment and Assumption: As part of the original transaction for development of the Embassy
Hotel and Conference Center, JQH (Hammons) entered into various agreements, including a Chapter 380 Economic Development Grant and Loan Agreement, a Note and Deed of Trust. Collectively, these loan agreements secure the $1.5 million loan from the City to JQH and establish performance obligations for JQH in relation to operation of the Hotel and Conference Center. The Loan Assignment and Assumption Agreement assigns the obligations of JQH under the various loan agreements over to JDHQ (Atrium). The City's consent to the Loan Assumption and Assignment is necessary to allow JDHQ to step into the shoes of JQH and continue to operate the Hotel and Conference Center without interruption. The agreement provides that JDHQ will assume all of the duties and obligations under the original loan agreements, as amended from time to time.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

City staff recommends approval of both JDHQ Hotels agenda items.
JQH - SAN MARCOS DEVELOPMENT, LLC
300 John Q. Hammons Parkway, Suite 900
Springfield, Missouri 65806

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8100
Facsimile: (512) 396-4656
Attn: City Manager

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8100
Facsimile: (512) 396-4656
Attn: City Attorney

RE: Transfer of Embassy Suites, San Marcos, TX (the “Property”)

To Whom It May Concern:

JQH - San Marcos Development, LLC ("Assignor") intends to transfer its interest in the Property to JDHQ Hotels LLC. In connection therewith please find attached the below documents.

1. Lessor Consent to that Certain Assignment and Assumption of Conference Center Lease Agreement
2. Assignment and Assumption of Conference Center Lease Agreement (for reference only, no signature required)
3. Conference Center Lessor Estoppel
4. Consent to that Certain Assignment and Assumption of Master Development Agreement
5. Assignment and Assumption of Master Development Agreement (for reference only, no signature required)
6. Estoppel Certificate (for Master Development Agreement)
7. Corrective Memorandum of Lease for Conference Center Lease Agreement
8. Release of Lien

At your earliest convenience, please execute the documents listed above, as applicable, and return the original signed documents to Kirkland & Ellis LLP, 300 N LaSalle, Chicago, IL 60654, Attn: Michael Shultz. If you have any questions or comments, please contact Michael Shultz of Kirkland & Ellis LLP at (312) 862-2833 or michael.shultz@kirkland.com. Thank you.

Sincerely,

JQH - San Marcos Development, LLC
LOAN ASSIGNMENT AND ASSUMPTION AGREEMENT

JQH - SAN MARCOS DEVELOPMENT, LLC,
a Missouri limited liability company,
Original Grantor,

having an office at
300 John W. Hammons Parkway, Suite 900
Springfield, Missouri 65806

JDHQ HOTELS, LLC
a Delaware limited liability company
Assuming Grantor,

having an office at
c/o Atrium Holding Company
2398 E. Camelback Road, Suite 1000
Phoenix, Arizona 85016

and

THE CITY OF SAN MARCOS, TEXAS,
a Texas municipal corporation,
Mortgagee,

having an office
630 E. Hopkins
San Marcos, Texas 78666
This Loan Assignment and Assumption Agreement ("Agreement"), is entered into as of the ___ day of ____________, 2018 (the "Effective Date"), by and among JQH - SAN MARCOS DEVELOPMENT, LLC, a Missouri limited liability company ("Original Grantor"), JDHQ HOTELS, LLC, a Delaware limited liability company ("Assuming Grantor"), and THE CITY OF SAN MARCOS, TEXAS, a Texas municipal corporation ("Mortgagee").

RECITALS:

A. Pursuant to (i) that certain Deed of Trust Note dated as of July 15, 2005 (the "Note") and (ii) that certain Chapter 380 Economic Development Grant and Loan Agreement dated as of July 15, 2005, (as amended from time to time, the "Original Loan Agreement") by and between Mortgagee and John Q. Hammons, as Trustee of the Revocable Trust of John Q. Hammons, Dated December 28, 1989, as amended and restated ("JQH"), Mortgagee made a loan (the "Loan") in the original principal amount of $1,500,000 to JQH.

B. The Original Loan Agreement was subsequently amended by (i) that certain First Modification to Chapter 380 Economic Development Grant and Loan Agreement dated as of October 14, 2005 by and between JQH and Mortgagee, (ii) that certain Second Modification to Chapter 380 Economic Development Grant and Loan Agreement dated December 27, 2005 by and between JQH and Mortgagee, (iii) that certain Third Modification to Chapter 380 Economic Development Grant and Loan Agreement dated March 10, 2006 by and between JQH and Mortgagee, (iv) that certain Fourth Modification to Chapter 380 Economic Development Grant and Loan Agreement dated as of September __, 2007, by and between Mortgagee, JQH and Original Grantor (the "Fourth Modification"), and (v) that certain Modification Agreement dated as of September __, 2007 by and between Mortgagee, JQH and Original Grantor (the Original Loan Agreement, as so amended, the "Loan Agreement").

C. Pursuant to the Fourth Modification, Original Grantor was added as a “Maker” under the Note, and Original Grantor assumed the rights, duties and obligations of JQH under the Note and Loan Agreement.

D. The Loan is secured by the Land and the other Mortgaged Property, each as more particularly described in that certain Deed of Trust (And Security Agreement, Assignment of Rents and Financing Statement) dated as of January 17, 2007 executed by Original Grantor and recorded in the records of the Clerk’s Office of Hays County, Texas on February 15, 2007 in Volume 3109 Page 365, as Document No. 70004541 (the “Deed of Trust”).

E. Assuming Grantor has agreed to acquire the Mortgaged Property and other assets of Original Grantor, and to assume all liabilities of Original Grantor under the Note, the Loan Agreement, and the Deed of Trust (collectively, the “Assumed Loan Documents”).

F. Original Grantor and Assuming Grantor desire to set forth with particularity the assignment and assumption of the Loan.

G. Mortgagee has agreed to consent to the conveyance of the Mortgaged Property by Original Grantor to Assuming Grantor subject to the Assumed Loan Documents (the “Conveyance”), as set forth in this Agreement.
NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein as if fully set forth in this paragraph.

2. **Definitions.** Terms defined in the applicable Assumed Loan Documents shall have the same meaning when used herein, unless defined otherwise in this Agreement.

3. **Assignment and Assumption.** With regard to the Conveyance from Original Grantor to Assuming Grantor:

   (a) Original Grantor, by this Agreement, assigns, sets over and transfers unto Assuming Grantor all of its rights, duties, obligations and liabilities accruing or arising under the Assumed Loan Documents, or any of them.

   (b) Assuming Grantor, by this Agreement, for itself and its successors and assigns, accepts the assignment from Original Grantor of all rights, duties, obligations and liabilities accruing and arising under the Assumed Loan Documents, or any of them, and assume and agree to perform all of the duties, obligations and liabilities to be performed and paid by Original Grantor pursuant to the Assumed Loan Documents, from and after the date hereof, and join in all assignments, indemnities, grants and conveyances of real and personal property, and grants of security interests as set forth in each and all of the Assumed Loan Documents.

   (c) Mortgagee, by this Agreement, consents to the Conveyance and to the assignment and assumption of Original Grantor’s duties and obligations under the Assumed Loan Documents. Mortgagee acknowledges that any conditions set forth in the Assumed Loan Documents for obtaining Mortgagee’s consent to any transfer or conveyance of the Mortgaged Property and the assignment and assumption of the Assumed Loan Documents have been satisfied.

   (d) Mortgagee, by this Agreement, certifies that (i) there are no documents or agreements evidencing the Loan other than the Assumed Loan Documents, (ii) the Assumed Loan Documents have not been modified or amended except as set forth in the Recitals to this Agreement, (iii) the Assumed Loan Documents are in full force and effect, (iv) there is no default under the Assumed Loan Documents and no condition exists which, with the giving of notice or the lapse of time or both, will constitute an actionable default under the Assumed Loan Documents, and (v) Original Grantor and Assuming Grantor are in currently compliance with the “Forgiveness Conditions” (as defined in the Loan Agreement), and such Forgiveness Conditions have been complied with at all times from and after the making of the Loan.

4. **General Modifications to Assumed Loan Documents.** With regard to the Conveyance from Original Grantor to Assuming Grantor:

   (a) Any reference in any of the Assumed Loan Documents to “Borrower” or “Grantor” or the like shall hereafter refer to the Assuming Grantor as the Borrower or Grantor from and after the date hereof, and any obligation of Borrower under any of the Assumed Loan Documents shall apply to the Assuming Grantor.

   (b) Any notice required or permitted to be given under the Assumed Loan Documents to Assuming Grantor, as assignee of Original Grantor shall be addressed to the following addresses:
If to Borrower/Grantor:

JDHQ HOTELS, LLC
c/o Atrium Holding Company
2398 E. Camelback Road, Suite 1000
Phoenix, Arizona 85016
Attn: President

With a copy to

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Andrew Small

5. Fixture Filing Provisions. For the avoidance of doubt, the Deed of Trust shall continue to be effective as a financing statement filed as a fixture filing under Section 9.502 of the Texas Business and Commercial Code. Accordingly, information concerning the security interest herein granted may be obtained at the addresses set forth below:

(a) Name and address of Debtor (Grantor) and record owner of the Mortgaged Property:

JDHQ HOTELS, LLC
c/o Atrium Holding Company
2398 E. Camelback Road, Suite 1000
Phoenix, Arizona 85016

(b) Name and address of Secured Party (Mortgagee):

THE CITY OF SAN MARCOS
630 East Hopkins
San Marcos, Texas 78666

(c) Debtor is organized under the laws of the State of Delaware.

(d) Information concerning the security interest evidenced by this Deed of Trust may be obtained from the Secured Party at its above address.

(e) This document covers goods which are to become fixtures.

6. Representations and Warranties. Assuming Grantor hereby represents and warrants to Mortgagee as follows:

(i) Assuming Grantor is a limited liability company duly organized and validly existing under the laws of the State of Delaware and has full power and authority to own and operate the Mortgaged Property and to enter into this Agreement;
(ii) This Agreement, and, except as may be modified by this Agreement, the Assumed Loan Documents constitute the legal, valid and binding obligations of Assuming Grantor, enforceable in accordance with their respective terms; and

(iii) Contemporaneously with the execution of this Agreement, Assuming Grantor has acquired from Original Grantor all of Original Grantor’s right, title and interest in the Mortgaged Property; and

7. Release of Original Grantor and JQH. Original Grantor and JQH shall be and are hereby released from the obligations under the Assumed Loan Documents for liability arising out of events or circumstances first occurring after the date of this Agreement.

8. No Other Change. Except as herein expressly amended, each and every term, condition, warranty and provision of the Assumed Loan Documents shall remain in full force and effect, and such are hereby ratified, confirmed and approved by the parties hereto. Nothing herein shall be construed to release, discharge, alter or affect the priority of the lien or title created by the Assumed Loan Documents, it being the expressly declared intention of the parties hereto that no novation of the Assumed Loan Documents be created hereby. A default under this Agreement will constitute a default under the Assumed Loan Documents.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and assigns.

10. Governing Law. This Agreement shall be construed and enforced according to, and governed by, the laws of the State of Texas without reference to conflicts of laws provisions which, but for this provision, would require the application of the law of any other jurisdiction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, each of the parties have executed this Agreement on the date of the acknowledgment set forth below, to be effective as of the Effective Date.

ORIGINAL GRANTOR:

JQH - SAN MARCOS DEVELOPMENT, LLC,

a Missouri limited liability company

By: REVOCABLE TRUST OF JOHN Q. HAMMONS
DATED DECEMBER 28, 1989, AS AMENDED
AND RESTATED

By: ______________________
Name: Jacqueline A. Dowdy
Title: Co-Successor Trustee of the Revocable Trust
of John Q. Hammons, dated December
28, 1989, as Amended and Restated

By: ______________________
Name: Greggory D. Groves
Title: Co-Successor Trustee of the Revocable Trust
of John Q. Hammons, dated December
28, 1989, as Amended and Restated
STATE OF MISSOURI )  
) ss  
COUNTY OF__________________ )

On this _____ day of ______________ 2018, before me appeared Jacqueline A. Dowdy, to me known, who, being by me duly sworn, did say that she is the Co-Successor Trustee of The Revocable Trust John Q. Hammons, dated December 28, 1989, as Amended and Restated, being the sole member of JQH - San Marcos Development, LLC, a limited liability company of the State of Missouri, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its operating agreement; and said Co-Successor Trustee acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

______________________________  
My Commission Expires: Notary Public

STATE OF MISSOURI )  
) ss  
COUNTY OF__________________ )

On this _____ day of ______________ 2018, before me appeared Greggory D. Groves, to me known, who, being by me duly sworn, did say that he is the Co-Successor Trustee of The Revocable Trust John Q. Hammons, dated December 28, 1989, as Amended and Restated, being the sole member of JQH - San Marcos Development, LLC, a limited liability company of the State of Missouri, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its operating agreement; and said Co-Successor Trustee acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

______________________________  
My Commission Expires: Notary Public
ASSUMING GRANTOR:

JDHQ HOTELS LLC, a Delaware limited liability company

By: _________________________________
Name: ______________________________
Title: _______________________________

STATE OF __________________________)
    ) SS.
COUNTY OF __________________________)

THIS INSTRUMENT was acknowledged before me on ________________ ___, 2018,
by ____________________, the __________________ of __________________, a
_____________________, on behalf of said ____________________.

WITNESS my hand and official seal.

____________________________________
Notary’s Signature

Printed Name: _________________________
My commission expires: _______________
CITY:

THE CITY OF SAN MARCOS TEXAS

By: _________________________________
Name: ______________________________
Title: _______________________________

STATE OF _________________________
) ) SS.
COUNTY OF _________________________

THIS INSTRUMENT was acknowledged before me on ________________ ___, 2018,
by ___________________, the ___________________ of ___________________, a
___________________, on behalf of said ___________________.

WITNESS my hand and official seal.

_________________________________
Notary’s Signature

Printed Name: _______________________
My commission expires: _______________
(SEAL)
RESOLUTION NO. 2018-  R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A LOAN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE CITY, JQH-SAN MARCOS DEVELOPMENT, LLC (A SUBSIDIARY OF JOHN Q. HAMMONS HOTELS AND RESORTS) AND JDHQ HOTELS LLC (A SUBSIDIARY OF ATRIUM HOSPITALITY) THAT ASSIGNS THE DUTIES AND OBLIGATIONS OF JQH DEVELOPMENT LLC UNDER VARIOUS LOAN DOCUMENTS WITH THE CITY RELATED TO THE DEVELOPMENT OF THE EMBASSY SUITES HOTEL AND CONFERENCE CENTER TO JDHQ HOTELS, LLC IN CONNECTION WITH THE SALE OF THE HOTEL FROM JQH-SAN MARCOS DEVELOPMENT, LLC TO JDHQ HOTELS LLC; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The Loan Assignment and Assumption Agreement attached hereto is hereby approved.

PART 2. The City Manager is authorized to execute said 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 June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGENDA CAPTION:
Receive a Staff presentation of the Quarterly Investment and Financial Reports, and provide direction to City Manager.

Meeting date: June 19, 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.
☐ 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 Texas Public Fund Investment Act requires the City's Quarterly Investment Report be received by City Council. The reports cover the 2nd quarter of fiscal year 2017-2018 reflecting investment activity and balances as of March 31, 2018.

The City's total portfolio summary as of March 31, 2018 reflects a total market value of $211,958,786 made up of funds from:

- **Pooled Cash** $60,374,099
- **Pooled Cash Reserves** $11,009,827
- **Enterprise Cash** $126,655,669
- **Enterprise Cash Reserves** $14,551,443

These funds are invested in various investment types including:

- **Bank Deposits** $12,076,530
- **Money Market Mutual Funds** $2,753,515
- **Certificates of Deposit** $1,966,000
- **Local Government Pools** $74,249,993
- **Municipal Coupon Securities** $31,372,238
- **Corporate Commercial Paper** $1,989,747
- **Federal Agencies** $87,550,762

The City's financial performance through March 31, 2018 is detailed in the enclosed Financial Summary Report. The report includes revenues and expenditures for the City's major funds. The reported funds are as follows: General Fund, Hotel Tax Fund, Water Wastewater Fund, Drainage Fund, Electric Fund and Airport Fund. Included on the report are trending analysis for both year-to-date and quarter-to-date with the related variances.

The Investment Report for quarter ended March 31, 2018 and the Financial Summary Report for quarter ended March 31, 2018 were reviewed by the Finance and Audit Committee prior to this meeting.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**
QUARTERLY FINANCIAL AND INVESTMENT UN...
General Fund

- Favorable $1.9M or 4.46%
  - Tax collections above trend $2.0M due to City’s portion of Best Buy revenue and overall Best Buy revenue above budget.
  - Fees/charges for services trending slightly below trend

- Unfavorable $979K or -5.07%
  - Primarily due to mild weather pattern. Anticipate volume pick up in Q3 due to hotter temperatures and irrigation increase.

- Unfavorable $962K or -3.39%
  - Primarily due to mild temperatures. Will see increase in usage due to hotter temperatures.

Hotel/Motel Tax

- Unfavorable $129K or -7.09%
General Fund - Favorable $280K or .83%
   Vacancies and timing of contract payments
Favorable $1.8M or 12.97%
   Primarily due to timing of contract payments and capital expenditures
Favorable $3.6M or 12.6%
   Reduced power purchases due to reduced usage, lower cost of power, and timing of contract payments and capital expenditures
- Federal Agency Coupon Securities: $87.5
- Government Investment Pools: $74.2
- Wells Fargo Operating/Money Market Certificates of Deposit: $14.9
- Municipal Coupon Securities: $31.4
- Corporate Commercial Paper: $2.0
Quarterly Investment Report
March 31, 2018

San Marcos
We'd love your company
### Aggregate Portfolio Composition

<table>
<thead>
<tr>
<th>Investments</th>
<th>March 31, 2018</th>
<th>% of Portfolio</th>
<th>December 31, 2017</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Deposits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wells Fargo Choice IV</td>
<td>10,974,083</td>
<td>5.2</td>
<td>16,794,784</td>
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<tr>
<td>Wells Fargo Bus. Market Rate Public Funds</td>
<td>1,102,447</td>
<td>0.5</td>
<td>1,102,112</td>
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<td></td>
<td>12,076,530</td>
<td>5.7</td>
<td>17,896,895</td>
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<tr>
<td>Money Market Mutual Funds</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Fidelity Prime MM Inst (FIPXX)</td>
<td>2,753,515</td>
<td>1.3</td>
<td>2,644,635</td>
<td>1.3</td>
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<tr>
<td>CD's - Interest at Maturity</td>
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<td>0.9</td>
<td>5,913,000</td>
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<tr>
<td>Local Government Investment Pools</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TexSTAR</td>
<td>1,178,659</td>
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<td>1,174,645</td>
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<tr>
<td>Logic</td>
<td>42,604,741</td>
<td>20.1</td>
<td>42,436,147</td>
<td>21.3</td>
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<td>TexPOOL</td>
<td>515,610</td>
<td>0.2</td>
<td>513,851</td>
<td>0.3</td>
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<td>Lone Star</td>
<td>602,774</td>
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<td>600,415</td>
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<td>TexasCLASS</td>
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<td>1,112,209</td>
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<td>TexasTERM - Daily</td>
<td>6,184,007</td>
<td>2.9</td>
<td>2,174,958</td>
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<td>74,249,993</td>
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<td>48,012,225</td>
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<tr>
<td>Municipal/Local Govt Bonds</td>
<td>31,372,238</td>
<td>14.8</td>
<td>32,482,538</td>
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<tr>
<td>Corporate Commerical Paper</td>
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<td>1,979,971</td>
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<tr>
<td>Federal Agency Coupon Securities</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FANNIE MAE (FNMA)</td>
<td>13,777,491</td>
<td>6.5</td>
<td>13,795,224</td>
<td>6.9</td>
</tr>
<tr>
<td>FEDERAL HOME LOAN BANK (FHLB)</td>
<td>21,031,223</td>
<td>9.9</td>
<td>21,048,614</td>
<td>10.5</td>
</tr>
<tr>
<td>FEDERAL FARM CREDIT BANK (FFCB)</td>
<td>24,356,675</td>
<td>11.5</td>
<td>24,349,840</td>
<td>12.2</td>
</tr>
<tr>
<td>FREDDIE MAC (FHLMC)</td>
<td>25,206,093</td>
<td>11.9</td>
<td>28,240,577</td>
<td>14.2</td>
</tr>
<tr>
<td>FARMER MAC (FAMCA)</td>
<td>3,179,282</td>
<td>1.5</td>
<td>3,187,843</td>
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<tr>
<td></td>
<td>87,550,762</td>
<td>41.3</td>
<td>90,622,098</td>
<td>45.4</td>
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<tr>
<td>Total Investments</td>
<td>211,958,786</td>
<td>100.0</td>
<td>199,551,362</td>
<td>100.0</td>
</tr>
</tbody>
</table>

**Portfolio Composition as of 03/31/18**

- Bank Deposits: 6%
- Money Market Mutual Funds: 1%
- Municipal Government Investment Pools: 35%
- Federal Agencies: 41%
- Commercial Paper: 1%
- CD’s: 1%

**Portfolio Composition as of 12/31/17**

- Bank Deposits: 9%
- Money Market Mutual Funds: 1%
- Local Government Investment Pools: 24%
- Federal Agencies: 46%
- Municipal Government Investment Pools: 1%
- Commercial Paper: 1%
### Aggregate Portfolio Summary

#### Pooled Cash Fund

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2018</th>
<th>December 31, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book Value</td>
<td>60,374,100</td>
<td>47,183,412</td>
</tr>
<tr>
<td>Market Value</td>
<td>60,299,940</td>
<td>47,147,088</td>
</tr>
<tr>
<td>% of Portfolio</td>
<td>28.4%</td>
<td>23.6%</td>
</tr>
<tr>
<td>Accrued Interest</td>
<td>113,000</td>
<td>148,000</td>
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<tr>
<td>Cash Receipts - Interest Earned</td>
<td>231,844</td>
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<td>Weighted Average Maturity (Days)</td>
<td>112.14</td>
<td>196</td>
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<td>Wt’d Average Yield to Maturity for Period:</td>
<td>1.63%</td>
<td>1.47%</td>
</tr>
<tr>
<td>Average Yield 1 Year US Treasury Bill for period:</td>
<td>2.09%</td>
<td>1.76%</td>
</tr>
<tr>
<td>Average Yield 6-month Treasury Bill for period:</td>
<td>1.93%</td>
<td>1.53%</td>
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</table>

#### Pooled Cash Reserves

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<tr>
<th></th>
<th>March 31, 2018</th>
<th>December 31, 2017</th>
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<tbody>
<tr>
<td>Book Value</td>
<td>11,009,827</td>
<td>10,981,580</td>
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<td>Market Value</td>
<td>10,891,132</td>
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<td>% of Portfolio</td>
<td>5.1%</td>
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<td>Average Yield 6-month Treasury Bill for period:</td>
<td>1.93%</td>
<td>1.53%</td>
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### Aggregate Portfolio Summary

#### Enterprise Fund

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2018</th>
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</tr>
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<tbody>
<tr>
<td>Book Value</td>
<td>126,655,669</td>
<td>127,373,527</td>
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<td>Market Value</td>
<td>126,318,536</td>
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<td>% of Portfolio</td>
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<tr>
<td>Average Yield 6-month Treasury Bill for period:</td>
<td>1.93%</td>
<td>1.53%</td>
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#### Enterprise Fund Reserves

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<tr>
<th></th>
<th>March 31, 2018</th>
<th>December 31, 2017</th>
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<tbody>
<tr>
<td>Book Value</td>
<td>14,551,443</td>
<td>14,472,903</td>
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<td>Average Yield 1 Year US Treasury Bill for period:</td>
<td>2.09%</td>
<td>1.76%</td>
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<tr>
<td>Average Yield 6-month Treasury Bill for period:</td>
<td>1.93%</td>
<td>1.53%</td>
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**Investments by Fund**

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<th>Account</th>
<th>CUSIP</th>
<th>Amount</th>
<th>Book Value</th>
<th>Par Value</th>
<th>Market Value</th>
<th>Maturity Date</th>
<th>Current Rate (%)</th>
<th>Yield to Maturity (%)</th>
<th>Wtd Avg Yield Maturity (%)</th>
<th>Days To Maturity</th>
<th>Current Price</th>
<th>Current Par</th>
<th>Wtd Avg Days to Maturity</th>
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</tbody>
</table>

**Subtotal and Average**

| $60,374,099.57 | $60,299,939.77 | 1.71% | 1.63% | 60,374,099.57 |

**Pool Cash - Reserves**

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<tr>
<th>Account</th>
<th>CUSIP</th>
<th>Amount</th>
<th>Book Value</th>
<th>Par Value</th>
<th>Market Value</th>
<th>Maturity Date</th>
<th>Current Rate (%)</th>
<th>Yield to Maturity (%)</th>
<th>Wtd Avg Yield Maturity (%)</th>
<th>Days To Maturity</th>
<th>Current Price</th>
<th>Current Par</th>
<th>Wtd Avg Days to Maturity</th>
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<tbody>
<tr>
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<td>$10,000,000</td>
<td>1,200,000</td>
<td>1,200,000</td>
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</tbody>
</table>

**Subtotal and Average**

| $11,009,826.87 | $10,831,132.37 | 1.19% | 1.15% | $11,009,826.87 | 396 |
## Investments by Fund

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<th>Book Value</th>
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<th>Wd't Avg Yield</th>
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### Note:
- Brokered CD's held in Wells Fargo Safekeeping Account. Yields and terms to maturity are blended rates of individual CD's.
- *Texas TERM CD Program yields and terms to maturity are blended rates of individual CD's.
- **Brokered CD's held in Wells Fargo Safekeeping Account. Yields and terms to maturity are blended rates of individual CD's.

### Total:
- $126,655,669.15
- **1,61%**
- **1,49%**

**Subtotal and Average:**

<table>
<thead>
<tr>
<th>Account</th>
<th>CUSIP</th>
<th>Issuer / Description</th>
<th>Book Value</th>
<th>Par Value</th>
<th>Maturity Date</th>
<th>Current Rate (%)</th>
<th>Yield to Maturity (%)</th>
<th>Wd't Avg Yield</th>
<th>Current Price</th>
<th>Wd't Avg Days to Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enterprise - Reserves</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Wells Fargo</strong></td>
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</tr>
</tbody>
</table>

### Total:
- **$14,551,442.98**
- **1,60%**
- **1,49%**

**Total:**

- **$121,591,098.57**
- **$211,591,038.57**
- **$211,938,786.31**
### Summary by Type

<table>
<thead>
<tr>
<th>Number of Investments or Accounts</th>
<th>Book Value</th>
<th>Market Value</th>
<th>% of Portfolio</th>
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</thead>
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<td></td>
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<tr>
<td>Municipal Coupon Securities</td>
<td>4</td>
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<td>Federal Agency Coupon Securities</td>
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<td>19,000,000</td>
<td>18,878,509</td>
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<tr>
<td>Government Investment Pool</td>
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<td>27,390,612</td>
<td>27,390,612</td>
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<tr>
<td>CD’s - Interest at Maturity</td>
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<td>1,966,000</td>
</tr>
<tr>
<td>Wells Fargo Choice IV</td>
<td>1</td>
<td>3,746,619</td>
<td>3,746,619</td>
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<tr>
<td>Fidelity Prime MM Inst (FIPXX)</td>
<td>1</td>
<td>305,869</td>
<td>305,869</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td>60,374,100</td>
<td>60,299,940</td>
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<td></td>
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<tr>
<td>Federal Agency Coupon Securities</td>
<td>5</td>
<td>10,400,000</td>
<td>10,281,306</td>
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<tr>
<td>Fidelity Prime MM Inst (FIPXX)</td>
<td>1</td>
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<td>609,827</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td>11,009,827</td>
<td>10,891,132</td>
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<td>19,695,833</td>
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<tr>
<td>CD’s - Interest at Maturity</td>
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<td>0</td>
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<tr>
<td>Wells Fargo Choice IV</td>
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<td>7,227,463</td>
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<td>Wells Fargo Bus. Market Rate Public Funds</td>
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<td>1,102,447</td>
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<tr>
<td>Fidelity Prime MM Inst (FIPXX)</td>
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<td>351,377</td>
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<td>Commercial Paper</td>
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<td><strong>Subtotal</strong></td>
<td>126,655,669</td>
<td>126,318,536</td>
<td>59.60%</td>
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<tr>
<td><strong>Enterprise - Reserves</strong></td>
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</tr>
<tr>
<td>Municipal Coupon Securities</td>
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<td>3,664,074</td>
</tr>
<tr>
<td>Federal Agency Coupon Securities</td>
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<td>9,298,661</td>
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<tr>
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<tr>
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<td>14,551,443</td>
<td>14,449,178</td>
<td>6.82%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>212,591,039</td>
<td>211,958,786</td>
<td>100.00%</td>
</tr>
</tbody>
</table>
## City of San Marcos
### 2017-18 Revenue & Expenditure Analysis
#### March 31, 2018

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Adopted Budget</th>
<th>Y-T-D Trend Estimate</th>
<th>Y-T-D Actual</th>
<th>Favorable (Unfavorable) $ Variance</th>
<th>% Variance</th>
<th>Q-T-D Trend Estimate</th>
<th>Q-T-D Actual</th>
<th>Favorable (Unfavorable) $ Variance</th>
<th>% Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>71,380,287</td>
<td>42,552,670</td>
<td>44,450,237</td>
<td>62.27% 1,897,567</td>
<td>4.46%</td>
<td>14,453,300</td>
<td>15,446,757</td>
<td>993,458</td>
<td>6.87%</td>
</tr>
<tr>
<td>StormWater Mngt Fund</td>
<td>4,993,581</td>
<td>2,455,495</td>
<td>2,439,787</td>
<td>48.86% (15,708)</td>
<td>-0.64%</td>
<td>1,274,375</td>
<td>1,226,302</td>
<td>(48,073)</td>
<td>-3.77%</td>
</tr>
<tr>
<td>Electric Fund</td>
<td>63,593,605</td>
<td>28,400,358</td>
<td>27,438,574</td>
<td>43.15% (961,785)</td>
<td>-3.39%</td>
<td>14,042,303</td>
<td>13,875,913</td>
<td>(166,390)</td>
<td>-1.18%</td>
</tr>
<tr>
<td>Water WasterWater Fund</td>
<td>40,403,790</td>
<td>19,308,714</td>
<td>18,329,843</td>
<td>45.37% (978,871)</td>
<td>-5.07%</td>
<td>9,607,591</td>
<td>9,292,286</td>
<td>(315,304)</td>
<td>-3.28%</td>
</tr>
<tr>
<td>Airport Fund</td>
<td>538,340</td>
<td>248,002</td>
<td>212,312</td>
<td>39.44% (35,690)</td>
<td>-14.39%</td>
<td>122,921</td>
<td>99,735</td>
<td>(23,186)</td>
<td>-18.86%</td>
</tr>
<tr>
<td>Hotel Tax Fund</td>
<td>4,103,267</td>
<td>1,819,093</td>
<td>1,690,050</td>
<td>41.19% (129,042)</td>
<td>-7.09%</td>
<td>916,171</td>
<td>840,079</td>
<td>(76,092)</td>
<td>-8.31%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>185,012,870</strong></td>
<td><strong>94,784,331</strong></td>
<td><strong>94,560,803</strong></td>
<td><strong>41.19% (223,529)</strong></td>
<td><strong>-7.09%</strong></td>
<td><strong>40,416,660</strong></td>
<td><strong>40,781,073</strong></td>
<td><strong>-364,412</strong></td>
<td><strong>-8.31%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenditures:</th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>73,008,043</td>
<td>33,608,182</td>
<td>33,327,841</td>
<td>45.65% 280,341</td>
<td>0.83%</td>
<td>21,209,495</td>
<td>18,471,061</td>
<td>2,738,434</td>
<td>12.91%</td>
</tr>
<tr>
<td>StormWater Mngt Fund</td>
<td>4,144,863</td>
<td>1,109,422</td>
<td>1,046,455</td>
<td>25.25% 62,968</td>
<td>5.68%</td>
<td>839,301</td>
<td>800,896</td>
<td>38,405</td>
<td>4.58%</td>
</tr>
<tr>
<td>Electric Fund</td>
<td>63,474,870</td>
<td>28,501,248</td>
<td>24,822,022</td>
<td>39.11% 3,679,226</td>
<td>12.91%</td>
<td>13,411,684</td>
<td>12,549,984</td>
<td>861,700</td>
<td>6.42%</td>
</tr>
<tr>
<td>Water WasterWater Fund</td>
<td>40,515,800</td>
<td>13,759,025</td>
<td>11,974,523</td>
<td>29.56% 1,784,502</td>
<td>12.97%</td>
<td>8,565,817</td>
<td>7,283,844</td>
<td>1,281,973</td>
<td>14.97%</td>
</tr>
<tr>
<td>Airport Fund</td>
<td>563,046</td>
<td>250,805</td>
<td>251,970</td>
<td>44.75% (1,164)</td>
<td>-0.46%</td>
<td>117,162</td>
<td>108,101</td>
<td>9,061</td>
<td>7.73%</td>
</tr>
<tr>
<td>Hotel Tax Fund</td>
<td>4,263,939</td>
<td>2,055,629</td>
<td>1,806,349</td>
<td>42.36% 249,280</td>
<td>12.13%</td>
<td>1,079,519</td>
<td>878,769</td>
<td>200,750</td>
<td>0.00%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>185,970,560</strong></td>
<td><strong>79,284,312</strong></td>
<td><strong>73,229,159</strong></td>
<td><strong>42.36% 6,055,153</strong></td>
<td><strong>12.13%</strong></td>
<td><strong>45,222,977</strong></td>
<td><strong>40,092,654</strong></td>
<td><strong>5,130,324</strong></td>
<td><strong>12.13%</strong></td>
</tr>
</tbody>
</table>

GTD / YTD Sales tax up from trend, timing of collection on external franchise fees & other agencies
GTD / YTD due to mild weather, lower consumption
YTD revenues are reflecting the slight decrease due to mild weather
MTD / YTD Timing of Airport Leases
MTD / YTD hotel tax trend due to lower room rates
GTD / YTD due to lower power purchases, timing of contracts and capital purchases
GTD timing of payments on contracts and capital purchases
MTD / YTD - timing of payments on contracts
QTD / YTD - timing of payments on contracts
AGENDA CAPTION:
Consider approval, by motion, of the following meeting Minutes:
   A) May 29, 2018 - Work Session Minutes
   B) May 29, 2018 - Regular Meeting Minutes
   C) June 5, 2018 - Work Session Minutes
   D) June 5, 2018 - Regular Meeting Minutes

Meeting date: 6/19/2018

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 29, 2018 - Work Session Minutes  
B) May 29, 2018 - Regular Meeting Minutes  
C) June 5, 2018 - Work Session Minutes  
D) June 5, 2018 - Regular Meeting Minutes

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

**Alternatives:**

**Recommendation:** Approve Minutes as attached
630 E. Hopkins - Work Session

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 3:00 p.m. Tuesday, May 29, 2018 in the Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Council Member Derrick and Council Member Mihalkanin arrived after 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

EXECUTIVE SESSION

1. Executive Session in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - to discuss and provide Annual Appointee Evaluations to the City Manager and City Clerk.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Hughson, to enter into Executive Session at 3:01 p.m. The motion carried by the following vote:

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

Against: 0

Absent: 2 - Council Member Derrick and Council Member Mihalkanin

III. Adjournment.

The City Council reconvened into Open Session at 6:00 p.m. Mayor Thomaides then adjourned the Work Session meeting of the San Marcos City Council at 6:00 p.m.
I. Call To Order

With a quorum present, the regular meeting of the San Marcos City Council was called to order by Mayor Thomaides at 6:31 p.m. Tuesday, May 29, 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. Mayor Thomaides asked that we remember the life of Mark Brinkley, former City of San Marcos Employee and to remember those lost in the school shooting at Santa Fe High School.

IV. Pledges Of Allegiance - United States And Texas

Mayor Thomaides 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 Section §551.074 of the Texas Government Code: Personnel Matters - to discuss and provide Annual Appointee Evaluations to the City Manager and City Clerk, which took place during the May 29, 2018 Work Session at 3:00PM.

   Council Members met in Executive Session to discuss appointee evaluations.

V. 30 Minute Citizen Comment Period

Sarah Simpson, spoke in honor of National Bike Month and expressed her appreciation to Council for initiating the application for bike friendly designation for the city. She expressed the benefits of a bikeable community. This application is an important step to take San Marcos a multimodal community. The community has a desire for a safer biking community and we
applaud you for your efforts.

Kevin Katz, spoke on Transportation Plan and the Craddock extension. Mr. Katz attended community meetings that discussed this extension and the rationale behind this appears to be due to the growth of Wimberley and the difficulty of traveling to I-35. The cost is a factor but also the ecological effects it could have on the springs and the resources of our community. Continual discussion of this topic makes it looks like it is going to happen at some point. We need to understand if we want this or not. There is a large number of people that do not want this.

Dianne Wassenich, Representing the San Marcos River Foundation regarding the Craddock Extension. Maps were presented to council earlier in the week that summarizes all the dye testing that has been done in the last 20 years. If you allow this to be on the plan, the very next election the balance of council could shift and the road could be built very quickly. Take the time to listen to someone from EAA to answer your questions about dye tracing and the effects this extension could have on the community. In the future we will be asked why we didn't stop this. It could affect water quality and quantity. Please get the information you need from the experts.

Roland Saucedo, stated that as citizens we put hope and faith in Council. You have done a great job with bringing City Manager Bert Lumbreras to the community and he has done a great job in the short time he has been here. When we are frustrated, we lash out and say things through emotions and we need to strive to be better humans. We all make mistakes, but with the strife in the nation right now we really need to humble ourselves and ask for forgiveness and forgive others.

Don Eysson, spoke on the Craddock Extension and the La Cima rezoning. La Cima project was passed by a previous council and consistently citizens voted that their number one concern was the River. This project is located above the largest cave systems in Hays County. La Cima is behind schedule and they are asking for an additional 60 acres and this is premature. Please do not approve this rezoning at this time. It is on a recharge area and it is not necessary. Craddock is one of the same concerns, located over a sensitive area and it is critical we protect our river.

PRESENTATIONS

2. Receive a Staff presentation and update on City Facilities, and provide direction to the City Manager.
Steve Parker, Assistant City Manager, provided an update on City facilities and the voter approved Bond Projects which consist of Proposition 1 that includes the remodel and expansion of the Police Department, the relocation of Holland Fire Station #2, the construction of the 6th Fire Station to be located in Highpointe Trace Subdivision, and a Fire Training Facility. Proposition 2 includes the 27,000 Square Foot Remodel of existing Library and 29,000 Square Foot Addition to existing Library.

Staff spoke on the various meetings held by Staff regarding these projects. The alternative delivery methods were discussed which include: Low Bid, Competitive sealed proposal, design build, construction manager at risk, and design build finance.

Mr. Parker presented the projected timeline for each project:
- Library and Police Projects first quarter of FY 2019
- Fire Station #2 Relocation January 2019 possible construction start
- Fire Training Facility early 2019 construction start
- Trace Fire Station possible construction in 2020 or 2021

Staff recommended the following steps:
- Proceed with hiring an experienced Project Management Firm,
- Proceed with the design of Fire Station 2 using the Competitive Sealed Proposal Methodology,
- Proceed with the Design Build RFQ for the Police and Library Bond Projects,
- Proceed with the Design Build Finance Methodology for the Public Services Maintenance Facility,
- Proceed with the formulation of a City Hall Development Plan that explores the Design Build Finance Delivery Method.

Council consensus was to move forward with these recommendations.

3. Receive the 10-year Capital Improvements Plan, hold discussion, and provide direction to the City Manager.

Laurie Moyer, Director of Engineering and CIP, introduced Kayla Foxworth and provided Council with the 10 year CIP Plan.

The four City funding sources include the General Fund, Drainage/Stormwater Fund, Electric Fund, and Water/Wastewater Funds. Mrs. Moyer explained the prioritization criteria and where we are in the process.
Departments submitted projects, reviewed projects, and bond project constraints. Planning & Zoning Commission provided recommendations, now council will discuss during Budget Process and approve projects for FY2019. Next steps include budget workshops and budget adoption including FY19 CIP projects.

Council has requested a future item or work session on the Capital Improvement Plan (CIP) as we have done in the past to fully discuss these projects.

CONSENT AGENDA

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Mihalkanin to approve the consent agenda with the exception of item 5 and 7, which were pulled and considered separately. The motion carried by the following vote:

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

Against: 0

4. Consider approval, by motion, of the following meeting Minutes:
   A) May 15, 2018 - Work Session Minutes
   B) May 15, 2018 - Regular Meeting Minutes

5. Consider approval of Ordinance 2018-15, on the second of two readings, 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.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Mihalkanin, to approve Ordinance 2018-15, on the second 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

6. Consider approval of Resolution 2018-81R, approving an Interlocal agreement regarding asset forfeitures within Comal County for the benefit of the Hays County Narcotics Task Force; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

7. Consider approval of Resolution 2018-82R, approving the award of a contract to Knight
Security Systems, Inc. for Water Tower and Lift Stations Surveillance and Access Systems, (#218-266) in the estimated purchase amount of $110,994.96; authorizing the City Manager or his designee to execute the appropriate purchase 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 Derrick, to approve Resolution 2018-82R. The motion carried by the following vote:

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

Against:  0

8. Consider approval of Resolution 2018-83R, granting an easement to Pedernales Electric Cooperative, Inc. for the installation of Electric Utility Facilities to serve the San Marcos Regional Airport; authorizing the City Manager to execute the easement on behalf of the City; and declaring an effective date.

9. Consider approval of Resolution 2018-84R, approving the Interlocal Contract with the Texas Department of Information Resources ("DIR") so that the City may participate in DIRS Cooperative Purchase Program; authorizing the City Manager or his designee to execute the appropriate purchase documents on behalf of the City and declaring an effective date.

NON-CONSENT AGENDA

10. 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)

A motion was made by Council Member Mihalkanin, seconded by Deputy Mayor Pro Tem Gregson to appoint Council Member Gonzales and Mayor Thomaides to the Joint Partnership Committee of the City Council, Hays County Commissioners and San Marcos Consolidated Independent School District Board of Trustees.

The motion carried by the following vote:
A motion was made to approve the appointment of Council Member Hughson, Mayor Pro Tem Prewitt, and Council Member Mihalkanin to serve on the Transit Committee.

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

A motion was made to approve the appointment of Mayor Thomaides, Mayor Pro Tem Prewitt, and Council Member Derrick to serve on the Workforce Housing Committee.

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

A motion was made to approve the appointment of Deputy Mayor Pro Tem Gregson, Council Member Gonzales, and Council Member Derrick to serve on the Rental Registration Council Committee.

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

A motion was made to approve the appointment of Council Member Mihalkanin to fill a vacancy on the Greater San Marcos Partnership (GSMP) Board of Directors.

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
A motion was made to approve the appointment of Mayor Pro Tem Prewitt to fill a vacancy on the Student Housing Committee.

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

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

Discussion was held regarding the City’s participation in the Cultural Art Districts. Council would like information related to current efforts by various organizations that may be requesting a Cultural Arts District designation. Council consensus was to not form a Council committee but allow the City Manager to begin the process and allow Mayor Pro Tem Prewitt and Council Member Derrick to attend meetings concerning these issues. A committee may be advantageous in the future, but at this time the City Manager and staff will begin the process.

12. Receive an update on CAMPO Regional Arterials Study and Craddock Extension and provide additional information as requested.

Council Member Hughson recused herself from discussion.

Laurie Moyer, Director of Engineering and CIP, provided a presentation regarding the Craddock extension.

Mrs. Moyer explained that the Craddock Extension would provide needed connectivity in northwest San Marcos, allows vehicles to bypass Downtown San Marcos to travel to IH 35 North, provide additional transportation capacity, and reduce congestion through downtown San Marcos.

CAMPOs recommendation to allow the Craddock Extension to remain in the plan because it reduces future congestion through City core and provides alternate access in case of disaster.

Staff recommends the Craddock Extension remain in the Thoroughfare Plan. There will be commitment to fully evaluate alternatives and address concerns, we will work with Hays County and CAMPO; and we will send the Transportation Master Plan through the Code SMTX process for approval which includes routing through the Planning and Zoning Commission, and
bring back for approval in the fall.

Council consensus was to remove this item from the June 5th meeting.

13. Receive a Staff presentation and update regarding the Fiscal Year 2018-2019 Budget, and provide direction to the City Manager.

Heather Hurlbert, Finance Director, provided a presentation regarding the Fiscal Year 2018-2019 Budget.

Mayor Thomaides asked if staff could create a revenue and expense assumption. Mrs. Hurlbert stated this could be modeled out and given to Council.

Council Member Hughson requested the revenue trend graph include the net property tax increases for those who are receiving tax abatements. This will be created and presented to Council.

Council requested that the following language located on the Historical Growth of Property Tax and Incentive Rebates Slide be looked into and revised: In FY18 the growth percentages reverse resulting in less available funding capacity to cover growing base costs for the general fund.

The Loop FM 110 TRZ was discussed with the Original City Contribution being estimated at $24M, CAMPO funding could reduce City Contribution to $9M, Annual contribution in 2019 estimated at $1.2M. The City and County are negotiating with TXDOT to reduce the annual contribution which could possibly eliminate the FM 110 TRZ. This would free up capacity for future economic incentives and would create greater financial capacity in the General Fund. Council consensus is to move forward with negotiations.

Homestead Exemption and Over 65 Freeze was discussed in detail. Mayor Thomaides suggested the City incorporate a $5000 exemption for homeowners. Council Member Hughson suggested we wait until after budget discussions to determine where this money would come from to fund this exemption.

Mrs. Hurlbert discussed the cost drivers and allocations which include personnel, health insurance, software maintenance and licensing, and maintain operating capacity for Library, Fire Station #8, and Fire Training Field.
Discussion was held regarding personnel priorities. Council asked staff to look into funding a part time position in the City Clerk's office.

Funding expenses related to downtown through the Downtown TIRZ in FY2019 was discussed which include downtown cleaning and maintenance, sidewalks, landscaping, and maintenance position and supplies and drainage-downtown sweeping. Council asked staff to look at community enhancement funds to cover some of these costs. Staff will bring back information related to ways to fund these expenses.

Utilities revenue was discussed which include the following:
Electric - No rate adjustment recommended by the Citizen Utility Advisory Board
Water - 5% rate adjustment recommended by the Citizen Utility Advisory Board
Wastewater - 2% rate adjustment recommended by the Citizen Utility Advisory Board
Drainage - Rate study underway-further discussions prior to end of year and rate adjustment expected to be effective January 1, 2019.

Staff will bring back items regarding exemptions and look at different funding sources for CIP projects.

14. Hold a discussion on allocation of Best Buy generated revenue for fiscal year 2018, and provide direction to the City Manager.

Council provided direction to bring a budget amendment item for the Homebuyers Program to the June 19th City Council meeting.

VI. Question and Answer Session with Press and Public.

None.

VII. Adjournment.

Mayor Thomaides adjourned the Regular Meeting of the San Marcos City Council Tuesday, May 29, 2018 @ 11:08 p.m.

Jamie Lee Case, TRMC, City Clerk                          John Thomaides, Mayor
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, June 5, 2018 in the City Hall Conference Room, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

Council Member Derrick arrived after roll call at 3:45 p.m.

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 presentation and provide direction to staff regarding the workforce housing strategic initiative.

Bert Lumbreras, City Manager introduced the staff that will be presenting this evening.

Abigail Gillfillan, Planning Manager, provided a presentation regarding workforce housing. The purpose of this presentation is to discuss the strategies proposed to achieve the major outcomes identified in the City’s strategic initiative for workforce housing. The three outcomes of this initiative include:

1. Increase rates of home ownership

Development regulations: code plays important role, the types, where they are added, we need to closely monitor new home starts and make sure we add to our housing needs as a community.

Housing Study: will provide insights into the housing market and target programs and regulations for greatest impact. This will allow us to target the proper needs. A RFP will be created for a consultant.
Housing Programs: use local and federal funding sources to build homes, support affordable housing builders, support potential home owners, and set aside land for affordable home ownership

2. Building a Task Force: collaborate with government and education agencies, major employers, development community, service providers, banking community

3. Maintain Existing Housing Stock in Safe Conditions: enforcement of unsafe rental conditions, housing rehabilitation programs (current housing rehabilitation programs are funded by the CDBG and CDBG-DR).

Next Ms. Gillfillan discussed the upcoming policy decisions related to workforce housing which include:

1. Defining Workforce Housing in the form of an amendment to policy, which will be placed on the June 19th City Council agenda.

2. Low Income House Tax Credit Policy to consider amending the policy at the June 19th Council Meeting to allow all application for new projects and include more rigorous criteria.

3. Homebuyer Program as part of the FY 2019 Budget Process and consider a modification to the program to provide additional funds for household earning up to 140% AMI.

4. Housing Study RFP to come before Council at the August 2018 meeting to be funded from CDBG-DR planning money funding.

5. Application for HOME which is a requirement for matching funds. This will be brought before Council at the August 2018 meeting.

6. Housing Trust Fund - FY19 Budget Process, set aside money for workforce housing programs such as land acquisition, matching funds, HOME matching funds, other programs identified by task force

7. Developer Incentive Package to utilize recommendations by the workforce task force to attract housing developers.

8. Rental Registration Committee - Committee to determine the best approach to managing high number of properties in San Marcos to ensure safe
Council directed Staff to include mixed income in all of our housing and make sure this is within the policy. We can pull from the Land Development Code that was just adopted when creating the policy. This will be brought before Council in December.

Council has requested the meetings with the Rental Registration Committee be scheduled soon.

**EXECUTIVE SESSION**

2. Executive Session in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - to discuss and provide Annual Appointee Evaluations to the City Attorney and the City Manager.

A motion was made by Council Member Hughson, seconded by Deputy Mayor Pro Tem Gregson to enter executive session at 4:35 p.m. The motion carried by the following vote:

- **For:**
  - 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 6:00 p.m. Mayor Thomaides then adjourned the Work Session meeting of the San Marcos City Council at 6:00 p.m.

Tammy K. Cook, TRMC, Deputy 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 6:31 p.m. Tuesday, June 5, 2018 in the City Council Chambers, 630 E. Hopkins, San Marcos, Texas 78666.

II. Roll Call

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

III. Invocation

Reverend Ben Nelson with St. Mark's Episcopal Church provided this evening's invocation.

IV. Pledges Of Allegiance - United States And Texas

Kia Davis, Miss Beautiful SMTX 2017, led the assembly in the pledges of allegiance.

ACTION/DIRECTION FOLLOWING WORK SESSION EXECUTIVE SESSION

1. Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - to discuss and provide Annual Appointee Evaluations to the City Attorney and City Manager, which took place during the June 5, 2018 Work Session at 3:30PM.

The Mayor informed those in attendance that Council will reconvene back into Executive Session later in the evening and will provide direction at that time.

V. 30 Minute Citizen Comment Period

Frank Pereira, spoke as a representative that serves on the Court Appointed Special Advocates (CASA) board and his main role is fundraising. The challenge is keeping up with growth in our community. He has done numerous 3rd party fundraising activities which include the Inaugural golf tournament
that Corridor Title Company sponsored. This will be held again in October. Two other events include a mud water volleyball tournament and car wash event. With the support of Council we can achieve our goals.

John Barthel, spoke as a volunteer for CASA, he encourages Council to continue funding. CASA serves foster children caught in the system and our sole role is to make sure they do not get overlooked. These children get everything they need so they are safe and out of harms way. We have asked for a certain allocated amount, and the past three years you have responded. Although our growth is rapid the dollars do not increase. We are requesting grant funds in the amount of $45,000.

Joseph Ptak, would like to see the creation of a set of rules, especially bylaws and regulations, for boards and commissions. Mr. Ptak served on the Arts Commission and they realized bylaws were needed. These were created and submitted to City Council for approval. This allows the ability to create Ad Hoc Committees and this is one of the necessities of these bylaws. Members of these Ad Hoc Committees include various people from various different organizations throughout our community.

Seth Worley, spoke as a CASA board member. He thanked Council for their past support. CASA is continuing to do great things and we are not keeping up with the growth. We are not even at the halfway mark. He publically thanked Miriam McCoy for her very generous gift so construction on their building will soon be underway.

Lynnette Lombardo, spoke as a CASA services representative and expressed her support of funding. Ms. Lombardo noted that CASA advocated for 94 children in San Marcos last year. She worked on a dozen child abuse cases and stated no two cases are the same. Volunteering with CASA is like no other experience she has ever had and she encourages anyone that would like to volunteer to remember these three things: know the specific issues your specific child faces, know the resources available to you, and be the voice that gets the conversation started. Get involved and help these children find safe and supportive homes.

Carol J. Grimm, spoke as a CASA volunteer since 2001. She stated these volunteers help taxpayers save money. She shared a personal story of an individual that was under CASA care and how vital these services are to them. Please continue to support and grow as our numbers grow.

CONSENT AGENDA
A motion was made by Council Member Mihalkanin, seconded by Council Member Hughson, to approve the consent agenda, with the exception of item #3, 8, 9, 13, 14, which were pulled and considered separately. The motion carried by the following vote:

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

Against: 0

2. Consider approval of Resolution 2018-68R, approving the award of a contract to Infosend Inc. for utility billing and notice services for a maximum term of four years in an amount not to exceed $1,050,000.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

3. Consider approval of Resolution 2018-85R, approving the award of a contract for radar system for patrol vehicles to Stalker Radar d/b/a Applied Concepts, Inc., in the estimated amount of $80,863.28; approving the award of a contract for patrol vehicle equipment and installation to Fleet Safety Equipment, Inc. (Buyboard #534-17) in the estimated amount of $32,105.50; approving the award; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Main Motion: A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Mihalkanin to approve Resolution 2018-85R.

Motion to Amend: A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Hughson to amend Resolution 2018-85R, by switching the two contract amounts making the contract for radar system for patrol vehicles to Stalker Radar d/b/a Applied Concepts, Inc as $32105.50 and the contract for patrol vehicle equipment and installation to Fleet Safety Equipment, Inc. (Buyboard #534-17) as $80,863.28.

The motion carried by the following vote:

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

Against: 0

Main Motion: to approve Resolution 2018-85R, 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
4. Consider approval of Resolution 2018-86R, approving the award of a contract to Lambda Construction I, Ltd., for transformer and feeder breaker replacement services in connection with the Ranch Road 12 Substation Transformer Upgrades Project in an amount not to exceed $828,697.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

5. Consider approval of Resolution 2018-87R, approving the award of a three year contract to Climatec, LLC., for climate control system maintenance and support in the estimated amount of $99,062.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

6. Consider approval of Resolution 2018-88R, approving the award of a contract to Cobb, Fendley & Associates, Inc., for the provision of engineering services in connection with the Bishop Street Improvements Project in an amount not to exceed $357,209.50, contingent upon the engineer’s provision of sufficient insurance; authorizing the City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

7. Consider approval of Resolution 2018-89R, approving the award of a contract to RPS for the provision of professional services in connection with the Staples Road Water Line Project in an amount not to exceed $185,584.40, contingent upon the engineer’s provision of sufficient insurance in accordance with the attached agreement; authorizing the City Manager or his designee to execute this agreement on behalf of the City; and declaring an effective date.

8. Consider approval of Resolution 2018-90R, approving the award of an Engineering Services Contract to Maestas & Associates, LLC, for the Guadalupe Street Improvement project in the estimated amount of $211,845; 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 Mayor Thomaides, seconded by Council Member Derrick, to approve Resolution 2018-90R. 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

9. Consider approval of Resolution 2018-91R, approving the award of an Engineering Contract to Lockwood, Andrews & Newnam, Inc., for the Purgatory Creek project, in the estimated amount of $467,440; authorizing the City Manager or his designee to execute the said agreement on behalf of the City; and declaring an effective date.

A motion was made by Council Member Derrick, seconded by Council Member Mihalkanin, to approve Resolution 2018-91R. The motion carried by the following vote:
10. Consider approval of Resolution 2018-92R, approving the award of a contract to Denbow Company, Inc. for services to reroute storm water run-off from residential areas to Coers Creek for an amount estimated at $1,690,365.03; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

11. Consider approval of Resolution 2018-93R, approving the award of a Construction Contract to Cox Commercial Construction, LLC., for the Victory Gardens Neighborhood Improvements Project for the estimated amount of $8,260,891.20; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

12. Consider approval of Resolution 2018-94R, approving the change of the Fuel Flowage Fee rate for the San Marcos Regional Airport from 4% of the cost of fuel delivered to $0.09 per gallon of fuel delivered; and declaring an effective date.

13. Consider approval of Resolution 2018-95R, approving a subordination agreement with Goldman Sachs Mortgage Company and JPMorgan Chase Bank that subordinates the City’s Deed of Trust lien against the Embassy Suites Hotel Property securing a note in the principal amount of $1,500,000 to the lien of such entities securing their loan to JDHQ Hotels, LLC. (a subsidiary of Atrium Hospitality) for the purchase of the hotel from JQH-San Marcos Development (a subsidiary of John Q. Hammons Hotels and Resorts); authorizing the City Manager to execute the subordination agreement on behalf of the City; and declaring an effective date.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Hughson, to postpone Resolution 2018-95R to the June 19, 2018 City Council meeting and discuss during executive session in accordance with Section 551.071 of the Local Government Code: Consultation with Attorney.

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 Resolution 2018-96R, approving a loan assignment and assumption agreement between the City, JQH-San Marcos Development, LLC. (a subsidiary of John Q. Hammons Hotels and Resorts) and JDHQ Hotels LLC. (a subsidiary of Atrium Hospitality) that assigns the duties and obligations of JQH Development LLC under various loan documents with the City related to the development of the Embassy Suites Hotel and Conference Center to JDHQ Hotels, LLC. in connection
with the sale of the hotel from JQH-San Marcos Development, LLC to JDQH Hotels LLC.; authorizing the City Manager to execute the agreement on behalf of the City; and declaring an effective date.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Council Member Hughson, to postpone Resolution 2018-96R to the June 19, 2018 City Council meeting and discuss during executive session in accordance with Section 551.071 of the Local Government Code: Consultation with Attorney. 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

15. Receive a Staff update and hold a Public Hearing to receive comments on the 2018 CDBG Annual Action Plan, and provide direction to the City Manager.

Aaron Harris, Community Initiatives Program Administrator, provided council with a brief presentation regarding the CDBG action plan. There is no action needed this evening. Mr. Harris indicated the allocation for this year is $649,948 which is a 15% increase from 2017. Two applications were received for Public Services with include CASA, requesting $45,000 and City of San Marcos Parks and Recreation for Youth Scholarships, requesting $10,500. The Human Services Advisory Board recommends the funding of both applicants.

The Non Public Service Summary includes:

BR3T - $220,000
Southside Community Center - $100,000
City - Anita Reyes Park - $125,000
City - Tree Planting at Children's Park - $9,750
City - Home Buyer Down Payment Assistance - $80,000

The Mayor opened the Public Hearing at 7:04 p.m.
Those who spoke:

Tricia Snider, CASA Director, spoke on their role to recruit, train, and support volunteers. This funding will be used for partial salary support. Ms. Snider spoke on the role these advocates have from meeting directly with children, teachers, healthcare providers and attending court. CASA is experiencing a high demand, and we anticipate serving 102 children in San Marcos. The City
and CASA have been long standing partners in helping children and we thank you for your continued support.

Roland Saucedo, expressed his appreciation to Council for their time and service. He is in support of the allocating CDBG funds to BR3T, Southside Community Center, Anita Reyes Park, and the Down Payment Assistance Program. Mr. Saucedo likes that BR3T is focusing on roofing and leveling of homes. Mr. Saucedo spoke on the issues at Anita Reyes Park which is located in his neighborhood. This park is utilized but there is a lot of concern in regards to the accessibility to the park. Entrances are just an opening in the gate. Older citizens make up a majority of this neighborhood and getting into the park is not safe or fun to navigate and there is an issue of not having enough play equipment for the children. The Down Payment Assistance Program is a way to promote and assist residents to stay and contribute to our community.

Kelly Eby, Urban Forester for the City of San Marcos, is seeking CDBG funds for the planting of trees in the children’s playscape. We need trees planted as others mature. Trees are environmentally important, they provide shade and encourages kids to be more active. She indicated the community would be invited to help with the planting of these trees.

Trey Bell, representative for BR3T, stated they are focusing these funds on roofing and leveling. Many agencies will not go into these projects. The primary group of people we serve are low income families, the elderly, and disabled. We want to help those that do not have a safe environment. Mr. Bell spoke as a former employee of the Southside Community Center and is in support of funding their request.

There being no further comments, the Mayor closed the Public Hearing at 7:18 p.m.

Council Member Hughson inquired about the request from CASA to fund salaries. In years past Council has not funded salaries and she asked if this has changed. Council asked how we audit the $45,000. Ms. Brown stated that we look at timesheets and who they are serving and this does go to payroll.

Council directed Staff to hold a work session or discussion late in the year to discuss CDBG Programs, Larger projects, and a policy that makes it a requirement that these funds will not go for salaries.

NON-CONSENT AGENDA
16. Discuss and consider appointments to fill vacancies on the Convention and Visitor Bureau Board (CVB) and provide direction to Staff.

A motion was made by Deputy Mayor Pro Tem Gregson, seconded by Mayor Pro Tem Prewitt, to approve the appointment of Ruth Buck as the Hotel/Motel +90 rooms representative, James Martin as the museum representative, Dan Alden as the Texas State representative, and Monte Sheffield as the Food/Beverage representative on the Convention and Visitor Bureau Board. 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

EXECUTIVE SESSION

17. Executive Session item in accordance with Section §551.072 of the Texas Local Government Code which allows deliberations regarding the purchase, exchange, lease or value of Real Property: Discuss and deliberate possible options available to the City related to the property in the vicinity of the intersection of South Edward Gary Street and South LBJ Drive purchased from Union Pacific Railroad Company in 2013.

A motion was made by Council Member Hughson, seconded by Mayor Pro Tem Prewitt, to enter into Executive Session at 7:39 p.m. 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

18. Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Section §551.072 of the Texas Local Government Code which allows deliberations regarding the purchase, exchange, lease or value of Real Property: Discuss and deliberate possible options available to the City related to the property in the vicinity of the intersection of South Edward Gary Street and South LBJ Drive purchased from Union Pacific Railroad Company in 2013.

Council reconvened into regular session at 9:08 p.m. Council completed appointee evaluations and provided direction to staff on matters discussed during executive session.

VI. Question and Answer Session with Press and Public.

None.
VII. Adjournment.

Mayor Thomaides adjourned the Regular Meeting of the San Marcos City Council Tuesday, June 5, 2018 @ 9:10 p.m.

Tammy K. Cook, TRMC, Deputy City Clerk  John Thomaides, Mayor
AGENDA CAPTION:
Consider approval of Resolution 2018-97R, approving a third amendment to an Interlocal Agreement for Commercial Office Lease with Hays County for the WIC office at 401C Broadway Street for the purpose of extending the lease term for one additional year; authorizing the City Manager to execute said agreement; and declaring an effective date.

Meeting date: June 19, 2018

Department: Community Services - WIC

Amount & Source of Funding
Funds Required: $11,580
Account Number: 52360 - Multiple WIC accounts
Funds Available: $11,580
Account Name: Building Rental

Fiscal Note:
Prior Council Action: Original agreement approved in 2012.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Community Partners
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
Background Information:
The WIC Program began leasing from Hays County in 2012. An amendment and extension was executed in 2017. This amendment provides for a one-year extension to August 31, 2019. There is no change in rental rate from previous year. This amendment adds language allowing the City of San Marcos WIC Program to terminate the lease at the end of the month following delivery of 30 days’ written notice.

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-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A THIRD AMENDMENT TO INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE WITH HAYS COUNTY FOR THE WIC OFFICE AT 401C BROADWAY STREET FOR THE PURPOSE OF EXTENDING THE LEASE TERM FOR ONE ADDITIONAL YEAR; 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 Third Amendment to Interlocal Agreement for Commercial Office Lease with Hays County (the “Third Amendment”) is hereby approved.

PART 2. The City Manager is hereby authorized to sign the Third Amendment on behalf of the City.

PART 3. This resolution shall become effective immediately from and after its passage.

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
THIRD AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 3RD Amendment to Interlocal Agreement for the Commercial Office Lease at 401C Broadway Street San Marcos, Texas (“Amendment”) is made this ______ day of _________________________, 2018, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as “County”), and the City of San Marcos, Texas, administering the Woman, Infants, and children (“WIC”) Program of San Marcos (hereinafter referred to as “City”). The above-cited parties are collectively referred to as “the parties to this Agreement” or “the parties.”

Section 4.1 Term, Possession, and Anniversary of the Interlocal Agreement for the Commercial Office Lease (“Agreement”) is hereby amended to reflect that the last day of the lease term will be August 31, 2019 or at the end of the month following delivery of 30 days’ written notice of termination by Lessee.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 3rd Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the ______ day of __________________________, 2018, as is evidenced by the authorized signatures of the Parties, below.

LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Printed name of person signing

Signature

City Manager
Title of person signing (if applicable)

630 East Hopkins, San Marcos, Texas 78666
Lessor Address

Date signed

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

Printed name of person signing

Signature

County Judge
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

Date signed

Attest: __________________________
County Clerk
INTERLOCAL AGREEMENT  
FOR  
COMMERCIAL OFFICE LEASE  

401C Broadway Street, San Marcos, Texas

This is an Interlocal Agreement for the Lease of Commercial Office Space (hereinafter “Agreement”) dated August 21, 2012 and entered into by the City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos, as (hereinafter “Lessor”) and Hays County, a political subdivision of the State of Texas as (hereinafter “Lessee”), whether one or more. The above-cited parties shall be collectively referred to as “the parties to this Agreement” or “the parties”.

1.1 Interlocal Agreement.  
This is an Agreement made pursuant to the Interlocal Cooperation Act (Chapter 791, Texas Government Code), which empowers the parties to contract with each other in the performance of services that each party is authorized to perform individually, including the leasing of real property. As required by the Interlocal Cooperation Act, (i) the execution of this agreement is authorized by the governing body of each party to this Agreement; (ii) payments of rent by Lessee under this Agreement shall be made from current revenues that are available to Lessee; and (iii) the rents paid under this agreement are considered by the parties to be fair compensation to Lessor for the Leased Premises.

1.2 The Leased Premises.  
Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the "Leased Premises" which consists of "Lessee's Office Space" as defined below.

(a) Lessee's Office Space. "Lessee's Office Space", to which Lessee shall have exclusive use rights to the office space outlined on the floor-plan contained in Exhibit A. The street address of the building is 401C Broadway Street, San Marcos, Texas 78666.

1.3 Lease Purpose.  
Lessee shall use Lessee’s Office Space for operation of the Women, Infants and Children (“WIC”) Program office and clinic space for the provision of services to WIC Program eligible members of the public (“Lease Purpose”).

1.4 Rentable Area.  
Lessee's approximate "rentable area" is 2,200 square feet.

2.1 Base Rent and Additional Rents.  
As set forth below, Lessee shall pay to Lessor “base rent(s)” per square foot of net rentable area per calendar year as set forth below, which amounts to the monthly and annualized rents set forth below.

<table>
<thead>
<tr>
<th>Base Rent</th>
<th>Time Period</th>
<th>Monthly Rent</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Period</td>
<td>36 months</td>
<td>$1,600.00</td>
<td>$19,200.00</td>
</tr>
</tbody>
</table>

3.1 Date and Place of Payment.  
The monthly rent shall be due on the first day of each calendar month without demand. Partial months shall be prorated. All rent and other sums are due in the county where the building is located at the address designated by Lessor from time to time. All sums due by Lessee shall be made from current funds, are not subject to any claim of credit by Lessee, and are without right of setoff or deduction. Monies mailed are considered timely paid only if received by Lessor by the due date. Rent and late payment charges shall be paid without notice or demand. All other sums shall be due upon delivery of written notice in accordance with paragraph 27.1.

Building name: 401C Broadway Street  
Lessor’s Name: Hays County, Texas  
Lessee’s Name: City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos  
Lessor initials:  
Lessee initials:
3.2 Late Payments.
If any rent payment or other sum due by Lessee to Lessor is received and accepted by Lessor later than five (5) days after its due date, Lessee shall pay a late charge of the greater of $10.00 or 5% of such rent payment, plus $10.00 therefor for each day thereafter (up to 15 days) until such rent or other sum is paid. Late charges shall be considered liquidated damages for Lessor’s time inconvenience and overhead (except for attorneys fees and litigation costs) in collecting late rent. Lessor’s acceptance of late rent or other sum shall not constitute permission for Lessee to pay the rent or other sum therefor and shall not constitute a waiver of Lessor’s remedies for subsequent late payments. Late payment charges are due immediately upon notice or demand. All payments shall be by check or money order on a local bank, not cash. For each returned check, Lessee shall pay all applicable bank charges incurred by Lessor plus $25.00. Payments of any kind received by Lessor on behalf of Lessee may be applied at Lessor’s option to non-rent items first, then to rent. Payment of rent by Lessee shall be an independent covenant. If Lessee has not timely paid rentals and other sums due on two or more occasions, or if a check from Lessee is returned for insufficient funds or no account, Lessor may, for the next twelve (12) months or the remainder of the lease term, whichever is shorter, require that all rent and other sums due be paid by cashier’s check, certified check, or money order, without prior notice.

3.3 Security Deposit.
The total additional security deposit to be provided by Lessee, in current funds, is $1,600.00, at the time of execution of this lease. This security deposit will be held by Lessor to secure performance of Lessee’s obligations under this lease. Lessor shall have a lien on the security deposit for that purpose. If Lessee fails to pay rent or other sums when due under this lease, Lessor may apply any cash security deposit toward amounts due and unpaid by Lessee. Lessee shall immediately restore the security deposit to its original amount after any portion of it is applied to amounts due and unpaid by Lessee. Lessor shall return the security deposit to Lessee within thirty (30) days after the termination of this Agreement, minus the cost of any damages to the Leased Premises caused by Lessee that are beyond normal wear and tear.

4.1 Term, Possession, and Anniversary.
The initial lease term shall be for __35__ full calendar months from commencement date, plus the remainder of the last month, the last day of the lease term being August 31, 2015. The commencement date of this lease shall be September 21, 2012. Rent will begin to accrue on the lease commencement date.

4.2 Delivery of Possession.
Lessor shall deliver keys and/or access cards or codes and possession of Lessee’s office space to Lessee on the lease commencement date stated in paragraph 4.1 unless otherwise agreed in writing by the parties. Lessee shall not be liable for rent until Lessor delivers possession of the leased premises to Lessee. If there is a delay in delivery of possession, the commencement date shall be delayed until Lessee’s office space is ready for occupancy; and neither Lessor nor Lessor’s agents shall otherwise be liable for any damages; and the lease shall not terminate.

5.1 Tenant Finish-Out.
Subject to paragraph 13.1, Lessee shall be allowed to make such initial improvements or alterations as are reasonably necessary for Lease Purpose. Lessor shall allow Lessee full access to the Leased Premises during preparation for move-in in advance of delivery of possession and shall pay for all utilities up to the date Lessor delivers possession under paragraph 4.2 of this Agreement.

6.1 Quiet Possession.
If Lessee is current and in compliance with all of Lessee’s obligations under this lease, Lessee shall be entitled to peaceful and quiet possession and enjoyment of Lessee’s office space, subject to the terms and conditions of this lease. Lessee shall have access to common parking areas at all times, subject to paragraph 9.2. Construction noise or vibrations shall not be considered a default by Lessor.

7.1 Utilities and Services by Lessee.
Except where otherwise stated in this lease, Lessor agrees to maintain existing accounts in its name, pay for the associated utilities and services, and submit a monthly invoice pursuant to Section 27.1 to Lessee for

Building name:  401C Broadway Street  
Lessor’s Name:  Hays County, Texas  
Lessee’s Name:  City of San Marcos, Texas, administering the  
Women, Infants, and Children (WIC) Program of San Marcos

Lessor initials:  
Lessee initials:  

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reimbursement. Lessee shall reimburse Lessor for the following utilities and services within thirty (30) days of receiving an undisputed invoice:

(a) Electric
(b) Water and Wastewater
(c) Solid Waste Disposal
(d) Phone/fax/data lines
(e) Natural Gas
(f) Security system monitoring
(g) Interior janitorial services (if requested in writing by the City Manager of the City of San Marcos)

Disputed invoices under this section shall be resolved via the agreed-upon Dispute Resolution procedures cited in Section 23.1, below.

7.2 Utilities and Services by Lessor.
Except where otherwise stated in this lease, Lessor agrees to provide the following utilities and services at no additional charge:

(a) Grounds maintenance

7.3 Interruption of Utilities or Services.
Temporary interruption or malfunction of utilities, services, and/or telephones shall not render Lessor liable for damages, rent abatements, or release of any Lessee obligation. Lessor shall use diligent efforts to have such utilities and services restored as soon as reasonably possible.

8.1 Maintenance and Repairs by Lessor.
Except as provided in paragraph 8.2, Lessor shall repair and/or replace, as needed, the following items, so long as they are building standard items: including but not limited to ballasts, fixtures, exterior walls, the foundation, flooring beneath floor finishes, exterior windows, roofs, other structural elements, the electrical, plumbing, hardware, appliances, doors, wall and window coverings, and heating and ventilating systems of the building. Lessor shall provide additional maintenance necessary because of damages by persons other than Lessee, or Lessee's agents, employees, family, licensees, invitees or visitors. Lessor shall use diligence to provide for the maintenance, repair, reconnection of interrupted utilities or services, subject to any reimbursement obligations of Lessee under paragraph 8.2. Lessor may rekey at any time. Lessor may temporarily close any part of the common facilities if reasonably necessary for repairs or construction. Repairs and maintenance shall be in accordance with applicable governmental requirements. Lessor shall also provide weekly cleaning services.

8.2 Maintenance and Repairs by Lessee.
Lessee shall promptly reimburse Lessor for the cost of maintaining, repairing or replacing non-building standard items and the cost of repairing or replacing damage which is caused inside Lessee's office space by Lessee, Lessee's agents, employees, family, or licensees, invitees, visitors, or customers or outside Lessee's office space by Lessee or Lessee's employee's, agents, or contractors. Kitchen appliances and wet bars in the Premises are not considered building standard items. Lessee shall have right of approval of all repairmen or maintenance personnel. Lessee shall not damage or allow other persons listed above to damage any portion of the leased premises. Lessee shall pay for replacement of all non-building standard light bulbs and for unstopping any drains or water closets in Lessee's office space. If Lessee or Lessee's workmen or contractors are permitted to repair, alter, or modify Lessee's office space, Lessee shall warrant that no mechanic or materialman's lien shall be filed against the leased premises and that all such contractors shall provide evidence of liability insurance as required by Lessor. All such work shall be in accordance with applicable governmental requirements.

8.3 Telecommunications.
All telecommunications equipment necessary to serve Lessee shall be located in Lessee's office space and paid for by Lessee. Lessee may not require Lessor to install or allow others, without the written consent of Lessor, to install telecommunication lines or equipment elsewhere in the building.

Building name: 401C Broadway Street
Lessor's Name: Hays County, Texas
Lessee's Name: City of San Marcos, Texas, administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessee initials: ___________________________  Lessor initials: ___________________________

(a) **Access.** Except in emergency situations, Lessee shall have access to the Leased Premises at all times during the Lease Term. Lessor shall have access to the Leased Premises during working hours for reasonable business purposes upon prior notice to Lessee except notice shall not be necessary in the event of an emergency threatening life or property or the lawful exercise of Lessor's remedies in case of default by Lessee. Lessor may show the Leased Premises six (6) months before the lease expiration date or the date Lessee gives notice to vacate, whichever is earlier.

(b) **Keys.** Lessor shall furnish Lessee up to five (5) keys or access codes or cards for the Leased Premises. An initial deposit of $10.00 shall be charged for each key or access card provided by Lessor. Lessor shall not be liable for risk of loss resulting from Lessee's keys, access codes, or cards being stolen, lost or used by unauthorized persons. Lessor reserves the right to rekey or change locks for security reasons if new keys are timely furnished to Lessee.

(c) **Locks.** Lessee may not add locks, change locks, or rekey locks without written permission of Lessor. Locks may be changed at Lessee's request and expense. If locks to the Leased Premises are changed, Lessor may specify kind and brand of locks, placement, installation, master key compatibility, etc. If Lessee or any of Lessee's employees lock themselves out of Lessee's suite, said person must call a fellow-employee to gain access. Lessor is not authorized to unlock a door that accesses an area leased solely by Lessee except for emergency purposes.

(d) **Security.** Lessor shall have no duty to provide any security services of any kind unless expressly provided in this lease. Lessor shall not be liable to Lessee or Lessee's employees, family, customers, invitees, contractors, or agents for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism or other crimes. Lessee shall lock the doors of the Leased Premises when the last person leaves such Premises for the day. If such actions do not unreasonably interfere with Lessee's occupancy, Lessor may take reasonable measures that Lessor deems advisable for the security, safety, improvement, and preservation of the Building.

9.2 Parking.
Lessor shall have sole control of private parking spaces included within the subject matter of this lease. If vehicles are parked in violation of Lessor parking rules, if any, or in violation of state statutes, Lessor may exercise vehicle removal remedies under Texas Transportation Code, Chapter 684 upon compliance with statutory notice. Reserved parking spaces must be established by written agreement of the parties.

10.1 Occupancy, Nuisance, and Hazards.
Lessee's office space shall be occupied by Lessee or Lessee's employees and shall not be left entirely vacant or used exclusively for storage. Lessee and Lessee's agents, employees, family, licensees, invitees, visitors, and contractors shall comply with all federal, state, and local laws relating to occupancy or to criminal conduct while such persons are on the leased premises. Lessee and the persons listed above shall not (i) use, occupy, or permit the use or occupancy of the leased premises for any purpose which is directly or indirectly forbidden by such laws or which may be dangerous to life or property, (ii) permit any public or private nuisance, (iii) disturb the quiet enjoyment of other tenants, (iv) do anything which might emit offensive odors or fumes, (v) make undue noise or vibrations, (vi) permit anything which would cancel insurance coverage or increase the insurance rate on the building or contents, or (vii) otherwise damage the leased premises, except for normal wear and tear. Normal wear and tear is damage that occurs without carelessness, negligence, accident, or abuse.

11.1 Taxes.
Lessor shall be responsible for payment of all taxes and assessments against the building. Lessee shall timely pay all taxes assessed against Lessee's furniture, equipment, fixtures, or other personal property in Lessee's office space.

12.1 Insurance.
Lessor and Lessee shall comply with the respective insurance obligations as set forth below:

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Lessor's Name:  Hays County, Texas
Lessee's Name:  City of San Marcos, Texas, administering the
                Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials:  
Lessee initials:  

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(a) **Lessor.** Lessor shall maintain commercial general liability insurance and all-risk insurance subject to standard policy exclusions and limitations through the Texas Association of Counties Risk Pool. Such insurance may contain policy exclusions as reasonably determined by Lessor. The coverage amounts shall be as Lessor may deem reasonably appropriate. Lessor shall have no responsibility to maintain any kind of insurance on Lessee’s contents. Lessor shall have no responsibility to maintain fire and extended coverage insurance on Lessee’s contents.

(b) **Lessee.** Lessee shall provide Lessee’s own public liability insurance for its operations on the leased premises. In no event shall such coverage limits be less than three-hundred-thousand dollars in United States currency ($300,000 USD) per offense (aggregate). Lessee is required to maintain adequate fire and extended coverage insurance (including theft, vandalism and malicious mischief) on the contents in Lessee’s office space, including fixtures, furniture, equipment, supplies, inventory, and other personal property. Such personal property is not covered by Lessor’s insurance.

(c) **Insurance certificates.** Lessee shall provide Lessor with a certificate of Lessee’s insurance or a copy thereof as required above within seven (7) days after Lessee initially occupies Lessee’s office space or any portion thereof.

12.2 **Hold Harmless and Indemnity.**
To the extent that it is not covered by Lessor's insurance, Lessee shall indemnify Lessor for and shall hold Lessor harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessee or Lessee's agents, employees, family, licensees, or invitees. To the extent that it is not covered by Lessee's insurance, Lessor shall indemnify Lessee for and shall hold Lessee harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessor or Lessor's agents, employees, family, licensees, or invitees. To the extent that it is covered by Lessor's insurance, Lessor and Lessee shall not be liable to the other or the other's agents, employees, or family for any damage to personal property resulting from any act, omission, or negligence of any other tenant, visitor, or occupant of the office building. This paragraph shall survive termination or expiration of this lease. The provisions of this paragraph 12.2 are limited as follows: All obligations of the Lessee, shall be enforceable against Lessee only to the extent permitted by law and with the limitation and understanding of Lessor that Lessee in no manner waives any limitations on liability or any immunity from suit or liability granted by applicable laws or the Texas Constitution.

13.1 **Alterations by Lessee.**
Lessee may not make any alterations, improvements, door lock changes, or other modifications of any kind to the leased premises without Lessor's written consent. Consent for governmental required changes may not be unreasonably withheld. "Alterations" include but are not limited to improvements glued, screwed, nailed, or otherwise permanently attached to the building, structural changes, roof and wall penetrations, and all plumbing, electrical, and HVAC changes. Requests for Lessor's approval shall be in writing and shall be detailed to Lessor's reasonable satisfaction. The foregoing shall be done only by Lessor's contractors or employees or by third parties approved by Lessor in writing. Lessee shall pay in advance for any requested alterations, improvements, lock changes, or other modifications which are approved and performed by Lessor. If same are performed by Lessee with Lessor's permission, Lessee shall not allow any liens to be placed against the buildings as a result of such additions or alterations. Alterations, improvements, and modifications done at Lessee's request shall comply with all applicable laws. Changes in Lessee's alterations or improvements in Lessee's space which may be later required by governmental action shall also be paid for by Lessee.

13.2 **Americans With Disabilities Act.**
Lessor shall be responsible for any requirements under the Americans with Disabilities Act or similar state or local laws as they relate to any common area entrance and exit doorways and elevators and any doors into Lessee's office space and to structural building items that Lessor is required to maintain under the terms of this lease. Lessee agrees to cooperate fully with Lessor to enable Lessor to timely comply with the provisions of this paragraph and to immediately forward to Lessor any notice Lessee receives regarding complaints, injuries, or claims by anyone claiming that those items which are the responsibility of Lessor do not comply with the provisions of the Americans with Disabilities Act.
with Disabilities Act. Lessee shall be responsible for any requirements under such architectural barrier laws as they relate to Lessee's use of Lessee's office space, including, but not limited to, the positioning of Lessee's furnishings within the office space.

14.1 Removal of Property by Lessee.
Lessee may remove its trade fixtures, furniture, and equipment only if (i) such removal is made prior to the end of the lease term, (ii) Lessee is not in default under this lease at time of removal, and (iii) such removal is not in anticipation of an early moveout prior to the end of the lease term. Lessee shall pay all costs of removal. Lessee shall have no rights to property remaining on the leased premises after moveout. Upon moveout, Lessee may not remove any alterations as defined in paragraph 13.1 or improvements such as wall-to-wall carpeting, book shelves, window coverings, drapes, cabinets, paneling, counters, kitchen or breakroom built-ins, shelving, wall covering, and anything else attached to the floor, walls, or ceilings. If and only if Lessor requests in writing no later than one month after Lessee moves out and receives the consent of Lessor, Lessee may remove alterations, fixtures, equipment, cabling, and other property installed by Lessee. Lessee shall pay for cleaning or repairing damage caused by Lessee's removal of any property.

15.1 Subletting and Assignment.
Lessee may not sublet, assign, pledge, or mortgage this lease and may not grant licenses, commissions, or other rights of occupancy to all or any part of the Leased Premises without Lessor's prior written approval.

16.1 Destruction by Fire or Other Casualty.

(a) Total destruction, rent abatement, and restoration. If Lessee's office space is totally damaged by fire or other casualty so that it cannot reasonably be used by Lessee and if this lease is not terminated as provided in subparagraph “d” below, there shall be a total abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses until Lessee's office space is restored by Lessor and Lessee.

(b) Partial destruction, rent abatement, and restoration. If Lessee's office space is partially destroyed or damaged by fire or other hazard so that it can be only partially used by Lessee for the purposes allowed in this lease and if this lease is not terminated as provided in subparagraph “d” below, there shall be a partial abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses which fairly and reasonably corresponds to the time and extent to which Lessee's office space cannot reasonably be used by Lessee.

(c) Restoration. Lessor's obligation to restore shall be limited to the condition of the leased premises existing prior to the casualty. Lessor shall proceed with diligence to restore. During restoration, Lessee shall continue business to the extent practical in Lessee's reasonable judgment.

(d) Lease termination. If Lessee's office space or the office center is so badly damaged that restoration and repairs cannot be completed within six (6) months after the fire or casualty, then this lease may be terminated as of the date of the destruction by either Lessor or Lessee by serving written notice upon the other. Termination notice must be delivered within one (1) month after the casualty.

17.1 Condemnation.
If the Leased Premises or any material portion thereof, including any portion of the parking lot is taken by condemnation and if the leased premises is thereby reasonably rendered unusable for Lessee's business use and activities, this lease shall automatically terminate as of the date title vests in the condemning authority pursuant to such taking or acquisition; and Lessor and Lessee shall be relieved of all further obligations under this lease. Lessor shall be entitled to recover from the condemning authority the full amount of Lessor's interest in this lease and in the property which is taken in condemnation; provided, however, if Lessee is not in default hereunder on the day of taking or acquisition by the condemning authority, Lessee shall be allowed to recover from the condemning authority, at Lessee's own expense, the value of Lessee's remaining leasehold interest and Lessee's trade fixtures, if any, which are taken in condemnation; but not otherwise. Lessee shall be responsible for Lessee's own attorney's fees and for proving its own damages.

Building name: 401C Broadway Street
Lessor's Name: Hays County, Texas
Lessee's Name: City of San Marcos, Texas, administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: [Signature]
Lessee initials: [Signature]
18.1 Default by Lessor.
Lessee shall be entitled to recover actual damages and terminate this lease if (i) Lessor fails to pay any sum due and owing to Lessee within seven (7) days after written demand from Lessee, or (ii) Lessor remains in default on any other obligation for seven (7) days after Lessee's written demand for performance. However, Lessor shall not be in default if Lessor promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default. If taxes and utilities are not timely paid, Lessee may pay same to the extent that it is necessary to avert foreclosure or cutoff. If Lessor fails to perform any covenant, term or condition of this lease that Lessor is obligated to perform and, as a consequence of such nonperformance, Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of Lessor's equity in the property. Lessor shall have no liability whatsoever for any deficiency, and no other property or assets of Lessor shall be subject to levy, execution or other enforcement procedures as a result of such judgment.

19.1 Default by Lessee.
If Lessee defaults, Lessor shall have any or all remedies set forth below.

(a) Definition of default. The occurrence of any of the following shall constitute a default by Lessee: (i) failure to pay rent or any other sum due by Lessee under this lease within 3 days after written demand therefor by Lessor; (ii) failure to vacate on or before the last day of the lease term, renewal term, or extension period; (iii) failure to pay rent in advance on a daily basis in the event of unlawful holdover by Lessee; (iv) unauthorized early move-out or notice of same as set forth below; (v) acquisition of Lessee's interest in the lease by a third party by judicial or non-judicial process; or (vi) failure to comply with any other provision of the lease (including rules) if such failure to comply is not cured as soon as possible after delivery of written notice by Lessor to Lessee. However, Lessee shall not be in default under subclause (vi) above if Lessee promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default.

(b) Utilities and services. If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor's representative written notice of Lessor's intent to terminate utilities or services which are furnished by Lessor, then Lessor may terminate such utilities or services after such 3-day notice period, without further notice. Lessor's right to terminate such utilities or services shall occur automatically and without notice if Lessee's rent is accelerated under subparagraph "d" below, relating to unlawful early move-out.

(c) Acceleration after notice of rental delinquency. If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor delivers to Lessee or to Lessee's office space a written notice of Lessor's intent to accelerate, then all rent for the remainder of the lease term shall be accelerated, due, and delinquent at the end of such 3-day notice period without further demand or notice. Such acceleration rights are in consideration of the rentals for the entire term being payable in monthly installments rather than in one lump sum at the beginning of the lease term. If Lessee has already vacated the leased premises, notice of acceleration may be delivered to Lessee pursuant to paragraph 27.1. Liability for additional rents accruing in the future (over and above any base rents) shall not be waived by such acceleration.

(d) Acceleration upon early move-out. If Lessee is lawfully evicted, or if Lessee moves out or gives verbal or written notice (in person or by an authorized employee or agent) of intent to move out prior to the end of the lease term without the rent being paid in full for the entire remainder of the lease term or renewal or extension period or without prior written consent of Lessor, all remaining rents for the remainder of the lease term shall be accelerated and due immediately and automatically, without demand or notice. Such acceleration shall occur even if the rent for the current month has been paid in full.

(e) Termination of possession. If Lessee is in default as defined in subparagraph "a" above and if Lessee remains in default for three (3) days after Lessor gives notice of such default to Lessee, or if Lessee abandons the leased premises, Lessor may (with or without demand for performance) terminate Lessee's right of possession by giving one day's written notice to vacate; and Lessor shall be entitled to immediate
possession without termination of Lessee's obligations under the lease. Lessor's repossession shall not be considered an election to terminate this lease unless written notice of such intention to terminate is given to Lessee by Lessor. Repossession may be by voluntary agreement or by eviction lawsuit. Commencement of an eviction lawsuit shall not preclude other Lessor remedies under this lease or other laws.

(f) Reletting costs. If Lessee is in default under this lease and if Lessor terminates Lessee's right of possession without terminating this lease and Lessee's space is released, Lessee shall pay upon Lessor's demand the following: (i) all costs of reletting (which in no event shall be less than one month's rent), including leasing commissions, rent concessions (whether in the form of assuming or buying out lease remainders elsewhere, free rent for a period of time, or reduced rental rates), utilities during the vacancy, advertising costs, administrative overhead, and all costs of repair, remodeling, or redecorating for replacement tenants in Lessee's office space, (ii) all rent and other indebtedness due from Lessee to Lessor through the date of termination of Lessee's right of possession, and (iii) all rent and other sums required to be paid by Lessee during the remainder of the entire lease term, subject to the acceleration paragraphs above.

(g) Mitigation by Lessor. Upon eviction or voluntary vacation of the leased premises by Lessee without the lease being terminated by Lessor, Lessor shall make reasonable efforts to relet the leased premises. After deduction of reasonable expenses incurred by Lessor, Lessee shall receive credit for any rentals received by Lessor through reletting the leased premises during the remainder of the lease term or renewal or extension period. Such deductible expenses may include real estate commissions, attorney's fees, and all other commercially reasonable expenses in connection with reletting. Lawsuit to collect amounts due by Lessee under this lease may be brought from time to time on one or more occasions without the necessity of Lessor's waiting until the expiration of the lease term. If judgment for accelerated rents is recovered, Lessor shall give credit against such judgment for subsequent payments made by Lessee and subsequent rentals received by Lessor from other tenants of Lessee's office space, less lawful deductions and expenses of reletting.

(h) Termination of lease. Lessor may terminate this lease upon default by Lessee or at any time after Lessor's lawful re-entry or repossession following default by Lessee. Lessor's agents have authority to terminate the lease only by written notice given pursuant to paragraph 27.1. After termination, Lessee shall remain liable to Lessor for all sums accruing and unpaid prior to termination and any year-end adjustments of building operating expense, prorated through the date of termination.

(i) Damages. In addition to other remedies, Lessor may recover actual damages incurred.

20.1 Late Payment Fees and Other Expenses.
Late payment fees as set forth in paragraph 3.2 shall be considered reasonable liquidated damages for the time, trouble, inconvenience, and administrative overhead expense incurred by Lessor in collecting late rentals, such elements of damages being uncertain and difficult to ascertain. Late payment fees shall not be liquidated damages for attorney's fees or for Lessor's loss of use of such funds during the time of delinquency. Whenever Lessee requests Lessor to take any action or give any consent required or permitted under this Lease, Lessor will reimburse Lessor for Lessor's reasonable costs incurred in reviewing the proposed action or consent, including reasonable attorneys', engineers', or architects' fees, within ten (10) days after Lessor's delivery to Lessee of a statement of such costs. Lessee shall be obligated to make such reimbursement without regard to whether Lessor consents to any such proposed action.

21.1 Nonwaiver.
The acceptance of monies past due or the failure to claim of any action, nonaction, delayed payment, or default, whether singular or repetitive, shall not constitute a waiver of rights or obligations under the lease. Lessor's or Lessee's waiver of any right or any default shall not constitute waiver of other rights, violations, defaults, or subsequent rights, violations, or defaults under this lease. No act or omission by Lessor or Lessor's agents shall be deemed an acceptance or surrender of the leased premises, and no agreement by Lessor to accept a surrender of the leased premises shall be valid unless it is in writing and signed by a duly authorized agent of Lessor.

Building name: 401C Broadway Street
Lessor's Name: Hays County, Texas
Lessee's Name: City of San Marcos, Texas, administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: [Signature]
Lessee initials: [Signature]
22.1 Transfer of Ownership by Lessor.
If Lessor transfers ownership of the office building (other than as security for a mortgage) and if Lessor has delivered to the transferee all of Lessee's security deposits and any prepaid rents, Lessor shall be released from all liability under the lease for Lessor obligations (other than for Lessor defaults arising prior to the transfer and noted in any estoppel certificate signed by Lessee); and such transferee shall become liable as Lessor. Such right to be released of liability shall accrue to subsequent owners only if such transfer is in good faith and for consideration.

23.1 Dispute Resolution.

(a) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Lease. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

(b) Mediation. If the dispute has not been resolved within thirty (30) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

(c) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

24.1 Surrender of Premises.
When Lessee moves out, Lessee shall surrender Lessee's office space in the same condition as on the date of lease commencement by Lessee (as changed or improved from time to time in accordance with this Agreement), less ordinary wear and tear. Removal of property from the leased premises is subject to paragraph 14.1. Upon surrender, Lessee shall provide Lessor with all of Lessee's keys, access codes and cards to the Leased Premises and the combination to all safes and vaults, if any in the Leased Premises.

25.1 Holding Over.
If Lessee remains in possession of the leased premises after the expiration of the lease (including valid lease extensions), then (i) Lessee shall be deemed to be occupying the leased premises as a tenant-at-sufferance on a daily basis, subject to all obligations of the lease, (ii) Lessee shall pay rent for the entire holdover period at the rate of 125% of the then-current rental rate under this lease, (iii) Lessee shall be subject to all other remedies of Lessor as provided in paragraph 19.1, and (iv) Lessee shall, to the extent permitted by law and without waiving any limitations on liability or immunity from suit or liability under applicable laws or the Texas Constitution, indemnify Lessor and/or prospective tenants for damages, including lost rentals, storage expenses, and attorney's fees. Holdover rents shall be immediately due on a daily basis and delinquent without notice or demand; and the prior written notice and
waiting period requirements of this lease shall not be necessary in order for Lessor to exercise remedies thereunder. By written agreement of the parties, Lessee may avoid being subjected to the above terms and penalties by extending the lease term for a period of one month (and for as many one-month periods thereafter as agreed to by the parties) at a minimum rate of 125% of the then-current rental rate under this lease.

26.1 Signs and Building Name.
Except for standard suite signage and building directory listings, there shall be no signs, symbols, or identifying marks on or in the building, halls, elevators, staircases, entrances, parking areas, landscape areas, doors, walls, or windows without prior written approval of Lessor. All signs or lettering shall conform to the sign and lettering criteria established by Lessor. Unless otherwise agreed by the parties, suite signage and building directory changes shall be done exclusively by Lessor and at Lessee's expense. Lessor may remove all unapproved signs without prior notice to Lessee and at Lessee's expense.

27.1 Notices.
Whenever written notice is required or permitted under this lease, such notice shall be in writing and shall be either (i) hand delivered personally to the party being notified, (ii) hand delivered to or inside such party's mailing address, (iii) delivered by fax provided there is a fax transmittal confirmation, or (iv) delivered at such party's mailing address by overnight commercial courier or by certified mail, return receipt requested. The mailing address of Lessor shall be the address to which Lessee normally mails or delivers the monthly rent unless Lessor notifies Lessee of a different address in writing. The mailing address of Lessee shall be Lessee's office space under this lease unless Lessee notifies Lessor of a different address in writing. Notice by noncertified mail is sufficient if actually received by the addressee or an employee or agent of addressee. The term "notice" shall be inclusive of notices, billings, requests, and demands.

28.1 Successors.
This lease shall bind and inure to the benefit of the parties, any guarantors of this lease, and their respective successors and assigns.

29.1 Building Operating Expense.
Unless otherwise agreed by the parties in writing, Lessor shall not charge Lessee for Building Operating Expenses, except those expenses defined in Section 7.2 and Section 8.2 of this Agreement. Valid charges for Building Operating Expenses shall be invoiced pursuant to Section 3.1, and shall be provided to Lessee in writing. Lessee shall include payment of any outstanding Building Operating Expenses in its next regular rent payment.

30.1 Representations and Warranties by Lessor.
Lessor warrants that Lessor is the sole owner of the land and improvements comprising the Lease Premises and that Lessor has full right to enter into this lease. Lessor's duties and warranties are limited to those expressly stated in this lease and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by Lessor other than those expressly contained in this lease.

31.1 Place of Performance.
Unless otherwise expressly stated in this lease, all obligations under this lease, including payment of rent and other sums due, shall be performed in the county where the office building is located, at the address designated from time to time by Lessor.

32.1 Miscellaneous.
(a) This lease contains the entire agreement of the parties. NO OTHER WRITTEN OR ORAL PROMISES OR REPRESENTATIONS HAVE BEEN MADE, AND NONE SHALL BE BINDING. This lease supersedes and replaces any previous lease between the parties on Lessee's office space, including any renewals or extensions thereunder. Except for reasonable changes in written rules, this lease shall not be amended or changed except by written instrument, signed by both Lessor and Lessee. LESSOR'S AGENTS DO NOT AND WILL NOT HAVE AUTHORITY TO (1) MAKE EXCEPTIONS, CHANGES OR AMENDMENTS TO THIS LEASE, OR FACTUAL REPRESENTATIONS NOT EXPRESSLY CONTAINED IN THIS LEASE, (2) WAIVE ANY RIGHT, REQUIREMENT, OR PROVISION OF THIS LEASE, OR (3) RELEASE LESSEE FROM ALL OR PART OF THIS

Building name: 401C Broadway Street
Lessor’s Name: Hays County, Texas
Lessees’ Name: City of San Marcos, Texas, administering the
Women, Infants, and Children (“WIC”) Program of San Marcos

Lessor initials: 
Lessee initials: 

LEASE, UNLESS SUCH ACTION IS IN WRITING AND SIGNED BY BOTH PARTIES TO THIS LEASE. Multiple lessees shall be jointly and severally liable under this lease. Notices, requests, or agreements to, from, or with one of multiple lessees shall be deemed to be to, from, or with all such Lessees. Under no circumstances shall Lessor or Lessee be considered an agent of the other. The lease shall not be construed against either party more or less favorably by reason of who drafted the lease or changes in the lease. Texas law applies. If any date of performance or exercise of a right ends on a Saturday, Sunday, or state holiday, such date shall be automatically extended through the next business day. Time is of the essence; and all performance dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided. Time for performance of non-monetary obligations of either party shall be reasonably extended to the extent delay is caused by force majeure (i.e. a cause such as riot, strikes, etc., beyond the control of the party obligated to perform). If any provision of this lease is invalid under present or future laws, the remainder of this lease shall not be affected.

(b) Subject to Funding. The obligations under this Lease are contingent upon the annual appropriation of funds by the San Marcos City Council based on funding from the Texas Department of State Health Services for the purposes of this Lease. If the San Marcos City Council fails to appropriate funds for such purposes in any fiscal year during the term of this Lease, the Lease term will be adjusted to terminate concurrently with the end of the period for which funding has been appropriated. Notwithstanding any other provision in this Lease to the contrary, termination of the Lease under this paragraph does not constitute a default by Lessee under any provisions of this Lease and the penalties and remedies for default outlined in this Lease are not applicable.

(c) Subject to State and Federal Funding Requirements. Notwithstanding anything to the contrary in this Lease, Landlord shall not assert or enforce a lien or security interest against any property of Lessee that is not permitted by applicable law or funding agreements with the State of Texas or United States of America related to the Lease Purpose. Moreover, any permitted lien or security interest shall be subordinate to any interest in property of the State of Texas or the United States of America arising by virtue of any funding agreements such entities may have with the Lessee. As Lessee is a governmental entity providing services funded with state and federal funds, Lessor agrees that it may not seize or deny access to any personal property, files, documents and any other possessions of Lessee or its officers, agents, employees or clients on or in the Leased Premises. In the event of a lock-out, Lessor agrees to allow Lessee all reasonable access during normal business hours to remove all such things enumerated in the previous sentence from the Leased Premises.

33.1 Exhibit List.
The exhibits attached to this lease are listed below. All exhibits are hereby incorporated in this Agreement by reference as if written fully herein.

- Exhibit A  Floor Plan of Lessee's Office Space
- Exhibit B  Hazardous Materials Statement

34.1 Authority to Sign.
The names and signatures of all parties are shown below; and all persons signing have been duly authorized to sign.

(Signatures are located on the following page)
LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

JAMES R. NUSE, P.E.
Printed name of person signing

Signature

City Manager
Title of person signing (if applicable)

630 East Hopkins, San Marcos, Texas 78666
Lessor Address

8/24/12
Date signed (Please initial all pages and exhibits)

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature

County Judge
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

8/14/12
Date signed (Please initial all pages and exhibits)

Attest:

County Clerk

Building name: 401C Broadway Street
Lessor’s Name: Hays County, Texas
Lessee’s Name: City of San Marcos, Texas, administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: JN
Lessee initials: BC
Floor Plan of Lessee's Office Space
(see paragraph 1.2 of lease)

Building Name: 401C Broadway Street
Approximate Usable SF: 3,200
Approximate Rentable SF: 3,200

The parties agree that the floor plan outlined in bold or hashmarked below is a true and correct diagram of Lessee's office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
This drawing was prepared using dimensions and features represented in the construction drawings. Some features may have been installed slightly different during construction.

This door was installed in the center of the wall during construction.
Hazardous Materials Statement

Various materials utilized in the construction of any improvements to the property or in the use thereof, past or present, may contain materials that have been or may in the future be determined to be hazardous. For example, some electrical transformers and other electrical components can contain PCBs, and asbestos may have been used in a wide variety of building components such as fire-proofing, air duct insulation, acoustical tiles, spray-on acoustical materials, linoleum, floor tiles and plaster. Such substances may be present on or in soils, underground water, building components or other portions of the leased premises in areas that may or may not be accessible or noticeable.

Current federal, state and local laws and regulations may require the clean-up of such hazardous or undesirable materials.

Lessor, real estate brokers, and leasing agents in this transaction have no expertise with respect to hazardous materials and have not made, nor will any of their statements constitute representations, either express or implied, regarding the existence or nonexistence of hazardous materials in or on the leased premises.
SECOND AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease at 401C Broadway Street San Marcos, Texas ("Amendment") is made this 11+ day of July, 2017, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of San Marcos, Texas, administering the Woman, Infants, and children ("WIC") Program of San Marcos (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 1.4 Rentable Area of the Agreement shall be amended to reflect the approximate 'rentable area' is 2,150 square feet.

Section 2.1 Base Rent and Additional Rents of the Agreement shall be amended to reflect the following:

<table>
<thead>
<tr>
<th>Monthly Rent</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>$965.00</td>
<td>$11,580.00</td>
</tr>
</tbody>
</table>

Section 4.1 Term, Possession, and Anniversary of the Agreement shall be amended to reflect that the last day of the lease term will be August 31, 2018.

Section 7.1 Utilities and Services by Lessee of the Agreement shall be amended as follows:

Except where otherwise stated in this lease, Lessor agrees to maintain existing accounts in its name, pay for the associated utilities and services, and submit a monthly invoice pursuant to Section 27.1 to Lessee for reimbursement. Lessee shall reimburse Lessor for the following utilities and services within thirty (30) days of receiving an undisputed invoice:

(a) 100% of Electric for the front building (account 001-0012718-04) and 25% of Electric for the back building (account 001-00025518-00)
(b) 25% of Water and Wastewater
(c) 25% of Solid Waste Disposal
(d) Phone/fax/data lines
(e) Natural Gas
(f) Security system monitoring

Disputed invoices under this section shall be resolved via the agreed-upon Dispute Resolution procedures cited in Section 23.1, below.

Exhibit A of the Agreement shall be amended as attached.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the 11+ day of July, 2017, as is evidenced by the authorized signatures of the Parties, below.
LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Charles W. Daniels
Printed name of person signing

Signature
City Manager
Title of person signing (if applicable)
630 East Hopkins, San Marcos, Texas 78666
Lessor Address

7-21-2017
Date signed

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature
County Judge
Title of person signing (if applicable)
111 E. San Antonio, San Marcos, Texas 78666
Lessees Address

7-11-17
Date signed

Attest: Deputy
County Clerk
EXHIBIT A
(two pages)

Floor Plan of Lessee's Office Space
(see paragraph 1.2 of lease)

Building Name: 401C Broadway St  
Approximate Usable SF: 2,150
Approximate Rentable SF: 2,150

The parties agree that the floor plan is a true and correct diagram of Lessee's office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
This drawing was prepared using dimensions and features represented in the construction drawings. Some features may have been installed slightly different during construction.

Approx. 525 sq-ft
(WIC use of back building)

Door to be secured by Hays County

Door to be secured by Hays County

Door to be installed for WIC access to Bathroom

Approx. 1825 sq-ft
(front building)

Hays County Use and Access Only =1400 sq-ft
(Hays County will access this area, shown as shaded, via the loading area and door in the back of the warehouse)

This door was installed in the center of the wall during construction.
SECOND AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease at 150 Lockhart Street, Kyle, Texas ("Amendment") is made this 11th day of July 2017, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of San Marcos, Texas, administering the Woman, Infants, and children ("WIC") Program of San Marcos (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 1.4 Rentable Area of the Agreement shall be amended to reflect the approximate 'rentable area' is 3,390 square feet.

Section 2.1 Base Rent and Additional Rents of the Agreement shall be amended to reflect the following:

<table>
<thead>
<tr>
<th>Monthly Rent</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,600.00</td>
<td>$19,200.00</td>
</tr>
</tbody>
</table>

Section 4.1 Term, Possession, and Anniversary of the Agreement shall be amended to reflect that the last day of the lease term will be August 31, 2018.

Exhibit A of the Agreement shall be amended as attached.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the 11th day of July 2017, as is evidenced by the authorized signatures of the Parties, below:

LESSOR
CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Charles W. Daniels
Printed name of person signing

Signature
City Manager
Title of person signing (if applicable)
630 East Hopkins, San Marcos, Texas 78666
Lessor Address

7-21-2017
Date signed

LESSEE
HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature
County Judge
Title of person signing (if applicable)
111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

7-11-17
Date signed

Attest:
County Clerk
**Floor Plan of Lessee's Office Space**  
(see paragraph 1.2 of lease)

<table>
<thead>
<tr>
<th>Building Name: 150 Lockhart St.</th>
<th>Approximate Usable SF: 3,390</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approximate Rentable SF: 3,390</td>
</tr>
</tbody>
</table>

The parties agree that the floor plan is a true and correct diagram of Lessee’s office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
File #: Res. 2018-98R, Version: 1

AGENDA CAPTION:
Consider approval of Resolution 2018-98R, approving a third amendment to an Interlocal Agreement for Commercial Office Lease with Hays County for the WIC Satellite Office at 150 Lockhart Street in Kyle for the purpose of extending the lease term for one additional year; authorizing the City Manager to execute said agreement; and declaring an effective date.

Meeting date: June 19, 2018

Department: Community Services - WIC

Amount & Source of Funding
Funds Required: $19,200
Account Number: 52360 - Multiple WIC accounts
Funds Available: $19,200
Account Name: Building Rental

Fiscal Note:
Prior Council Action: Original agreement approved in 2012.

City Council Strategic Initiative: [Please select from the dropdown menu below]
Community Partners
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 - Effective Social Services to those who can most benefit from them
☐ 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 WIC Program began leasing from Hays County in 2012. An amendment and extension was executed in 2017. This amendment provides for a one-year extension to August 31, 2019. There is no change in Rental Rate from previous year. This amendment added language allowing the City of San Marcos WIC Program to terminate the lease at the end of the month following delivery of 30 days’ written notice.

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 APPROVING A THIRD AMENDMENT TO INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE WITH HAYS COUNTY FOR THE WIC SATELLITE OFFICE AT 150 LOCKHART STREET IN KYLE FOR THE PURPOSE OF EXTENDING THE LEASE TERM FOR ONE ADDITIONAL YEAR; 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 Third Amendment to Interlocal Agreement for Commercial Office Lease with Hays County (the “Third Amendment”) is hereby approved.

PART 2. The City Manager is hereby authorized to sign the Third Amendment on behalf of the City.

PART 3. This resolution shall become effective immediately from and after its passage.

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
THIRD AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 3rd Amendment to Interlocal Agreement for the Commercial Office Lease at 150 Lockhart Street, Kyle, Texas ("Amendment") is made this _____ day of ________________ 2018, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of San Marcos, Texas, administering the Woman, Infants, and children ("WIC") Program of San Marcos (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 4.1 Term, Possession, and Anniversary of the Interlocal Agreement for the Commercial Office Lease ("Agreement") is hereby amended to reflect that the last day of the lease term will be August 31, 2019 or at the end of the month following delivery of 30 days’ written notice of termination by Lessee.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 3rd Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the _____ day of __________________________, 2018, as is evidenced by the authorized signatures of the Parties, below.

LENSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Printed name of person signing

Signature

City Manager
Title of person signing (if applicable)

630 East Hopkins, San Marcos, Texas 78666
Lessor Address

Date signed

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature

County Judge
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

Date signed

Attest: __________________________
County Clerk
INTERLOCAL AGREEMENT
FOR
COMMERICAL OFFICE LEASE
150 Lockhart Street, Kyle, Texas

This is a Interlocal Agreement for the Lease of Commercial Office Space (hereinafter “Agreement”) dated August 21, 2012 and entered into between the City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos, as (hereinafter “Lessee”) and Hays County, a political subdivision of the State of Texas as (hereinafter “Lessor”), whether one or more. The above-cited parties shall be collectively referred to as “the parties to this Agreement” or “the parties”.

1.1 Interlocal Agreement.
This is an Agreement made pursuant to the Interlocal Cooperation Act (Chapter 791, Texas Government Code), which empowers the parties to contract with each other in the performance of services that each party is authorized to perform individually, including the leasing of real property. As required by the Interlocal Cooperation Act, (i) the execution of this agreement is authorized by the governing body of each party to this Agreement; (ii) payments of rent by Lessee under this Agreement shall be made from current revenues that are available to Lessee; and (iii) the rents paid under this agreement are considered by the parties to be fair compensation to Lessor for the Leased Premises.

1.2 The Leased Premises.
Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the "Leased Premises" which consists of "Lessor's Office Space" as defined below.

(a) Lessor's Office Space. "Lessor's Office Space", to which Lessee shall have exclusive use rights to the office space outlined on the floor-plan contained in Exhibit A. The street address of the building is 150 Lockhart St., Kyle, Texas.

1.3 Lease Purpose.
Lessee shall use Lessee's Office Space for operation of the Women, Infants and Children (“WIC”) Program office and clinic space for the provision of services to WIC Program eligible members of the public (“Lease Purpose”).

1.4 Rentable Area.
Lessor's approximate "rentable area" is 3,200 square feet. Lessee shall allow Lessor uninhibited access to approximately 320 square feet, as defined in Exhibit A, during regular business hours (Monday through Friday, between 8 a.m. and 5 p.m.).

2.1 Base Rent and Additional Rents.
As set forth below, Lessee shall pay to Lessor "base rent(s)" per square foot of net rentable area per calendar year as set forth below, which amounts to the monthly and annualized rents set forth below.

<table>
<thead>
<tr>
<th>Base Rent</th>
<th>Monthly Rent</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Period</td>
<td>$1,853.00</td>
<td>$22,236.00</td>
</tr>
<tr>
<td>36 months</td>
<td>$1,853.00</td>
<td>$22,236.00</td>
</tr>
</tbody>
</table>

3.1 Date and Place of Payment.
The monthly rent shall be due on the first day of each calendar month without demand. Partial months shall be prorated. All rent and other sums are due in the county where the building is located at the address designated by Lessor from time to time. All sums due by Lessee shall be made from current funds, are not subject to any claim of credit by Lessee, and are without right of setoff or deduction. Monies mailed are considered timely paid only if received by Lessor by the due date. Rent and late payment charges shall be paid without notice or demand. All other sums shall be due upon delivery of written notice in accordance with paragraph 27.1.

Building name: 150 Lockhart Street
Lessor’s Name: Hays County, Texas
Lessee’s Name: City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos

Lessor initials: [Signature]
Lessee initials: [Signature]
3.2 Late Payments.
If any rent payment or other sum due by Lessee to Lessor is received and accepted by Lessor later than five (5) days after its due date, Lessee shall pay a late charge of the greater of $10.00 or 5% of such rent payment, plus $10.00 thereof for each day thereafter (for up to 15 days) until such rent or other sum is paid. Late charges shall be considered liquidated damages for Lessor's time inconvenience and overhead (except for attorneys fees and litigation costs) in collecting late rent. Lessor's acceptance of late rent or other sum shall not constitute permission for Lessee to pay the rent or other sum late thereafter and shall not constitute a waiver of Lessor's remedies for subsequent late payments. Late payment charges are due immediately upon notice or demand. All payments shall be by check or money order on a local bank, not cash. For each returned check, Lessee shall pay all applicable bank charges incurred by Lessor plus $25.00. Payments of any kind received by Lessor on behalf of Lessee may be applied at Lessor's option to non-rent items first, then to rent. Payment of rent by Lessee shall be an independent covenant. If Lessee has not timely paid rentals and other sums due on two or more occasions, or if a check from Lessee is returned for insufficient funds or no account, Lessor may, for the next twelve (12) months or the remainder of the lease term, whichever is shorter, require that all rent and other sums due be paid by cashier's check, certified check, or money order, without prior notice.

3.3 Security Deposit.
The total additional security deposit to be provided by Lessee, in current funds, is $1,853.00, at the time of execution of this lease. This security deposit will be held by Lessor to secure performance of Lessee's obligations under this lease. Lessor shall have a lien on the security deposit for that purpose. If Lessee fails to pay rent or other sums when due under this lease, Lessor may apply any cash security deposit toward amounts due and unpaid by Lessee. Lessee shall immediately restore the security deposit to its original amount after any portion of it is applied to amounts due and unpaid by Lessee. Lessor shall return the security deposit to Lessee within thirty (30) days after the termination of this Agreement, minus the cost of any damages to the Leased Premises caused by Lessee that are beyond normal wear and tear.

4.1 Term, Possession, and Anniversary.
The initial lease term shall be for 35 full calendar months from commencement date, plus the remainder of the last month, the last day of the lease term being August 31, 2015. The commencement date of this lease shall be September 21, 2012. Rent will begin to accrue on the lease commencement date.

4.2 Delivery of Possession.
Lessor shall deliver keys and/or access cards or codes and possession of Lessee's office space to Lessee on the lease commencement date stated in paragraph 4.1 unless otherwise agreed in writing by the parties. Lessee shall not be liable for rent until Lessor delivers possession of the leased premises to Lessee. If there is a delay in delivery of possession, the commencement date shall be delayed until Lessee's office space is ready for occupancy; and neither Lessor nor Lessor's agents shall otherwise be liable for any damages; and the lease shall not terminate.

5.1 Tenant Finish-Out.
Subject to paragraph 13.1, Lessee shall be allowed to make such initial improvements or alterations as are reasonably necessary for Lease Purpose. Lessor shall allow Lessee full access to the Leased Premises during preparation for move-in in advance of delivery of possession and shall pay for all utilities up to the date Lessor delivers possession under paragraph 4.2 of this Agreement.

6.1 Quiet Possession.
If Lessee is current and in compliance with all of Lessee's obligations under this lease, Lessee shall be entitled to peaceful and quiet possession and enjoyment of Lessee's office space, subject to the terms and conditions of this lease. Lessee shall have access to common parking areas at all times, subject to paragraph 9.2. Construction noise or vibrations shall not be considered a default by Lessor.

7.1 Utilities and Services by Lessee.
Except where otherwise stated in this lease, Lessor agrees to maintain existing accounts in its name, pay for the associated utilities and services, and submit a monthly invoice pursuant to Section 27.1 to Lessee for

Building name: 150 Lockhart Street
Lessor's Name: Hays County, Texas
Lessee's Name: City of San Marcos, Texas; administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc
Lessee initials: jm
reimbursement. Lessee shall reimburse Lessor for the following utilities and services within thirty (30) days of receiving an undisputed invoice:

(a) Electric
(b) Water and Wastewater
(c) Solid Waste Disposal
(d) Phone/fax/data lines
(e) Natural Gas
(f) Security system monitoring
(g) Interior janitorial services (if requested in writing by the City Manager of the City of San Marcos)

Disputed invoices under this section shall be resolved via the agreed-upon Dispute Resolution procedures cited in Section 23.1, below.

7.2 Utilities and Services by Lessor.
Except where otherwise stated in this lease, Lessor agrees to provide the following utilities and services at no additional charge:

(a) Grounds maintenance

7.3 Interruption of Utilities or Services.
Temporary interruption or malfunction of utilities, services, and/or telephones shall not render Lessor liable for damages, rent abatements, or release of any Lessee obligation. Lessor shall use diligent efforts to have such utilities and services restored as soon as reasonably possible.

8.1 Maintenance and Repairs by Lessor.
Except as provided in paragraph 8.2, Lessor shall repair and/or replace, as needed, the following items, so long as they are building standard items: including but not limited to ballasts, fixtures, exterior walls, the foundation, flooring beneath floor finishes, exterior windows, roofs, other structural elements, the electrical, plumbing, hardware, appliances, doors, wall and window coverings, and heating and ventilating systems of the building. Lessor shall provide additional maintenance necessary because of damages by persons other than Lessee, or Lessee's agents, employees, family, licensees, invitees or visitors. Lessor shall use diligence to provide for the maintenance, repair, reconnection of interrupted utilities or services, subject to any reimbursement obligations of Lessee under paragraph 8.2. Lessor may rekey at any time. Lessor may temporarily close any part of the common facilities if reasonably necessary for repairs or construction. Repairs and maintenance shall be in accordance with applicable governmental requirements. Lessor shall also provide weekly cleaning services

8.2 Maintenance and Repairs by Lessee.
Lessee shall promptly reimburse Lessor for the cost of maintaining, repairing or replacing non-building standard items and the cost of repairing or replacing damage which is caused inside Lessee's office space by Lessee, Lessee's agents, employees, family, or licensees, invitees, visitors, or customers or outside Lessee's office space by Lessee or Lessee's employee's, agents, or contractors. Kitchen appliances and wet bars in the Premises are not considered building standard items. Lessor shall have right of approval of all repairmen or maintenance personnel. Lessee shall not damage or allow other persons listed above to damage any portion of the leased premises. Lessee shall pay for replacement of all non-building standard light bulbs and for unstopping any drains or water closets in Lessee's office space. If Lessee or Lessee's workmen or contractors are permitted to repair, alter, or modify Lessee's office space, Lessee shall warrant that no mechanic or materialman's lien shall be filed against the leased premises and that all such contractors shall provide evidence of liability insurance as required by Lessor. All such work shall be in accordance with applicable governmental requirements.

8.3 Telecommunications.
All telecommunications equipment necessary to serve Lessee shall be located in Lessee's office space and paid for by Lessee. Lessee may not require Lessor to install or allow others, without the written consent of Lessor, to install telecommunication lines or equipment elsewhere in the building.

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[Signature]
Lessor initials: 
Lessee initials: 

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(a) Access. Except in emergency situations, Lessee shall have access to the Leased Premises at all times during the Lease Term. Lessor shall have access to the Leased Premises during working hours for reasonable business purposes upon prior notice to Lessee except notice shall not be necessary in the event of an emergency threatening life or property or the lawful exercise of Lessor's remedies in case of default by Lessee. Lessor may show the Leased Premises six (6) months before the lease expiration date or the date Lessee gives notice to vacate, whichever is earlier.

(b) Keys. Lessor shall furnish Lessee up to five (5) keys or access codes or cards for the Leased Premises. An initial deposit of $10.00 shall be charged for each key or access card provided by Lessor. Lessor shall not be liable for risk of loss resulting from Lessee's keys, access codes, or cards being stolen, lost or used by unauthorized persons. Lessee reserves the right to rekey or change locks for security reasons if new keys are timely furnished to Lessee.

(c) Locks. Lessee may not add locks, change locks, or rekey locks without written permission of Lessor. Locks may be changed at Lessee's request and expense. If locks to the Leased Premises are changed, Lessor may specify kind and brand of locks, placement, installation, master key compatibility, etc. If Lessee or any of Lessee's employees lock themselves out of Lessee's suite, said person must call a fellow-employee to gain access. Lessor is not authorized to unlock a door that accesses an area leased solely by Lessee except for emergency purposes.

(d) Security. Lessor shall have no duty to provide any security services of any kind unless expressly provided in this lease. Lessor shall not be liable to Lessee or Lessee's employees, family, customers, invitees, contractors, or agents for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism or other crimes. Lessee shall lock the doors of the Leased Premises when the last person leaves such Premises for the day. If such actions do not unreasonably interfere with Lessee's occupancy, Lessor may take reasonable measures that Lessor deems advisable for the security, safety, improvement, and preservation of the Building.

9.2 Parking.
Lessor shall have sole control of private parking spaces included within the subject matter of this lease. If vehicles are parked in violation of Lessor parking rules, if any, or in violation of state statutes, Lessor may exercise vehicle removal remedies under Texas Transportation Code, Chapter 684 upon compliance with statutory notice. Reserved parking spaces must be established by written agreement of the parties.

10.1 Occupancy, Nuisance, and Hazards.
Lessee's office space shall be occupied only by Lessee or Lessee's employees and shall not be left entirely vacant or used exclusively for storage. Lessee and Lessee's agents, employees, family, licensees, invitees, visitors, and contractors shall comply with all federal, state, and local laws relating to occupancy or to criminal conduct while such persons are on the leased premises. Lessee and the persons listed above shall not (i) use, occupy, or permit the use or occupancy of the leased premises for any purpose which is directly or indirectly forbidden by such laws or which may be dangerous to life or property, (ii) permit any public or private nuisance, (iii) disturb the quiet enjoyment of other tenants, (iv) do anything which might emit offensive odors or fumes, (v) make undue noise or vibrations, (vi) permit anything which would cancel insurance coverage or increase the insurance rate on the building or contents, or (vii) otherwise damage the leased premises, except for normal wear and tear. Normal wear and tear is damage that occurs without carelessness, negligence, accident, or abuse.

11.1 Taxes.
Lessor shall be responsible for payment of all taxes and assessments against the building. Lessee shall timely pay all taxes assessed against Lessee's furniture, equipment, fixtures, or other personal property in Lessee's office space.

12.1 Insurance.
Lessor and Lessee shall comply with the respective insurance obligations as set forth below:

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Lessor's Name: Hays County, Texas
Lessee's Name: City of San Marcos, Texas, administering The Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: ____________________________
Lessee initials: ____________________________
(a) **Lessor.** Lessor shall maintain commercial general liability insurance and all-risk insurance subject to standard policy exclusions and limitations through the Texas Association of Counties Risk Pool. Such insurance may contain policy exclusions as reasonably determined by Lessor. The coverage amounts shall be as Lessor may deem reasonably appropriate. Lessor shall have no responsibility to maintain any kind of insurance on Lessee's contents. Lessor shall have no responsibility to maintain fire and extended coverage insurance on Lessee's contents.

(b) **Lessee.** Lessee shall provide Lessee's own public liability insurance for its operations on the leased premises. In no event shall such coverage limits be less than three-hundred-thousand dollars in United States currency ($300,000 USD) per offense (aggregate). Lessee is required to maintain adequate fire and extended coverage insurance (including theft, vandalism and malicious mischief) on the contents in Lessee's office space, including fixtures, furniture, equipment, supplies, inventory, and other personal property. Such personal property is not covered by Lessor's insurance.

(c) **Insurance certificates.** Lessee shall provide Lessor with a certificate of Lessee's insurance or a copy thereof as required above within seven (7) days after Lessee initially occupies Lessee's office space or any portion thereof.

12.2 **Hold Harmless and Indemnity.**
To the extent that it is not covered by Lessor's insurance, Lessee shall indemnify Lessor for and shall hold Lessor harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessee or Lessor's agents, employees, family, licensees, or invitees. To the extent that it is not covered by Lessee's insurance, Lessor shall indemnify Lessee for and shall hold Lessee harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessor or Lessor's agents, employees, family, licensees, or invitees. To the extent that it is covered by Lessor's insurance, Lessor and Lessee shall not be liable to the other or the other's agents, employees, or family for any damage to personal property resulting from any act, omission, or negligence of any other tenant, visitor, or occupant of the office building. This paragraph shall survive termination or expiration of this lease. The provisions of this paragraph 12.2 are limited as follows: All obligations of the Lessee, shall be enforceable against Lessee only to the extent permitted by law and with the limitation and understanding of Lessor that Lessee in no manner waives any limitations on liability or any immunity from suit or liability granted by applicable laws or the Texas Constitution.

13.1 **Alterations by Lessee.**
Lessee may not make any alterations, improvements, door lock changes, or other modifications of any kind to the leased premises without Lessor's written consent. Consent for governmentally required changes may not be unreasonably withheld. "Alternations" include but are not limited to improvements glued, screwed, nailed, or otherwise permanently attached to the building, structural changes, roof and wall penetrations, and all plumbing, electrical, and HVAC changes. Requests for Lessor's approval shall be in writing and shall be detailed to Lessor's reasonable satisfaction. The foregoing shall be done only by Lessor's contractors or employees or by third parties approved by Lessor in writing. Lessee shall pay in advance for any requested alterations, improvements, lock changes, or other modifications which are approved and performed by Lessor. If same are performed by Lessee with Lessor's permission, Lessee shall not allow any liens to be placed against the buildings as a result of such additions or alterations. Alterations, improvements, and modifications done at Lessee's request shall comply with all applicable laws. Changes in Lessee's alterations or improvements in Lessee's space which may be later required by governmental action shall also be paid for by Lessee.

13.2 **Americans With Disabilities Act.**
Lessor shall be responsible for any requirements under the Americans with Disabilities Act or similar state or local laws as they relate to any common area entrance and exit doorways and elevators and any doors into Lessee's office space and to structural building items that Lessor is required to maintain under the terms of this lease. Lessee agrees to cooperate fully with Lessor to enable Lessor to timely comply with the provisions of this paragraph and to immediately forward to Lessor any notice Lessee receives regarding complaints, injuries, or claims by anyone claiming that those items which are the responsibility of Lessor do not comply with the provisions of the Americans

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Lessee initials:
with Disabilities Act. Lessee shall be responsible for any requirements under such architectural barrier laws as they relate to Lessee's use of Lessee's office space, including, but not limited to, the positioning of Lessee's furnishings within the office space.

14.1 Removal of Property by Lessee.
Lessee may remove its trade fixtures, furniture, and equipment only if (i) such removal is made prior to the end of the lease term, (ii) Lessee is not in default under this lease at time of removal, and (iii) such removal is not in anticipation of an early moveout prior to the end of the lease term. Lessee shall pay all costs of removal. Lessee shall have no rights to property remaining on the leased premises after moveout. Upon moveout, Lessee may not remove any alterations as defined in paragraph 13.1 or improvements such as wall-to-wall carpeting, bookshelves, window coverings, drapes, cabinets, paneling, counters, kitchen or breakroom built-ins, shelving, wall covering, and anything else attached to the floor, walls, or ceilings. If and only if Lessor requests in writing no later than one month after Lessee moves out and receives the consent of Lessor, Lessee may remove alterations, fixtures, equipment, cabling, and other property installed by Lessee. Lessee shall pay for cleaning or repairing damage caused by Lessee's removal of any property.

15.1 Subletting and Assignment.
Lessee may not sublet, assign, pledge, or mortgage this lease and may not grant licenses, commissions, or other rights of occupancy to all or any part of the Leased Premises without Lessor's prior written approval.

16.1 Destruction by Fire or Other Casualty.

(a) Total destruction, rent abatement, and restoration. If Lessee's office space is totally damaged by fire or other casualty so that it cannot reasonably be used by Lessee and if this lease is not terminated as provided in subparagraph "d" below, there shall be a total abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses until Lessee's office space is restored by Lessor and Lessee.

(b) Partial destruction, rent abatement, and restoration. If Lessee's office space is partially destroyed or damaged by fire or other hazard so that it can be only partially used by Lessee for the purposes allowed in this lease and if this lease is not terminated as provided in subparagraph "d" below, there shall be a partial abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses which fairly and reasonably corresponds to the time and extent to which Lessee's office space cannot reasonably be used by Lessee.

(c) Restoration. Lessor's obligation to restore shall be limited to the condition of the leased premises existing prior to the casualty. Lessor shall proceed with diligence to restore. During restoration, Lessee shall continue business to the extent practicable in Lessee's reasonable judgment.

(d) Lease termination. If Lessee's office space or the office center is so badly damaged that restoration and repairs cannot be completed within six (6) months after the fire or casualty, then this lease may be terminated as of the date of the destruction by either Lessor or Lessee by serving written notice upon the other. Termination notice must be delivered within one (1) month after the casualty.

17.1 Condemnation.
If the Leased Premises or any material portion thereof, including any portion of the parking lot is taken by condemnation and if the leased premises is thereby reasonably rendered unusable for Lessee's business use and activities, this lease shall automatically terminate as of the date title vests in the condemning authority pursuant to such taking or acquisition; and Lessor and Lessee shall be relieved of all further obligations under this lease. Lessor shall be entitled to recover from the condemning authority the full amount of Lessor's interest in this lease and in the property which is taken in condemnation; provided, however, if Lessee is not in default hereunder on the day of taking or acquisition by the condemning authority, Lessee shall be allowed to recover from the condemning authority, at Lessee's own expense, the value of Lessee's remaining leasehold interest and Lessee's trade fixtures, if any, which are taken in condemnation; but not otherwise. Lessee shall be responsible for Lessee's own attorney's fees and for proving its own damages.

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Lessor initials:  
Lessee initials:  

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18.1 Default by Lessor.

Lessee shall be entitled to recover actual damages and terminate this lease if (i) Lessor fails to pay any sum due and owing to Lessee within seven (7) days after written demand from Lessee, or (ii) Lessor remains in default on any other obligation for seven (7) days after Lessee’s written demand for performance. However, Lessor shall not be in default if Lessor promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default. If taxes and utilities are not timely paid, Lessee may pay same to the extent that it is necessary to avert foreclosure or cutoff. If Lessor fails to perform any covenant, term or condition of this lease that Lessor is obligated to perform and, as a consequence of such nonperformance, Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of Lessor’s equity in the property. Lessor shall have no liability whatsoever for any deficiency, and no other property or assets of Lessor shall be subject to levy, execution or other enforcement procedures as a result of such judgment.

19.1 Default by Lessee.

If Lessee defaults, Lessor shall have any or all remedies set forth below.

(a) Definition of default. The occurrence of any of the following shall constitute a default by Lessee: (i) failure to pay rent or any other sum due by Lessee under this lease within 3 days after written demand therefor by Lessor; (ii) failure to vacate on or before the last day of the lease term, renewal term, or extension period; (iii) failure to pay rent in advance on a daily basis in the event of unlawful holdover by Lessee; (iv) unauthorized early move-out or notice of same as set forth below; (v) acquisition of Lessee’s interest in the lease by a third party by judicial or non-judicial process; or (vi) failure to comply with any other provision of the lease (including rules) if such failure to comply is not cured as soon as possible after delivery of written notice by Lessor to Lessee. However, Lessee shall not be in default under subclause (vi) above if Lessor promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default.

(b) Utilities and services. If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor hand delivers to Lessee or to Lessee’s representative written notice of Lessor’s intent to terminate utilities or services which are furnished by Lessor, then Lessor may terminate such utilities or services after such 3-day notice period, without further notice. Lessor’s right to terminate such utilities or services shall occur automatically and without notice if Lessee’s rent is accelerated under subparagraph “d” below, relating to unlawful early move-out.

(c) Acceleration after notice of rental delinquency. If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor delivers to Lessee or to Lessee’s office space a written notice of Lessor’s intent to accelerate, then all rent for the remainder of the lease term shall be accelerated, due, and delinquent at the end of such 3-day notice period without further demand or notice. Such acceleration rights are in consideration of the rentals for the entire term being payable in monthly installments rather than in one lump sum at the beginning of the lease term. If Lessee has already vacated the leased premises, notice of acceleration may be delivered to Lessee pursuant to paragraph 27.1. Liability for additional rents accruing in the future (over and above any base rents) shall not be waived by such acceleration.

(d) Acceleration upon early move-out. If Lessee is lawfully evicted, or if Lessee moves out or gives verbal or written notice (in person or by an authorized employee or agent) of intent to move out prior to the end of the lease term without the rent being paid in full for the entire remainder of the lease term or renewal or extension period or without prior written consent of Lessor, all remaining rents for the remainder of the lease term shall be accelerated and due immediately and automatically, without demand or notice. Such acceleration shall occur even if the rent for the current month has been paid in full.

(e) Termination of possession. If Lessee is in default as defined in subparagraph “a” above and if Lessee remains in default for three (3) days after Lessor gives notice of such default to Lessee, or if Lessee abandons the leased premises, Lessor may (with or without demand for performance) terminate Lessee’s right of possession by giving one day’s written notice to vacate; and Lessor shall be entitled to immediate
possession without termination of Lessee's obligations under the lease. Lessor's repossession shall not be considered an election to terminate this lease unless written notice of such intention to terminate is given to Lessee by Lessor. Repossession may be by voluntary agreement or by eviction lawsuit. Commencement of an eviction lawsuit shall not preclude other Lessor remedies under this lease or other laws.

(f) **Reletting costs.** If Lessee is in default under this lease and if Lessor terminates Lessee's right of possession without terminating this lease and Lessee's space is released, Lessee shall pay upon Lessor's demand the following: (i) all costs of reletting (which in no event shall be less than one month's rent), including leasing commissions, rent concessions (whether in the form of assuming or buying out lease remainders elsewhere, free rent for a period of time, or reduced rental rates), utilities during the vacancy, advertising costs, administrative overhead, and all costs of repair, remodeling, or redecorating for replacement tenants in Lessee's office space, (ii) all rent and other indebtedness due from Lessee to Lessor through the date of termination of Lessee's right of possession, and (iii) all rent and other sums required to be paid by Lessee during the remainder of the entire lease term, subject to the acceleration paragraphs above.

(g) **Mitigation by Lessor.** Upon eviction or voluntary vacation of the leased premises by Lessee without the lease being terminated by Lessor, Lessor shall make reasonable efforts to relet the leased premises. After deduction of reasonable expenses incurred by Lessor, Lessee shall receive credit for any rentals received by Lessor through reletting the leased premises during the remainder of the lease term or renewal or extension period. Such deductible expenses may include real estate commissions, attorney's fees, and all other commercially reasonable expenses in connection with reletting. Lawsuit to collect amounts due by Lessee under this lease may be brought from time to time on one or more occasions without the necessity of Lessor's waiting until the expiration of the lease term. If judgment for accelerated rents is recovered, Lessor shall give credit against such judgment for subsequent payments made by Lessee and subsequent rentals received by Lessor from other tenants of Lessee's office space, less lawful deductions and expenses of reletting.

(h) **Termination of lease.** Lessor may terminate this lease upon default by Lessee or at any time after Lessor's lawful re-entry or repossession following default by Lessee. Lessor's agents have authority to terminate the lease only by written notice given pursuant to paragraph 27.1. After termination, Lessee shall remain liable to Lessor for all sums accruing and unpaid prior to termination and any year-end adjustments of building operating expense, prorated through the date of termination.

(i) **Damages.** In addition to other remedies, Lessor may recover actual damages incurred.

20.1 **Late Payment Fees and Other Expenses.**
Late payment fees as set forth in paragraph 3.2 shall be considered reasonable liquidated damages for the time, trouble, inconvenience, and administrative overhead expense incurred by Lessor in collecting late rentals, such elements of damages being uncertain and difficult to ascertain. Late payment fees shall not be liquidated damages for attorney's fees or for Lessor's loss of use of such funds during the time of delinquency. Whenever Lessee requests Lessor to take any action or give any consent required or permitted under this Lease, Lessee will reimburse Lessor for Lessor's reasonable costs incurred in reviewing the proposed action or consent, including reasonable attorneys', engineers', or architects' fees, within ten (10) days after Lessor's delivery to Lessee of a statement of such costs. Lessee shall be obligated to make such reimbursement without regard to whether Lessor consents to any such proposed action.

21.1 **Nonwaiver.**
The acceptance of monies past due or the failure to complain of any action, nonaction, delayed payment, or default, whether singular or repetitive, shall not constitute a waiver of rights or obligations under the lease. Lessor's or Lessee's waiver of any right or any default shall not constitute waiver of other rights, violations, defaults, or subsequent rights, violations, or defaults under this lease. No act or omission by Lessor or Lessor's agents shall be deemed an acceptance or surrender of the leased premises, and no agreement by Lessor to accept a surrender of the leased premises shall be valid unless it is in writing and signed by a duly authorized agent of Lessor.

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Lessee's Name: City of San Marcos, Texas, administering the Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: 
Lessee initials: 

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22.1 Transfer of Ownership by Lessor.
If Lessor transfers ownership of the office building (other than as security for a mortgage) and if Lessor has delivered to the transferee all of Lessee's security deposits and any prepaid rents, Lessor shall be released from all liability under the lease for Lessor obligations (other than for Lessor defaults arising prior to the transfer and noted in any estoppel certificate signed by Lessee); and such transferee shall become liable as Lessor. Such right to be released of liability shall accrue to subsequent owners only if such transfer is in good faith and for consideration.

23.1 Dispute Resolution.

(a) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Lease. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

(b) Mediation. If the dispute has not been resolved within thirty (30) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

(c) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

24.1 Surrender of Premises.
When Lessee moves out, Lessee shall surrender Lessee’s office space in the same condition as on the date of lease commencement by Lessee (as changed or improved from time to time in accordance with this Agreement), less ordinary wear and tear. Removal of property from the leased premises is subject to paragraph 14.1. Upon surrender, Lessee shall provide Lessor with all of Lessee’s keys, access codes and cards to the Leased Premises and the combination to all safes and vaults, if any in the Leased Premises.

25.1 Holding Over.
If Lessee remains in possession of the leased premises after the expiration of the lease (including valid lease extensions), then (i) Lessee shall be deemed to be occupying the leased premises as a tenant-at-sufferance on a daily basis, subject to all obligations of the lease, (ii) Lessee shall pay rent for the entire holdover period at the rate of 125% of the then-current rental rate under this lease, (iii) Lessee shall be subject to all other remedies of Lessor as provided in paragraph 19.1, and (iv) Lessee shall, to the extent permitted by law and without waiving any limitations on liability or immunity from suit or liability under applicable laws or the Texas Constitution, indemnify Lessor and/or prospective tenants for damages, including lost rentals, storage expenses, and attorney's fees. Holdover rents shall be immediately due on a daily basis and delinquent without notice or demand; and the prior written notice and
waiting period requirements of this lease shall not be necessary in order for Lessor to exercise remedies thereunder. By written agreement of the parties, Lessee may avoid being subjected to the above terms and penalties by extending the lease term for a period of one month (and for as many one-month periods thereafter as agreed to by the parties) at a minimum rate of 125% of the then-current rental rate under this lease.

26.1 Signs and Building Name.
Except for standard suite signage and building directory listings, there shall be no signs, symbols, or identifying marks on or in the building, halls, elevators, staircases, entrances, parking areas, landscape areas, doors, walls, or windows without prior written approval of Lessor. All signs or lettering shall conform to the sign and lettering criteria established by Lessor. Unless otherwise agreed by the parties, suite signage and building directory changes shall be done exclusively by Lessor and at Lessee’s expense. Lessor may remove all unapproved signs without prior notice to Lessee and at Lessee’s expense.

27.1 Notices.
Whenever written notice is required or permitted under this lease, such notice shall be in writing and shall be either (i) hand delivered personally to the party being notified, (ii) hand delivered to or inside such party’s mailing address, (iii) delivered by fax provided there is a fax transmittal confirmation, or (iv) delivered at such party’s mailing address by overnight commercial courier or by certified mail, return receipt requested. The mailing address of Lessor shall be the address to which Lessee normally mails or delivers the monthly rent unless Lessor notifies Lessee of a different address in writing. The mailing address of Lessee shall be Lessee’s office space under this lease unless Lessee notifies Lessor of a different address in writing. Notice by noncertified mail is sufficient if actually received by the addressee or an employee or agent of addressee. The term “notice” shall be inclusive of notices, billings, requests, and demands.

28.1 Successors.
This lease shall bind and inure to the benefit of the parties, any guarantors of this lease, and their respective successors and assigns.

29.1 Building Operating Expense.
Unless otherwise agreed by the parties in writing, Lessor shall not charge Lessee for Building Operating Expenses, except those expenses defined in Section 7.2 and Section 8.2 of this Agreement. Valid charges for Building Operating Expenses shall be invoiced pursuant to Section 3.1, and shall be provided to Lessee in writing. Lessee shall include payment of any outstanding Building Operating Expenses in its next regular rent payment.

30.1 Representations and Warranties by Lessor.
Lessor warrants that Lessor is the sole owner of the land and improvements comprising the Lease Premises and that Lessor has full right to enter into this lease. Lessor's duties and warranties are limited to those expressly stated in this lease and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by Lessor other than those expressly contained in this lease.

31.1 Place of Performance.
Unless otherwise expressly stated in this lease, all obligations under this lease, including payment of rent and other sums due, shall be performed in the county where the office building is located, at the address designated from time to time by Lessor.

32.1 Miscellaneous.
(a) This lease contains the entire agreement of the parties. NO OTHER WRITTEN OR ORAL PROMISES OR REPRESENTATIONS HAVE BEEN MADE, AND NONE SHALL BE BINDING. This lease supersedes and replaces any previous lease between the parties on Lessee’s office space, including any renewals or extensions thereunder. Except for reasonable changes in written rules, this lease shall not be amended or changed except by written instrument, signed by both Lessor and Lessee. LESSOR’S AGENTS DO NOT AND WILL NOT HAVE AUTHORITY TO (1) MAKE EXCEPTIONS, CHANGES OR AMENDMENTS TO THIS LEASE, OR FACTUAL REPRESENTATIONS NOT EXPRESSLY CONTAINED IN THIS LEASE, (2) WAIVE ANY RIGHT, REQUIREMENT, OR PROVISION OF THIS LEASE, OR (3) RELEASE LESSEE FROM ALL OR PART OF THIS

Building name: 150 Lockhart Street
Lessor’s Name: Hays County, Texas
Lessee’s Name: City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos
Lessee initials: [Signature]

Lessor initials: [Signature]
LEASE, UNLESS SUCH ACTION IS IN WRITING AND SIGNED BY BOTH PARTIES TO THIS LEASE. Multiple lessees shall be jointly and severally liable under this lease. Notices, requests, or agreements to, from, or with one of multiple lessees shall be deemed to be to, from, or with all such Lessees. Under no circumstances shall Lessor or Lessee be considered an agent of the other. The lease shall not be construed against either party more or less favorably by reason of who drafted the lease or changes in the lease. Texas law applies. If any date of performance or exercise of a right ends on a Saturday, Sunday, or state holiday, such date shall be automatically extended through the next business day. Time is of the essence; and all performance dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided. Time for performance of non-monetary obligations of either party shall be reasonably extended to the extent delay is caused by force majeure (i.e. a cause such as riot, strikes, etc., beyond the control of the party obligated to perform). If any provision of this lease is invalid under present or future laws, the remainder of this lease shall not be affected.

(b) Subject to Funding. The obligations under this Lease are contingent upon the annual appropriation of funds by the San Marcos City Council based on funding from the Texas Department of State Health Services for the purposes of this Lease. If the San Marcos City Council fails to appropriate funds for such purposes in any fiscal year during the term of this Lease, the Lease term will be adjusted to terminate concurrently with the end of the period for which funding has been appropriated. Notwithstanding any other provision in this Lease to the contrary, termination of the Lease under this paragraph does not constitute a default by Lessee under any provisions of this Lease and the penalties and remedies for default outlined in this Lease are not applicable.

(c) Subject to State and Federal Funding Requirements. Notwithstanding anything to the contrary in this Lease, Landlord shall not assert or enforce a lien or security interest against any property of Lessee that is not permitted by applicable law or funding agreements with the State of Texas or United States of America related to the Lease Purpose. Moreover, any permitted lien or security interest shall be subordinate to any interest in property of the State of Texas or the United States of America arising by virtue of any funding agreements such entities may have with the Lessee. As Lessee is a governmental entity providing services funded with state and federal funds, Lessor agrees that it may not seize or deny access to any personal property, files, documents and any other possessions of Lessee or its officers, agents, employees or clients on or in the Leased Premises. In the event of a lock-out, Lessor agrees to allow Lessee all reasonable access during normal business hours to remove all such things enumerated in the previous sentence from the Leased Premises.

33.1 Exhibit List.
The exhibits attached to this lease are listed below. All exhibits are hereby incorporated in this Agreement by reference as if written fully herein.

   Exhibit A Floor Plan of Lessee’s Office Space
   Exhibit B Hazardous Materials Statement

34.1 Authority to Sign.
The names and signatures of all parties are shown below; and all persons signing have been duly authorized to sign.

(Signatures are located on the following page)
LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

JAMES R. NUSE, P.E.,
Printed name of person signing

Signature

City Manager
Title of person signing (if applicable)

630 East Hopkins, San Marcos, Texas 78666
Lessor Address

8/24/12
Date signed (Please initial all pages and exhibits)

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature

County Judge
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

8/14/12
Date signed (Please initial all pages and exhibits)

Attest:

County Clerk

Building name: 130 Lockhart Street
Lessor’s Name: Hays County, Texas
Lessee’s Name: City of San Marcos, Texas, administering the Women, Infants, and Children (“WIC”) Program of San Marcos

Lessor initials: 
Lessee initials: 
Floor Plan of Lessee's Office Space
(see paragraph 1.2 of lease)

Building Name: 150 Lockhart Street
Approximate Usable SF: 3,200
Approximate Rentable SF: 3,200

The parties agree that the floor plan outlined in bold or hashmarked below is a true and correct diagram of Lessee's office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
Hazardous Materials Statement

Various materials utilized in the construction of any improvements to the property or in the use thereof, past or present, may contain materials that have been or may in the future be determined to be hazardous. For example, some electrical transformers and other electrical components can contain PCBs, and asbestos may have been used in a wide variety of building components such as fire-proofing, air duct insulation, acoustical tiles, spray-on acoustical materials, linoleum, floor tiles and plaster. Such substances may be present on or in soils, underground water, building components or other portions of the leased premises in areas that may or may not be accessible or noticeable.

Current federal, state and local laws and regulations may require the clean-up of such hazardous or undesirable materials.

Lessor, real estate brokers, and leasing agents in this transaction have no expertise with respect to hazardous materials and have not made, nor will any of their statements constitute representations, either express or implied, regarding the existence or nonexistence of hazardous materials in or on the leased premises.
SECOND AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease at 401C Broadway Street San Marcos, Texas ("Amendment") is made this 11th day of July, 2017, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of San Marcos, Texas, administering the Woman, Infants, and children ("WIC") Program of San Marcos (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 1.4 Rentable Area of the Agreement shall be amended to reflect the approximate "rentable area" is 2,150 square feet.

Section 2.1 Base Rent and Additional Rents of the Agreement shall be amended to reflect the following:

<table>
<thead>
<tr>
<th>Monthly Rent</th>
<th>Annual Rent</th>
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</thead>
<tbody>
<tr>
<td>$965.00</td>
<td>$11,580.00</td>
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</tbody>
</table>

Section 4.1 Term, Possession, and Anniversary of the Agreement shall be amended to reflect that the last day of the lease term will be August 31, 2018.

Section 7.1 Utilities and Services by Lessee of the Agreement shall be amended as follows:

Except where otherwise stated in this lease, Lessor agrees to maintain existing accounts in its name, pay for the associated utilities and services, and submit a monthly invoice pursuant to Section 27.1 to Lessee for reimbursement. Lessee shall reimburse Lessor for the following utilities and services within thirty (30) days of receiving an undisputed invoice:

(a) 100% of Electric for the front building (account 001-0012718-04) and 25% of Electric for the back building (account 001-00025518-00)
(b) 25% of Water and Wastewater
(c) 25% of Solid Waste Disposal
(d) Phone/fax/data lines
(e) Natural Gas
(f) Security system monitoring

Disputed invoices under this section shall be resolved via the agreed-upon Dispute Resolution procedures cited in Section 23.1, below.

Exhibit A of the Agreement shall be amended as attached.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 2nd Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the 11th day of July, 2017, as is evidenced by the authorized signatures of the Parties, below.
LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Charles W. Daniels
Printed name of person signing

Signature

City Manager
Title of person signing (if applicable)

630 East Hopkins, San Marcos, Texas 78666
Lessor Address

7-21-2017
Date signed

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature

County Judge
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666
Lessees Address

7-11-17
Date signed

Attest:  
County Clerk

Deputy
Floor Plan of Lessee's Office Space
(see paragraph 1.2 of lease)

Building Name: 401C Broadway St.  
Approximate Usable SF: 2,150  
Approximate Rentable SF: 2,150

The parties agree that the floor plan is a true and correct diagram of Lessee's office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
Exhibit A

This drawing was prepared using dimensions and features represented in the construction drawings. Some features may have been installed slightly different during construction.

Hays County Use and Access Only =1400 sq-ft
(Hays County will access this area, shown as shaded, via the loading area and door in the back of the warehouse)

Approx. 525 sq-ft
(WC use of back building)

Door to be secured by Hays County

Door to be installed for WC access to Bathroom

Approx. 1625 sq-ft
(front building)

STORAGE

UTILITY CLOSET

OFFICE

PUBLIC BATHROOM

MALE BATHROOM

FEMALE BATHROOM
SECOND AMENDMENT TO
INTERLOCAL AGREEMENT FOR COMMERCIAL OFFICE LEASE

This 2\textsuperscript{nd} Amendment to Interlocal Agreement for the Commercial Office Lease at 150 Lockhart Street, Kyle, Texas ("Amendment") is made this \textsuperscript{11\textsuperscript{th}} day of \textsuperscript{July} 2017, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of San Marcos, Texas, administering the Woman, Infants, and children ("WIC") Program of San Marcos (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

Section 1.4 Rentable Area of the Agreement shall be amended to reflect the approximate "rentable area" is 3,390 square feet.

Section 2.1 Base Rent and Additional Rents of the Agreement shall be amended to reflect the following:

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<thead>
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<th>Monthly Rent</th>
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<td>$1,600.00</td>
<td>$19,200.00</td>
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Section 4.1 Term, Possession, and Anniversary of the Agreement shall be amended to reflect that the last day of the lease term will be August 31, 2018.

Exhibit A of the Agreement shall be amended as attached.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 2\textsuperscript{nd} Amendment to Interlocal Agreement for the Commercial Office Lease is hereby executed this the \textsuperscript{11\textsuperscript{th}} day of \textsuperscript{July} 2017, as is evidenced by the authorized signatures of the Parties, below.

LESSOR

CITY OF SAN MARCOS
A MUNICIPAL CORPORATION
Printed name of company or firm (if applicable)

Charles W. Daniels
Printed name of person signing

Signature
City Manager
Title of person signing (if applicable)
630 East Hopkins, San Marcos, Texas 78666
Lessor Address

\text{7-21-2017}
Date signed

LESSEE

HAYS COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS
Printed name of company or firm (if applicable)

BERT COBB, M.D.
Printed name of person signing

Signature
County Judge
Title of person signing (if applicable)
111 E. San Antonio, San Marcos, Texas 78666
Lessee Address

\text{7-11-17}
Date signed

Attest: Deputy County Clerk
Floor Plan of Lessee's Office Space
(see paragraph 1.2 of lease)

Building Name: 150 Lockhart St.  
Approximate Usable SF: 3,390  
Approximate Rentable SF: 3,390

The parties agree that the floor plan is a true and correct diagram of Lessee’s office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)
AGENDA CAPTION:
Consider approval of Resolution 2018-99R, approving the award of a contract to DellEmc, Inc. For the Dell Servers and Hardware Licensing (#DIR-TSO-3763) with a total value estimated of $174,130.71; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

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

Amount & Source of Funding
Funds Required: $174,130.71
Account Number: 50036112.70400 ($58,043.57); 51536112.70400 ($45,133); 51536163.70200 ($12,913); 52036112.70400 ($32,114); 52036163.70200 ($25,930)
Funds Available: $174,131
Account Name: IT CAPITAL PROJECTS-W/WW, ELECTRIC, GENERAL

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

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

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

Choose an item.

Background Information:
The City is in the process of replacing four (4) core production servers that have reached the end of their five (5) year warranty with three (3) higher density next generation servers. In addition to the servers, IT will be purchasing NVIDIA graphic processing licenses to increase the user experience and performance of the heavily utilized virtual technology.

The Texas Comptroller of Public Accounts, Department of Information Resources (DIR), awarded a contract #DIR-TSO-3763, to DellEMC for servers and hardware licensing. City Staff recommends awarding a contract to DellEMC, through this DIR contract, for three (3) PowerEdge Servers and a five (5) year license for a total amount of $174,130.71.

Below is the breakout for the segments of the purchase:
- $123,130.71 - Servers
- $ 51,000.00 - Licenses

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 2018-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT TO DELL EMC, INC. FOR THE DELL SERVERS AND HARDWARE LICENSING (#DIR-TSO-3763) WITH A TOTAL VALUE ESTIMATED OF $174,130.71; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract to Dell EMC, Inc. for the Dell Servers and Hardware Licensing (#DIR-TSO-3763) with a total value estimated of $174,130.71 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
A quote for your consideration!

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

**Total:** $123,130.71

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<tr>
<td>CITY OF SAN MARCOS</td>
<td>53576</td>
<td>(512) 393-8112</td>
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<tr>
<th>Sales rep information:</th>
<th>Billing Information:</th>
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<tr>
<td>Caroline Richter</td>
<td>CITY OF SAN MARCOS</td>
</tr>
<tr>
<td><a href="mailto:Caroline_Richter@Dell.com">Caroline_Richter@Dell.com</a></td>
<td>630 E HOPKINS ST</td>
</tr>
<tr>
<td>(800) 456-3355</td>
<td>SAN MARCOS</td>
</tr>
<tr>
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<td></td>
<td>US</td>
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**Pricing Summary**

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| Subtotal: | $123,130.71 |
| Shipping: | $0.00 |
| Environmental Fees: | $0.00 |
| Non-Taxable Amount: | $123,130.71 |
| Taxable Amount: | $0.00 |
| Estimated Tax: | $0.00 |
| Total: | $123,130.71 |

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

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

Regards,
Caroline Richter

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

<table>
<thead>
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**Shipping Contact:**
KAYLA LAMM
Shipping phone:
(512) 393-8124
Shipping via:
DELL Standard Delivery
Shipping Address:
630 E HOPKINS
SAN MARCOS
TX 78666-6314
US

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421-5736  No Media Required 3 - -
379-BCQV  iDRAC Group Manager, Enabled 3 - -
379-BCSF  iDRAC, Factory Generated Password 3 - -
330-BBHH  Riser Config 4, 3x8, 4 x16 slots 3 - -
540-BBBZ  QLogic 57800 2x10Gb BT + 2x1Gb BT Network Daughter Card 3 - -
385-BBLE  IDSDM and Combo Card Reader 3 - -
385-BBCF  Redundant SD Cards Enabled 3 - -
385-BBKI  64GB microSDHC/SDXC Card 3 - -
385-BBKI  64GB microSDHC/SDXC Card 3 - -
429-ABBJ  No Internal Optical Drive 3 - -
384-BBPZ  6 Performance Fans for R740/R740XD 3 - -
450-AFMQ  Dual, Hot-plug, Redundant Power Supply (1+1), 1600W, 250 Volt Power Cord Required for Use 3 - -
325-BCHU  PowerEdge 2U Standard Bezel 3 - -
350-BBKG  Dell EMC Luggage Tag 3 - -
350-BBJU  Quick Sync 2 (At-the-box mgmt) 3 - -
750-AABF  Power Saving Dell Active Power Controller 3 - -
770-BBBR  ReadyRails Sliding Rails With Cable Management Arm 3 - -
631-AACK  No Systems Documentation, No OpenManage DVD Kit 3 - -
332-1286  US Order 3 - -
813-9119  Dell Hardware Limited Warranty Plus On-Site Service 3 - -
813-9147  ProSupport Plus Mission Critical: 4-Hour 7x24 On-Site Service with Emergency Dispatch, 3 Years 3 - -
813-9148  ProSupport Plus Mission Critical: 7x24 HW/SW Technical Support and Assistance, 3 Years 3 - -
951-2015  Thank you for choosing Dell ProSupport Plus. For tech support, visit http://www.dell.com/contactdell 3 - -
804-6750  ProDeploy Plus Dell Server R Series 1U/2U - Deployment 3 - -
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Estimated Tax: $0.00  
Total: $123,130.71
Unless you have a separate written agreement that specifically applies to this order, your order is subject to Dell's Terms of Sale (for consumers the terms include a binding arbitration provision). Please see the legal disclaimers below for further information.

Important Notes

Terms of Sale

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

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

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

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

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

Pricing, Taxes, and Additional Information

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

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

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

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

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

Quote number: 3000023422135.2
Quote date: Jun. 7, 2018
Quote expiration: Jul. 7, 2018
Deal ID: 15486946

Company name: CITY OF SAN MARCOS
Customer number: 53576
Phone: (512) 393-8112

Sales rep information:
Caroline Richter
Caroline_Richter@Dell.com
(800) 456-3355
Ext: 80000

Billing Information:
CITY OF SAN MARCOS
630 E HOPKINS ST
SAN MARCOS
TX 78666-6314
US
(512) 393-8112

Pricing Summary

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Environmental Fees: $0.00
Non-Taxable Amount: $51,000.00
Taxable Amount: $0.00
Estimated Tax: $0.00
Total: $51,000.00

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

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

Regards,
Caroline Richter

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

Shipping Group 1

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

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

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

For certain products shipped to end-users in California, a State Environmental Fee will be applied to your invoice. Dell encourages customers to dispose of electronic equipment properly.
File #: Res. 2018-100R, Version: 1

AGENDA CAPTION:
Consider approval of Resolution 2018-100R, authorizing the execution of an Advance Funding Agreement with the State of Texas, acting through the Texas Department of Transportation (CSJ No. 0914-33-078), for construction of a multi-use bike and pedestrian trail to begin east of the Hopkins Street Bridge and extend west of the Interstate Highway 35 southbound frontage road along the San Marcos River, with an estimated cost of participation by the City of $645,253; authorizing the City Manager to execute the Agreement on behalf of the City; and declaring an effective date.

Meeting date: June 19, 2018

Department: Community Services

Amount & Source of Funding
Funds Required: $645,253 (FY18 - $25,249 and the balance due FY19 - $620,004)
Account Number: FY061
Funds Available: $650,000
Account Name: San Marcos Bike and Pedestrian Trail

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

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
Background Information:
In 2013, the City was awarded funding through the Texas Transportation Commission and the Texas Department of Transportation (TxDOT) for the Cross-Town Pathway - A Bike and Pedestrian Transportation Corridor. Subsequent to the project being funded, a contract for professional services was executed between the City and Recreation Engineering and Planning, Inc., for project design. The project was out for bid when the funds were de-obligated by the state in 2016. The City of San Marcos re-submitted an application for funding in 2017 for this project under the new name San Marcos River Bike and Pedestrian Trail. The City was notified in November 2017 that our application was approved for funding. The total project cost estimate is $2,714,326. Federal participation is $1,935,758, State Participation (Indirect cost) is $133,315, and the local match is $645,253.

Project Scope
The City proposes to construct an east/west Shared Use Path (SUP) to the existing surface transportation system. The San Marcos River Bike and Pedestrian Trail will begin east of Hopkins St. Bridge and end west of the IH35 south bound frontage road along the San Marcos River at Lucio Park. The almost 2-mile long, 10-foot-wide concrete trail, lighted SUP will be constructed with 6” reinforced concrete using steel rebar. Improvements include a pedestrian bridge over Purgatory Creek, bikeway signage, benches, trash receptacles, bike racks, and under-crossings at Cheatham Street and at the Union Pacific railroad at Rio Vista Park.

TxDOT is requesting the City of San Marcos approve a Resolution affirming support of the project and execution of an Advance Funding Agreement (AFA).

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Approve Resolution and execution of Advance Funding Agreement.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN ADVANCE FUNDING AGREEMENT WITH THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION (CSJ NO. 0914-33-078), FOR CONSTRUCTION OF A MULTI-USE BIKE AND PEDESTRIAN TRAIL TO BEGIN EAST OF THE HOPKINS STREET BRIDGE AND EXTEND WEST OF THE INTERSTATE HIGHWAY 35 SOUTHBOUND FRONTAGE ROAD ALONG THE SAN MARCOS RIVER, WITH AN ESTIMATED COST OF PARTICIPATION BY THE CITY OF $645,253; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached Advance Funding Agreement with the State of Texas, acting through the Texas Department of Transportation (CSJ No. 0914-33-078) for construction of a multi-use bike and pedestrian trail to begin east of the Hopkins Street Bridge and extend west of the Interstate Highway 35 Southbound frontage road along the San Marcos River (the “Agreement”), is 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 June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
State-Selected Off-System

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project ("Agreement") is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of San Marcos (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as San Marcos River Shared Use Path (Project), and

WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 115076 (MO) dated October 26, 2017 awarding funding for TASA projects in the 2017 TASA Program Call of the State, including Project, and
WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated 06/19/2018, which is attached to and made a part of this Agreement as Attachment A, Resolution or Ordinance. A map showing the Project location appears in Attachment B, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of Agreement and Performance
   A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
   B. Period of Performance.
      1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
      2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

2. Scope of Work and Use of Project
   A. This project will construct a 2-mile-long, 10-foot-wide shared use path on the banks of the San Marcos River from just east of Hopkins Street Bridge to just west of IH 35 southbound frontage road. Improvements include a pedestrian bridge over Purgatory Creek, bikeway signage, benches, trash receptacles, bike racks, and undercrossings at Cheatham Street and at the Union Pacific railroad. This shared use path will be independent of roadway right-of-way, connecting a variety of recreational and institutional areas and will terminate just outside of downtown San Marcos.
   B. Any project changes proposed must be submitted in writing by Local Government to State. Changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

3. Project Sources and Uses of Funds
   The total estimated development cost of the Project is shown in Attachment C, Project Budget Estimate and Source of Funds (Attachment C).
   A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification

Page 2 of 18
in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

B. The total estimated project cost as shown in Attachment C includes the Local Government’s estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State’s In-Kind Match Reporting form.

C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

D. The Project budget and source of funds estimate based on the budget provided in the nomination form is included in Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.

E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

F. Local Government will be responsible for all non-federal participation costs associated with Project, including any overruns in excess of Project’s estimated budget and any operating or maintenance expenses.

G. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State’s estimated construction oversight and construction cost.

H. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100 percent of any overruns above the federally authorized amount.
Local Government will make payment to State within 30 days from receipt of State’s written notification.

I. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the “Texas Department of Transportation”. The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.

J. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.

K. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State’s notification.

L. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.

M. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

N. State will not pay interest on any funds provided by Local Government.

O. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.

P. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.

Q. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

4. Termination of the Agreement
A. This Agreement may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties;
2. By any party with 90 days written notice; or
3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

C. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State’s cost accounting system and with 2 CFR Part 200 recapture requirements.

D. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:

2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
3. Local Government withdraws from participation in Project.
4. State determines that federal funding may be lost due to Project not being implemented and completed.
5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
6. The associated FPAA is not issued by the end of the third federal fiscal year following the federal fiscal year for which the funds are authorized. Federal fiscal years run October 1 through September 30.
7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

E. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

5. Amendments
This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

6. Remedies
This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.
7. **Utilities**

Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government’s failure to ensure that utilities or utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. Unless specified in (1) the nomination form approved by State or MPO in consultation with State and (2) this agreement, Local Government will not be reimbursed with federal or state funds for the cost of required utility work. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State’s request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

8. **Environmental Assessment and Mitigation**

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

A. Local Government is responsible for the identification and assessment of any environmental problems associated with the development of Project.

B. Local Government is responsible for the cost of any environmental problem’s mitigation and remediation. These costs will not be reimbursed or credited towards Local Government’s financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.

C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. **Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. **Architectural and Engineering Services**

A. Architectural and engineering services for preliminary engineering will be provided by Local Government. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services...
contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TASA reimbursement.

B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior’s Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.

D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

11. Construction Responsibilities
A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.

B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.

C. All contract change order review and approval procedures must be approved by State prior to start of construction.

D. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.
E. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.

F. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded shall be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

12. Project Maintenance
   A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project’s original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

   B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.

   C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.

   D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must
continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

13. **Right of Way and Real Property Acquisition**
   
   A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
   
   B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
   
   C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.
   
   D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, and (2) Local Government, otherwise. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
   
   E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
   
   F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel’s value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values.
   
   G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.
H. NOT APPLICABLE-Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State’s predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title.

I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.

J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment as outlined in 43 Tex. Admin. Code §11.317. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

K. Local Government shall execute individually or produce a legal document as necessary to provide for Project’s continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.

L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project’s continued use and upkeep.

M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

14. Insurance
A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a “Loss Payee” should the building be destroyed.

15. Notices
All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<table>
<thead>
<tr>
<th>Local Government:</th>
<th>State:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of San Marcos</td>
<td>Texas Department of Transportation</td>
</tr>
<tr>
<td>ATTN: City Manager</td>
<td>ATTN: Director of Contract Services</td>
</tr>
<tr>
<td>630 East Hopkins Street</td>
<td>125 E. 11th Street</td>
</tr>
<tr>
<td>San Marcos, TX 78666</td>
<td>Austin, TX 78701</td>
</tr>
</tbody>
</table>

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

16. Legal Construction
In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties
Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents
Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

19. Document and Information Exchange
Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local
Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

20. **Compliance with Laws**  
The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

21. **Sole Agreement**  
This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

22. **Cost Principles**  
In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

23. **Procurement and Property Management Standards**  
The parties to this Agreement shall adhere to the procurement standards established in Title 49 CFR §18.36, to the property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

24. **Inspection of Books and Records**  
The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for three (3) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. **Civil Rights Compliance**  
The parties to this Agreement are responsible for the following:  
A. **Compliance with Regulations:** Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S.
Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

B. **Nondiscrimination:** The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. **Information and Reports:** The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of the Local Government’s noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
2. cancelling, terminating, or suspending of the Agreement, in whole or in part.

F. **Incorporation of Provisions:** The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.
26. **Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:


B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).


F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).

G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).

H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.

I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. **Disadvantaged Business Enterprise Program Requirements**
A. The parties shall comply with the Disadvantaged Business Enterprise ("DBE") Program requirements established in 49 CFR Part 26.

B. Local Government shall adopt, in its totality, State’s federally approved DBE program.

C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).

F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.”

28. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.
If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. **Lobbying Certification**

In executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

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

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

30. **Federal Funding Accountability and Transparency Act Requirements**

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: [http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf](http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf) and [http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf](http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf).

B. Local Government agrees that it shall:

1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is [https://www.sam.gov/portal/public/SAM/](https://www.sam.gov/portal/public/SAM/).

2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the...
Dun & Bradstreet on-line registration website http://fedgov.dnb.com/webform; and
3. Report the total compensation and names of its top five executives to State if:
   a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
   b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report
   A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
   B. If threshold expenditures of $750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
   C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY______.
   D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Signatory Warranty
   Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.
<table>
<thead>
<tr>
<th>TxDOT:</th>
<th>Federal Highway Administration:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSJ #</td>
<td>0914-33-078</td>
</tr>
<tr>
<td>District #</td>
<td>14 - Austin</td>
</tr>
<tr>
<td>Code Chart 64 #</td>
<td>37950 - City of San Marcos</td>
</tr>
<tr>
<td>Project Name</td>
<td>San Marcos River Shared Use Path</td>
</tr>
<tr>
<td>CFDA No.</td>
<td>20.205</td>
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<tr>
<td>CFDA Title</td>
<td>Highway Planning and Construction</td>
</tr>
<tr>
<td>AFA Not Used For Research &amp; Development</td>
<td></td>
</tr>
</tbody>
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**THIS AGREEMENT IS EXECUTED** by the State and the Local Government.

**THE STATE OF TEXAS**

---

**THE LOCAL GOVERNMENT**

---

**Signature**

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

---

**Signature**

John Thomaides

Typed or Printed Name

Mayor

Typed or Printed Title

Date
ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT
<table>
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<tr>
<th><strong>TxDOT:</strong></th>
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<td>20.205</td>
</tr>
<tr>
<td>CFDA Title</td>
<td>Highway Planning and Construction</td>
</tr>
</tbody>
</table>

**ATTACHMENT B**

**PROJECT LOCATION MAP**

[Map of the project location]

*Measure distance*

*Click on the map to add to your path*

*Total distance: 3.612.27 ft (1.10 km)*
ATTACHMENT C
PROJECT ESTIMATE AND SOURCE OF FUNDS
LG Performs PE Work or Hires Consultant / State Lets Project for Construction

<table>
<thead>
<tr>
<th>Description of Project Costs to be Incurred</th>
<th>Total Project Cost Estimate</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Government Participation</th>
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</thead>
<tbody>
<tr>
<td>Planning/Maps/Education/Non-CST</td>
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<td>0%</td>
<td>$0</td>
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<tr>
<td>Preliminary Engineering</td>
<td>$0</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Environmental Cost</td>
<td>$0</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Right of Way</td>
<td>$0</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Utilities</td>
<td>$0</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Construction Cost</td>
<td>$2,244,357</td>
<td>75%</td>
<td>$1,683,268</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Total Construction Value** (sum of construction cost and in-kind value) $2,244,357

Work by LG Subtotal $2,244,357 $1,683,268 $561,089
<table>
<thead>
<tr>
<th>Description of Project Costs to be Incurred</th>
<th>Total Project Cost Estimate</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Government (LG) Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering¹</td>
<td>$50,499</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Environmental Cost¹</td>
<td>$33,665</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Right of Way¹</td>
<td>$10,100</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Utilities¹</td>
<td>$6,733</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Construction²</td>
<td>$235,657</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Direct State Costs Subtotal</td>
<td>$336,654</td>
<td>75%</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Indirect State Cost</td>
<td>$133,315</td>
<td>100%</td>
<td>$133,315</td>
<td>$0</td>
</tr>
<tr>
<td><strong>TOTAL PARTICIPATION</strong></td>
<td><strong>$2,714,326</strong></td>
<td><strong>$1,935,758</strong></td>
<td><strong>$133,315</strong></td>
<td><strong>$645,253</strong></td>
</tr>
</tbody>
</table>

### Description
- **1** Local Government’s first payment of $25,249 is due to State within 30 days from execution of this contract.
- **2** Local Government’s second payment of $620,004 is due to State within 60 days prior to the Construction contract being advertised for bids.
- **3** If ROW is to be acquired by State, Local Government’s share of property cost will be due prior to acquisition.
- The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.
- This is an estimate, the final amount of Local Government participation will be based on actual costs.
- Maximum federal TASA funds available for Project are $1,935,758.
AGENDA CAPTION:
Consider approval of Resolution 2018-101R, approving the award of a construction contract for Parks and Recreation Equipment and Installation (Buyboard Contract #512-16) to T.F. Harper and Associates, LP for the Dog Park Improvements Project in the estimated amount of $116,183.75, utilizing CDBG funds; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

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

Amount & Source of Funding
Funds Required: $116,183.75
Account Number: G0008-Federal-FY2017-DOGPARK; FIL11-NSNF-CONST-DOGPARK
Funds Available: CDBG Funding-$88,400, Fee In Lieu-$27,784
Account Name: CDBG Projects, Fee in Lieu

Fiscal Note:
Prior Council Action: Council initially approved this project in the 2017 CDBG Action Plan

City Council Strategic Initiative:
City Facilities

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: Parks, Recreation, & Open Space Master Plan
Background Information:
The City of San Marcos is authorized by Local Government Code, Chapter 271, to participate in cooperative purchasing programs. The Texas Local Government Purchasing Cooperative (BuyBoard) has awarded a contract for Parks and Recreation Equipment and Field Lighting Products and Installation (BuyBoard Contract #512-16) to T.F. Harper and Associates, LP, located in Austin, Texas. This resolution is to approve a contract between T.F. Harper and Associates, LP and the City for the amount of $116,183.75. This project is for improvements to the Dog Park including expanding fencing to add two (2) new dog exercise areas, two (2) new shade structures, two (2) new water fountains, and two (2) new waste and recycling receptacles. This project will also include the realignment and construction of connecting sidewalks, placement of new concrete pads for shade structures and two (2) new concrete ADA parking spaces as well as regrading to facilitate proper drainage.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Award a contract to T.F. Harper and Associates, LP, through the BuyBoard Cooperative for the improvements to the City of San Marcos Dog Park for the amount of $116,183.75.
RESOLUTION 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONSTRUCTION CONTRACT FOR PARKS AND RECREATION EQUIPMENT AND INSTALLATION (BUYBOARD CONTRACT #512-16) TO T.F. HARPER AND ASSOCIATES, LP FOR THE DOG PARK IMPROVEMENTS PROJECT IN THE ESTIMATED AMOUNT OF $116,183.75, UTILIZING CDBG FUNDS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract for Parks and Recreation Equipment and Installation (Buyboard contract #512-16) to T.F. Harper And Associates, LP for the dog park improvements project in the estimated amount of $116,183.75 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
City of San Marcos
Dog Park
630 East Hopkins
San Marcos, TX 78666

NEW 5' SIDEWALK
NEW 10' WIDE SIDEWALK
NEW 6' FENCE
DEMOLISHED EXISTING FENCE
NEW 6' FENCE
NEW 6' FENCE
NEW 6' FENCE TO MATCH EXISTING
NEW 12'X12'x9' SHADE
NEW 12'X12'x9' SHADE
NEW ENTRANCE AREA
NEW CANOPY TOP
NEW GRADING

(2) NEW ADA PARKING STRIPING

CONCRETE CROSS SECTION DETAIL
To: City of San Marcos  
Attn: Drew Wells  
Address: 630 East Hopkins, San Marcos, Texas 78666  
Phone: 512-393-8406  
Email: dwells@sanmarcostx.gov

Buy Board  
QUOTE #: 132018-102-th  
DATE: May 17, 2018  
#512-16

<table>
<thead>
<tr>
<th>QTY</th>
<th>DESCRIPTION OF EQUIPMENT</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing Dog Park Renovation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Demo Existing 6' fencing +/- 229 lin</td>
<td>$2,393.00</td>
</tr>
<tr>
<td></td>
<td>Demo Existing 8' tall fencing +/- 120 lin.</td>
<td>$1,254.00</td>
</tr>
<tr>
<td></td>
<td>Demo Two dog entry areas</td>
<td>$695.00</td>
</tr>
<tr>
<td></td>
<td>Dem 225 sq. ft of existing concrete</td>
<td>$595.00</td>
</tr>
<tr>
<td></td>
<td>Regrade areas as shown on drawing for positive drainage +/- 27000 sqft</td>
<td>$8,895.00</td>
</tr>
<tr>
<td></td>
<td>Demo Existing parking for new ADA parking +/- 520 sqft</td>
<td>$1,975.00</td>
</tr>
<tr>
<td></td>
<td>New Concrete ADA Parking, 2 curb stops, 2 signs, &amp; related work.</td>
<td>$3,360.00</td>
</tr>
<tr>
<td></td>
<td>645’ of new 6’ chain link fence</td>
<td>$16,125.00</td>
</tr>
<tr>
<td></td>
<td>125’ of new 8’ chain link fence</td>
<td>$3,597.00</td>
</tr>
<tr>
<td></td>
<td>8’ - 4’ w x 6’ tall walk thru gates</td>
<td>$2,800.00</td>
</tr>
<tr>
<td></td>
<td>2 - 10’ w x 6’ access gates</td>
<td>$1,800.00</td>
</tr>
<tr>
<td></td>
<td>2 - 20’ x 20’ x 9’ tall four post shade canopies Installed</td>
<td>$11,066.00</td>
</tr>
<tr>
<td></td>
<td>1 - 20’ x 20’ replacement top Installed</td>
<td>$2,006.00</td>
</tr>
<tr>
<td></td>
<td>2 - waste stations &amp; 2 trash receptacles Installed</td>
<td>$1,031.75</td>
</tr>
<tr>
<td></td>
<td>2 - MDF 10I55 SMSS BF w/FTN &amp; PF Fountains, bottle filler &amp; dog bowl, installed w water line</td>
<td>$14,094.50</td>
</tr>
<tr>
<td></td>
<td>120 lin‘ 5’ concrete walk on south side</td>
<td>$3,960.00</td>
</tr>
<tr>
<td></td>
<td>210 lin’ 10’ wide sidewalk down the middle</td>
<td>$13,860.00</td>
</tr>
<tr>
<td></td>
<td>20’ x 20’ concrete slab at shade (2)</td>
<td>$4,800.00</td>
</tr>
<tr>
<td></td>
<td>20’ x 28’ New ADA parking</td>
<td>$4,065.75</td>
</tr>
<tr>
<td></td>
<td>New Concrete at gate areas 12’ x 10’ x 2</td>
<td>$1,742.75</td>
</tr>
<tr>
<td></td>
<td>170 lin’ 5’ wide sidewalk across to shade area</td>
<td>$5,610.00</td>
</tr>
</tbody>
</table>

Contractors fee 7%  
Bond Cost  
Sales Tax Exempt  

| TOTAL | $116,183.75 |

QUOTE IS VALID FOR 45 DAYS FROM DATE OF QUOTE OR FROM DATE OF REVISION  
If you are receiving your equipment, you are responsible for unloading and accepting delivery from the freight company and reporting any damaged freight or shortages on the freight bill at the time. You will also be responsible for a complete inventory of your received equipment and reporting any discrepancies to us immediately.  
NOT INCLUDED: Sales Tax (RESALE OR EXEMPTION CERTIFICATE REQUIRED), Permits/Bonds/Fees (if required), Assembly & Installation.  
Payment Terms: 25% due with signed quote and balance due upon completion of work and receipt of invoice. Progress pay applications acceptable.  
Estimated Delivery: 8 weeks after receipt of signed quote (or purchase order) & color selections.  
Installation time frame to be determined.  
Accepted by:  
Date:  
P.O. # (if applicable):  

Thank you for giving us the opportunity to provide this proposal. Tommy Harper

Note: Please refer to COSM terms and conditions with this Contract.  
Lynda Williams, Purchasing Manager

Commercial Play and Recreational Equipment - www.tfharper.com  
Dog Park Proposal 51718.xls
AGENDA CAPTION:
Consider approval of Resolution 2018-102R, approving the award of a construction contract for Parks and Recreation Equipment and Installation (Buyboard Contract #512-16) to T.F. Harper and Associates, LP for the Dunbar Park Improvements Project in the estimated amount of $232,468.95, utilizing CDBG funds; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

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

Amount & Source of Funding
Funds Required: $232,468.95
Account Number: G0008.FEDERAL.PY2015.DUNBAR ($200,402), G0008.GENERAL.CONST.DUNBAR ($1,593), FIL.GENERAL.CONST.DUNBAR ($23,451), FIL15.GENERAL.CONST.DUNBAR ($7,554)
Funds Available: $233,000
Account Name: CDBG Projects/Fee in Lieu

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.
Community Partners
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☒ Parks, Public Spaces & Facilities - Choose an item.
Background Information:
The City of San Marcos is authorized by Local Government Code, Chapter 271 to participate in cooperative purchasing programs. The Texas Local Government Purchasing Cooperative (BuyBoard) has awarded a contract for Parks and Recreation Equipment and Field Lighting Products and Installation (BuyBoard Contract #512-16) to T.F. Harper and Associates, LP, located in Austin, Texas. This resolution is to approve a contract between T.F. Harper and Associates, LP and the City, through the BuyBoard Cooperative, for the amount of $232,468.95. This project is for Improvements to Dunbar Park including the addition of concrete trails, a skate spot, pavilions, picnic tables, playground equipment, and the reconstruction of the basketball court.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Award a contract to T.F. Harper and Associates, LP, through the BuyBoard Cooperative, for the amount of $232,468.95 for the Improvements to Dunbar Park project.
RESOLUTION 2018-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONSTRUCTION CONTRACT FOR PARKS AND RECREATION EQUIPMENT AND INSTALLATION (BUYBOARD CONTRACT #512-16) TO T.F. HARPER AND ASSOCIATES, LP FOR THE DUNBAR PARK IMPROVEMENTS PROJECT IN THE ESTIMATED AMOUNT OF $232,468.95, UTILIZING CDBG FUNDS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract for Parks and Recreation Equipment and Installation (Buyboard contract #512-16) to T.F. Harper and Associates, LP for the Dunbar Park improvements project in the estimated amount of $232,468.95 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
<table>
<thead>
<tr>
<th>QTY</th>
<th>DESCRIPTION OF EQUIPMENT</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dunbar Park Renovations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trails, Basketball Area, Picnic Area &amp; Skate Area</td>
<td></td>
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<tr>
<td></td>
<td>Plans By Luck design Team Sheets LO-A, LO-B, LO-C, L1, L2, L3, L4, L5, D1, D2, D3, EX1; Dated 12/14/17</td>
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<tr>
<td></td>
<td>BB# Buy Board Catagories</td>
<td></td>
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<tr>
<td>24</td>
<td>Not to Exceed HRLY Rate ($35.75) for installation or repair of Natural grass, turf removal, ciling or grading</td>
<td>1036 $37,037.00</td>
</tr>
<tr>
<td>25</td>
<td>Not to Exceed HRLY Rate ($35.75) for installation or repair of all other park &amp; recreation related equipment</td>
<td>3998 $142,928.50</td>
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<tr>
<td>11</td>
<td>surfacing 0% discount</td>
<td>L5 $10,162.50</td>
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<tr>
<td>10</td>
<td>3 - MYTCoat Tables 11% Discount</td>
<td>$3,555.75 $3,164.62</td>
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<tr>
<td>8</td>
<td>2 - Bison Basketball Goals 5% Discount</td>
<td>$2,644.00 $2,511.50</td>
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<tr>
<td>25</td>
<td>Alternate One: Skate Spot (2)</td>
<td>358.5 $12,816.38</td>
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<tr>
<td>12</td>
<td>Alternate Two: Pavilions (2) Shade Canopies &amp; Structures 12% Discount</td>
<td>$15,985.00 $14,066.46</td>
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<td>Freight</td>
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<tr>
<td></td>
<td>Bond Cost</td>
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<tr>
<td></td>
<td>Sales Tax</td>
<td>Exempt</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>$232,468.95</td>
</tr>
</tbody>
</table>

QUOTE IS VALID FOR 45 DAYS FROM DATE OF QUOTE OR FROM DATE OF REVISION

If you are receiving your equipment, you are responsible for unloading and accepting delivery from the freight company and reporting any damage freight or shortages on the freight bill at the time. You will also be responsible for a complete inventory of your received equipment and reporting any discrepancies to us immediately.

NOT INCLUDED: Sales Tax (RESALE OR EXEMPTION CERTIFICATE REQUIRED), Permits/Bonds/Feas (if required), Assembly & Installation.

Payment Terms: Progressive payments acceptable and balance due upon completion of work and receipt of invoice.

Estimated Construction Time: 130 days

Accepted by: ____________________________

Date: ____________________________
P.O. # (if applicable): ____________________________

Thank you for giving us the opportunity to provide this proposal. Tommy Harper
Dunbar Park
City of San Marcos

Site Plan

ENDICOTT ST.
(MARKED WEST)

NOTE:
1. PICNIC TABLES AND TRASH
   ARE PURCHASED, TO BE PURCHASED
   AND INSTALLED BY THE CITY.
2. CONTRACTOR TO PROVIDE
   CONCRETE PADS THAT THESE ITEMS
   ARE PLACED ON.

IMPERVIOUS COVER CALCULATIONS

EXISTING IMPERVIOUS COVER:

- 7,210 SF BASKETBALL COURT
- 6,624 SF COMMUNITY BUILDING
- 920 SF SCHOOLS BUILDING
- 2,757 SF PARKING
- 740 SF PICNIC TABLE PAD
- 174 SF PLAYGROUND BANDING
- 150 SF UTILITY PADS
- TOTAL: 18,588 SF

PROPOSED IMPERVIOUS COVER:

- 6,624 SF SIDEWALKS AND TRASH/PICNIC PADS
- 34,953 SF SKATE SPOTS
- TOTAL: 41,577 SF

REMOVAL OF EXISTING IMPERVIOUS COVER:

- (1,570 SF) BASKETBALL COURT DOWNSIZING
- TOTAL: (1,570 SF)

TOTAL IMPERVIOUS COVER FOR SITE: 43,165 SF

% OF IMPERVIOUS COVER FOR SITE: 17.29%

OVERALL SITE ACREAGE = 256,048 SF
OR 5.8 AC

% OF IMPERVIOUS COVER FOR SITE: 17.29%

LOCATION:

- 4" SCH40 PVC PIPE SLEEVE UNDER SIDEWALK FOR FUTURE ELECTRICAL;
  TOP OF PIPE 18" BELOW FINISH GRADE; EXTEND 1'-0" OFF EDGE OF WALK
- TYPICAL

- EXPANSION JOINT - TYPICAL
  SEE SHEET D1, DETAIL 5

- ACCESSIBLE EMBLEM
  SEE SHEET D2, DETAIL 4

- ACCESSIBLE STRIPING
  SEE SHEET D2, DETAIL 4

- ACCESSIBLE SIGN
  SEE SHEET D2, DETAIL 4

PROPERTY BOUNDARY
FOR PRIVATE RESIDENCE

PERIMETER STONE BLOCK
SEE SPECIFICATIONS

EXISTING BUS STOP

12.5' X 11' CONCRETE PAD
SEE SHEET D1, DETAIL 5

EXISTING SIGN

PERIMETER #4 CONCRETE
W/ COLUMN - TYPICAL

6' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

PERIMETER #4 CONCRETE
W/ COLUMN - TYPICAL

EXPANSION JOINT - TYPICAL
SEE SHEET D1, DETAIL 5

12.5' X 11' CONCRETE PAD
SEE SHEET D1, DETAIL 5

4" SCH40 PVC PIPE SLEEVE UNDER SIDEWALK FOR FUTURE ELECTRICAL;
TOP OF PIPE 18" BELOW FINISH GRADE; EXTEND 1'-0" OFF EDGE OF WALK
- TYPICAL

6' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

6' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

6' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

6' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

EXPANSION JOINT - TYPICAL
SEE SHEET D1, DETAIL 5

PERIMETER STONE BLOCK
SEE SHEET D2, DETAIL 6

4" SCH40 PVC PIPE SLEEVE UNDER SIDEWALK FOR FUTURE ELECTRICAL;
TOP OF PIPE 18" BELOW FINISH GRADE; EXTEND 1'-0" OFF EDGE OF WALK
- TYPICAL

2' HIGH QUARTER PIPE
WITH STEPS AND DROP IN PLATFORM

2' HIGH BY 4' LONG
GRIND RAIL

2' HIGH QUARTER PIPE
WITH STEPS AND DROP IN PLATFORM

4' WIDE CONCRETE
SEE SHEET D1, DETAIL 5

ACCESSIBLE ROUTE
TO PLAYGROUND

ACCESSIBLE ROUTE
TO PLAYGROUND

ACCESSIBLE ROUTE
TO PLAYGROUND

ACCESSIBLE ROUTE
TO PLAYGROUND

1. PICNIC TABLES AND TRASH
   ARE PURCHASED, TO BE PURCHASED
   AND INSTALLED BY THE CITY.
2. CONTRACTOR TO PROVIDE
   CONCRETE PADS THAT THESE ITEMS
   ARE PLACED ON.
AGENDA CAPTION:
Consider approval of Resolution 2018-103R, approving the award of a contract for minor construction (Choice Partners Cooperative Purchasing Contract #18/029JN) to Fence Lady, Inc. for the materials and construction of a pedestrian bridge in Ramon Lucio Park in the estimated amount of $263,106.05, funded by TML Insurance; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

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

Amount & Source of Funding
Funds Required: $263,106.05
Account Number: FL0515.INS.STRUCTURE.LUCIO ($254,951), MPK200.GENERAL.CONST.LUCIO ($8,155)
Funds Available: $263,106
Account Name: Insurance Proceeds, Park Maintenance

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.
Background Information:
The City of San Marcos is authorized by Local Government Code, Chapter 271 to participate in cooperative purchasing programs. The Harris County Department of Education Choice Partners Cooperative Program has awarded a contract for Job Order Contracting, IDIQ Minor Construction, Maintenance, Repair, Alteration, Renovation, and Remediation Services (Contract #18/029JN) to The Fence Lady, Inc., located in Boerne, Texas. This resolution is to approve a contract between The Fence Lady, Inc. and the City, through Choice Partners Cooperative, for the amount of $263,106.05. This project includes the replacement of the Ramon Lucio Bridge, which was damaged beyond repair during the Memorial Day Flood of 2015. The bridge is an 8’ wide by 100’ long concrete and steel structure. New abutments, piers, and rip-rap will be installed as well. Project will take approximately 120 days to complete due to the amount of time for bridge fabrication. This project is being funded primarily by insurance proceeds from TML.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Award a contract to The Fence Lady through Choice Partners Cooperative for the replacement of the Ramon Lucio Bridge for the amount of $263,106.25.
RESOLUTION 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT FOR MINOR CONSTRUCTION (CHOICE PARTNERS COOPERATIVE PURCHASING CONTRACT #18/029JN) TO FENCE LADY, INC. FOR THE MATERIALS AND CONSTRUCTION OF A PEDESTRIAN BRIDGE IN RAMON LUCIO PARK AND BEING FUNDED THROUGH INSURANCE PROCEEDS IN THE ESTIMATED AMOUNT OF $263,106.05; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract for minor construction (Choice Partners Cooperative Purchasing Contract #18/029JN) to Fence Lady, Inc. for the materials and construction of a pedestrian bridge in Ramon Lucio Park and being funded through insurance proceeds in the estimated amount of $263,106.05 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
**Date** | **Estimate #**  
---|---  
3/5/2018 | 1407

### Name / Address

City of San Marcos  
630 E Hopkins  
SAN MARCOS TX 78666  
Ramon Lucio Bridge

### Description

**Scope of Work:**  
- Provide all materials, tools and equipment required to purchase and install new Pedestrian Bridge in Ramon Lucio Park  
  - purchase bridge  
  - Rental of crane  
  - Install Bridge  
  - Removal of existing concrete abutments and buttersticks  
  - Temporary construction fencing  
  - Piers and casings  
  - Rebar, forms and concrete  
  - New concrete bridge abutments  
  - Erosion controls  
  - Additional concrete sidewalk  
  - New concrete bridge deck  
  - 18" rip-rap along slopes  
  - Granite, top soil and grass as needed to repair construction site  
  - pier and abutment engineering when provided with a Geotech by The City of San Marcos

### Exclusion:

- Geotech Report  
- Testing

<table>
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<tr>
<th>P.O. No.</th>
<th>Project</th>
<th>Qty</th>
<th>Amount</th>
<th>Total</th>
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<td>18/029JN-14</td>
<td>RAMON LUCIO BRIDGE</td>
<td>1</td>
<td>263,106.05</td>
<td>263,106.05</td>
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</tbody>
</table>

**Total**  
$263,106.05

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<table>
<thead>
<tr>
<th>Phone #</th>
<th>E-mail</th>
<th>Web Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>830-822-1822</td>
<td><a href="mailto:RDEAN1473@AOL.COM">RDEAN1473@AOL.COM</a></td>
<td><a href="http://www.thefencelady.com">www.thefencelady.com</a></td>
</tr>
</tbody>
</table>
File #: Res. 2018-104R, Version: 1

AGENDA CAPTION:
Consider approval of Resolution 2018-104R, approving the award of a professional services contract to Schrickel, Rollins and Associates, Inc. for the design of the Adult Softball Complex at the Gary Sports Complex with a total value estimated of $269,500.00; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

Department: Community Services, Parks and Recreation

Amount & Source of Funding
Funds Required: $269,500
Account Number: 50036959-70200
Funds Available: $269,500
Account Name: PARD General Fund Debt 2016

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

City Council Strategic Initiative: [Please select from the dropdown menu below]
City Facilities
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 scope of work is to include concession building, restroom facilities, maintenance and storage facility, four (4) softball field layouts, irrigation, lighting, parking lot, and all associated utilities. A Request for Qualifications (RFQ) was issued on March 18, 2018 for professional design services for the design of the adult softball complex at Gary Sports Complex. Seven (7) statements of qualifications were received and evaluated by a city-staffed evaluation panel. Schrickel, Rollins and Associates, Inc. was determined to be the most highly qualified firm to perform these professional services. Following negotiations as required, it is determined that their price is fair and reasonable.

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

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

**Recommendation:**
Based on the final evaluations of the city-staffed evaluation committee of qualifications and a fair and reasonable price, it is recommended that a contract be awarded to Schrickel, Rollins and Associates, Inc., for the total amount of $269,500.00 for professional design services for the Adult Softball Complex project at Gary Sports Complex.
RESOLUTION 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT TO SCHRICKEL, ROLLINS AND ASSOCIATES, INC. FOR THE DESIGN OF THE ADULT SOFTBALL COMPLEX AT THE GARY SPORTS COMPLEX WITH A TOTAL VALUE ESTIMATED OF $269,500.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a professional services contract to Schrickel, Rollins And Associates, Inc. for the design of the adult softball complex at the Gary Sports Complex with a total value estimated of $269,500.00 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
**PROPOSAL SUBMITTALS**

Design of Adult Softball Complex  
April 12, 2018, at 2:00 p.m.

RFP 218-221

<table>
<thead>
<tr>
<th>PROPOSER NAME</th>
</tr>
</thead>
</table>
| Texas Engineering Solutions, LLC  
Austin, Texas |
| Schrickel, Rollins and Associates, Inc.  
Arlington, Texas |
| LPA, Inc.  
San Antonio, Texas |
| Dunaway Associates, L.P.  
San Antonio, Texas |
| Vickrey & Associates, Inc.  
San Antonio, Texas |
| LUCK Design Team, LLC  
Austin, Texas |
| KGA Architecture  
Austin, Texas |

WITNESSED BY:

[Signature]

[Signature]
AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL FIRM

This Agreement is made as of __________ ____, 2018 (the “Effective Date”), by and between:

The Owner: The City of San Marcos, Texas

and

The Professional Firm: Schrickel, Rollins and Associates, Inc.

for

The Project: Design of Gary Sports Complex Adult Softball Complex, 218-221

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 Drew Wells, Assistant Director of Community Services, 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:

Drew Wells  
Assistant Director of Community Services  
401 East Hopkins  
San Marcos, Texas 78666  
Ph.: 512-393-8406  
Email: dwells@sanmarcostx.gov

**ARTICLE 4**

**OWNERSHIP AND USE OF DOCUMENTS**

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Professional Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner’s use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.
ARTICLE 5
DISPUTE RESOLUTION

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

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

ARTICLE 6
PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

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

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm’s interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.
Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

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

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

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

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

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, Texas Government Code, Professional Firm certifies that it 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 it 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 day’s 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: Purchasing Department  
lwilliams@sanmarcostx.gov or purchasingprojects@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 Sanford P. LaHue, Jr., Vice President  
Schrickel, Rollins and Associates  
1161 Corporate Drive West, Suite 200  
Arlington, Texas 76006  
slahue@srradesign.com

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

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

**ARTICLE 8**  
**REIMBURSABLE EXPENSES**

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

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

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

- Professional models and renderings if requested by the Owner.

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

- Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.
Expense of any additional insurance coverage or limits, excluding professional liability and errors and 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>
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<th>Statutory Limits</th>
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<tr>
<td>Worker's Compensation</td>
<td>$1,000,000 each occurrence</td>
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<tr>
<td>Employer's Liability</td>
<td></td>
</tr>
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</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 per Exhibit 3 shall not exceed two hundred sixty nine thousand, five hundred dollars and no cents ($269,500.00).

**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:**

**SCHRICKEL, ROLLINS AND ASSOCIATES, INC.**

By: ______________________________

Name: ____________________________

Title: ______________________________

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
Gary Sports Complex
City of San Marcos Community Services

BASIC PROFESSIONAL SERVICES

A. The Basic Professional Services for the **Pre-Design Phase** of the Project shall include the following:

1. Topographic Mapping;
2. Geotechnical Investigation;
3. Plat Survey including preparation of easement and/or right-of-way documents and any title searches required to identify easements and ownership;
4. Data Acquisition of existing drainage and utility information from the City and Franchise Utility Agencies which will be included on plan and survey documents;
5. Base Mapping based on the information collected. Base maps will be in a 22" x 34" sheet format and shall indicate property boundaries, topographic information and other existing features such as visible utilities; and
6. Production of an electronically formatted Base Map.

B. The Basic Professional Services for the **Schematic Design/Design Development Phase** of the Project shall include the following:

1. Meeting with City Staff members to refine current program facilities for the site and to outline specific desired elements over and above elements previously discussed resulting in a refined program of elements for the park for City approval;
2. Schematic Plans which will incorporate the elements outlined in the project program. The Plan will be to scale, in color, and prepared in both presentation size and 11” x 17” for review and discussion;
3. Meetings, as needed, with City to present and review plan;
4. Refined plan based on comments received from the meeting and City Staff comments. The refined plan will be in CADD format and suitable for incorporating as a starting
point for preparation of construction drawings. The refined plan will be presented in presentation size and in 11” x 17” for review; and

5. Preliminary Opinion of Probable Construction Costs based on the selected plan. Architect/Engineer will prepare a preliminary opinion of probable construction cost for the proposed improvements and present these costs in a spreadsheet format.

C. The Basic Professional Services for the **Construction Document Phase** of the Project shall include the following:

1. Preparing the final Construction Documents and specifications based on the City’s description of the project scope. The Construction Documents shall comply with all applicable requirements imposed by governmental authorities having jurisdiction over the Project and shall be sealed by licensed professionals;

2. Construction Documents and Plans shall include but not be limited to:

   a. Existing Conditions and Removal Plans;
   
   b. Construction Layout Plans and Details;
   
   c. Site Grading Plans;
   
   d. Paving and Jointing Plans and Details;
   
   e. Landscape Plans and Details;
   
   f. Irrigation Plans and Details;
   
   g. Civil Plans and Details;
   
   h. Architectural Plans and Details;
   
   i. Structural Plans and Details;
   
   j. Mechanical Plans and Details;
   
   k. Electrical Plans and Details;
   
   l. Plumbing Plans and Details;
   
   m. City of San Marcos Standard Details and Notes;
   
   n. Storm Water Pollution Prevention Plans and Details; and
o. TDLR/ Independent provider review and inspection for ADA compliance;

3. Meetings with the City, as needed, shall be included in this phase.

D. The Basic Professional Services for the Construction Bidding Phase of the Project shall include the following:

1. Assisting the City to establish a list of prospective bidders on the Project;

2. Assisting the City in conducting the pre-bid meeting, assisting the City in bid opening at a designated City location and assisting the City in awarding and preparing contracts for construction; and

3. Assisting the City in evaluating the bids and in determining the successful bid, if any. As such, Architect/Engineer shall review the low bidder’s qualifications after bid opening and advise the City as to whether such bid should be accepted or rejected. If requested by the City, the Architect/Engineer shall notify all prospective bidders or contractors of the bid or proposal results.

E. The Additional Professional Services for the Construction Observation and Administration Phase of the Project shall include the following:

1. Providing administration of the Construction Contract;

2. Providing representation, advice and consultation to the City. As such, Architect/Engineer shall have authority to act on behalf of the City but only to the extent provided in the Professional Services Contract;

3. Visiting the Job Site at least an average of one time per month depending on the progress of the Work, or as otherwise agreed by the Director and Architect/Engineer in writing, to observe and become familiar with the progress and quality of the Work and to determine in general if the Work has been and is being performed in accordance with the Contract Documents. All such observations shall be performed in the presence of the Director or other City employee designated by the Director to attend such observations;

4. Communicating with the City regarding the progress and quality of the contractor’s Work, and promptly reporting to the City any defects or deficiencies in the Work which Architect/Engineer discovers as a result of Architect/Engineer’s monthly observation visits to the Job Site. Architect/Engineer shall, at no cost to the City, promptly correct or cause to be corrected any defects or deficiencies in the documents of the professional
services caused by errors, defects or deficiencies of Architect/Engineer’s work or services under the Professional Services Contract;

5. Reviewing and certifying the amounts due to the general contractor under the Construction Contract based on Architect/Engineer’s observations of the Work and evaluations of the general contractor’s applications for payment. The Architect/Engineer shall maintain a record of all of the general contractor’s applications for payment and Architect/Engineer’s certifications of payment and shall deliver to the City a copy of such record upon issuing the Final Certificate for Payment. The Architect/Engineer’s certification for payment shall constitute a representation to the City, based on the Architect/Engineer’s observations at the Job Site and on the data comprising the general contractor’s application for payment that the Work has progressed to the point indicated to the best of the Architect/Engineer’s knowledge, information and belief and that the Contractor is entitled to payment in the amount certified. However, the Architect/Engineer’s issuance of certificates for payment shall not constitute a representation that the Architect/Engineer has reviewed the construction means, methods, techniques, sequences or procedures, or copies of requisitions received from subcontractors or suppliers, or that the Architect/Engineer has ascertained how or for what purpose the general contractor has used money previously paid on account of the Contract Sum, or that the Architect/Engineer has made exhaustive and continuous inspections to check the quality of the Work;

6. Recommending to the City the rejection of all or portions of the contractor’s Work that does not, in the Architect/Engineer’s opinion, conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require the general contractor to uncover or to perform additional inspection or testing of the Work, regardless of whether or not such Work is fabricated, installed or completed. However, the Architect/Engineer’s duties and responsibilities under this Subsection (6) extend only to the City and shall not give rise to a duty or responsibility to the general contractor, or the subcontractors, suppliers, their agents or employees or any other persons performing portions of the Work;

7. Reviewing and approving or taking other appropriate action with respect to the general contractor’s submittals to the City (such as shop drawings, product data or samples) for the purpose of determining whether or not the Work, when completed, will conform to the requirements of the Contract Documents. In doing so, the Architect/Engineer shall act with reasonable promptness and shall not cause delay in the progress of the Work. The Architect/Engineer’s review of such submittals is not conducted for the purpose of substantiating instructions for the installation or performance of equipment or systems designed by the general contractor, which remains the responsibility of the general contractor to the extent required by the Contract Documents. Unless otherwise specifically stated by the Architect/Engineer, the Architect/Engineer’s review of such submittals shall not constitute Architect/Engineer’s approval of safety precautions,
AGENDA CAPTION:
Consider approval of Resolution 2018-105R, approving and authorizing the termination for convenience of the agreement with Pike Electric, LLC for San Marcos Electric Utility related maintenance services (Contract Number 218-199); authorizing the City Manager or his designee to execute the said termination on behalf of the City.

Meeting date: June 19, 2018

Department: Public Services Electric Utility, Tyler Hjorth, Assistant Director (By Lynda Williams, Purchasing Manager)

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

Choose an item.

Background Information:
This City currently has an interlocal agreement with LCRA to provide maintenance services for utility substations. The City would like to continue these services with LCRA.

No work has been performed by Pike Electric, LLC, therefore the City intends to terminate the contract for convenience for contract 218-199, SMEU Substation Maintenance Services.

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 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AND AUTHORIZING THE TERMINATION FOR CONVENIENCE OF THE AGREEMENT WITH PIKE ELECTRIC, LLC FOR SMEU RELATED MAINTENANCE SERVICES (CONTRACT NUMBER 218-199); AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID TERMINATION ON BEHALF OF THE CITY.

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

PART 1. The authorization of the termination for convenience of the agreement with Pike Electric, LLC for SMEU related maintenance services (contract number 218-199) is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGENDA CAPTION:
Consider approval of Resolution 2018-106R, approving an Amended and Restated Airport Facility Lease Agreement for Commercial Fixed Base Operator (FBO) Use with Berry Aviation, Inc. for the FBO terminal facility and associated fueling facilities at the San Marcos Regional Airport; authorizing the City Manager to execute the Agreement; and declaring an effective date.

Meeting date: June 19, 2018

Department: Airport-Texas Aviation Partners

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
Background Information:
In May 2017, City Council approved a 40-year ground lease for the construction of a maintenance facility for Berry Aviation Inc. ("Berry"). Berry has requested that their existing leases be amended to extend the terms to match the May 2017 ground lease. The proposed new deal clarifies and cleans up areas of confusion with two amended, new leases that improve our mutual business arrangement at the airport. This lease includes the City-owned terminal facility, the City-owned above ground storage tanks (2), and the Berry-owned self-service fueling facility.

Additional changes were made, including:

- Separating FBO and fueling facilities from hangar facilities
- Clarification of leased premises and associated maintenance costs including those associated with the City-owned above ground fuel storage tanks
- Changing responsibility of utility payments from the City to Berry (including electricity, water/wastewater, and alarm monitoring)
- Addition of periodic rent increases
- Removal of 1% gross revenue requirement, consistent with current leasing policy

There is a comparison of Berry's current lease and the proposed lease prepared by Texas Aviation Partners attached as background information. There are two agenda items because there are two separate leases: one for Berry's Fixed Based Operator business and Berry's other aircraft business.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
Texas Aviation Partners recommends approval.
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL FIXED BASE OPERATOR USE WITH BERRY AVIATION, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The terms and conditions of the Amended and Restated Airport Facility Lease Agreement for Commercial Fixed Base Operator Use attached hereto as Exhibit A is hereby approved.

PART 2. The City Manager is hereby expressly authorized to execute the Agreement in the form attached hereto as Exhibit A on behalf of the City.

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

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
**Berry Lease Comparison**

The proposed lease terms represent a good business arrangement for the City and its largest airport employer. The goal of the new leases is to align the expiration date with that of Berry’s new maintenance facility currently under construction and to update the terms to be more in line with those offered to other FBOs.

Berry’s original leases from 1993 had the City paying for all utilities and repairs and maintenance to the facilities. Additionally, the old leases reference underground storage tanks that have since been decommissioned and replaced by above ground tanks. The new leases include language to ensure the facilities are being maintained by the tenant and that the City’s fuel tanks are being maintained by the tenant to EPA/TCEQ standards.

Additionally, there have been disagreements on numerous provisions in the existing lease including the ramp area around the hangars and who should maintain them. A new survey is being done to clarify the premises and to remove any question about what they are leasing and their responsibilities.

Texas Aviation Partners has been diligently negotiating these terms with Sonny Berry and his outside Counsel for almost two years.

<table>
<thead>
<tr>
<th>EXISTING LEASE TERMS</th>
<th>PROPOSED LEASE TERMS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expiration</strong></td>
<td></td>
</tr>
<tr>
<td>• FBO/Large Hangar: Dec. 21, 2032 (10-year extension available at new terms)</td>
<td></td>
</tr>
<tr>
<td>• Small Hangar: April 11, 2029</td>
<td></td>
</tr>
<tr>
<td></td>
<td>April 18, 2057 (to coincide with new maintenance facility currently under construction)</td>
</tr>
<tr>
<td><strong>Current Annual Rent</strong></td>
<td>$46,950.96</td>
</tr>
<tr>
<td></td>
<td>$51,793.20</td>
</tr>
<tr>
<td><strong>Revenue Sharing</strong></td>
<td>4% of fuel delivered</td>
</tr>
<tr>
<td></td>
<td>1% gross revenue</td>
</tr>
<tr>
<td></td>
<td>$0.09 per gallon of fuel delivered</td>
</tr>
<tr>
<td></td>
<td>No gross revenue (consistent with new airport leases)</td>
</tr>
<tr>
<td><strong>Rent Escalations</strong></td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>10% every 5 years beginning in 2032 (Paying $91,735.33 per year by end of lease)</td>
</tr>
<tr>
<td><strong>Remaining Rent Credits</strong></td>
<td>$562,011.72 (credit balance $0.00 by mid-2031)</td>
</tr>
<tr>
<td></td>
<td>$562,011.72 (credit balance $0.00 by mid-2031)</td>
</tr>
<tr>
<td><strong>Utilities</strong></td>
<td>City pays water, electricity, and alarm monitoring at FBO</td>
</tr>
<tr>
<td></td>
<td>Berry pays water, electricity, and alarm monitoring at FBO</td>
</tr>
<tr>
<td><strong>Repairs and Maintenance</strong></td>
<td>City responsible for all R&amp;M to FBO and large hangar. Unclear language regarding fuel tanks.</td>
</tr>
<tr>
<td></td>
<td>City responsible for R&amp;M items over $5,000, including fuel tank repairs. Berry must provide annual fuel tank inspection reports.</td>
</tr>
<tr>
<td><strong>Total Rent June 2018 - Expiration</strong></td>
<td>$680,626.99 (Ex. 2032)</td>
</tr>
<tr>
<td></td>
<td>$2,463,893.43 (Ex. 2057)</td>
</tr>
</tbody>
</table>
CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT

AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT
FOR COMMERCIAL FBO USE

BY AND BETWEEN

CITY OF SAN MARCOS, TEXAS,

AS LESSOR

AND

BERRY AVIATION, INC.,

AS LESSEE
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CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT

AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT
FOR COMMERCIAL FBO USE

THIS AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT FOR
COMMERCIAL FBO USE ("Lease") is made between the City of San Marcos, a municipal corporation
of the State of Texas ("Lessor" or "City"), and Berry Aviation, Inc., a Texas corporation ("Lessee"),
effective as of July 1, 2018 (the "Effective Date").

RECITALS:

A. Lessor and Lessee entered into that certain Lease of Airport Property effective as of
December 12, 1992, as amended by that certain Amendment Number One to Lease of Airport Property
dated as of September 28, 2004, and Amendment Number Two to Lease of Airport Property dated as of
June 7, 2006 (collectively, the "Original Lease").

B. As an accommodation to Lessor, but expressly subject to the inclusion of the hangar
facilities/premises described in the Original Lease in an amended and restated Hangar Lease (as defined
below), Lessee has agreed that the hangar facilities leased to Lessee pursuant to the Original Lease will be
excluded from this Lease and leased to Lessee pursuant to an amendment and restatement of that certain
Revised Lease of Unimproved Airport Property for Construction and Operation of Business Facilities
recorded in Volume 215, Page 593, of the Official Public Records of Hays County, Texas (the "Hangar
Lease").

C. Lessor and Lessee desire to amend and restate the Original Lease on the terms stated
herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the Recitals, the covenants and obligations set forth
herein and other good and valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, Lessor and Lessee amend and restate the Original Lease as follows:

ARTICLE 1: LEASE OF PREMISES; ACCEPTANCE OF EXISTING CONDITIONS;
COMPLIANCE WITH REGULATIONS

1.01 Airport. Lessor is the owner of the San Marcos Regional Airport (the "Airport"), situated in
Caldwell County, Texas, by virtue of deeds from the United States of America.

1.02 Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein,
Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the
following described real property (hereinafter referred to as the "Leased Premises"), located at
the Airport in Caldwell County, Texas:
a. a terminal building (the “FBO Space”), the location of which is more particularly described in Exhibit A attached hereto;

b. two (2) City-owned above ground fuel storage tanks and above ground appurtenances thereto (the “Fuel Facilities”), the location of which is more particularly described in Exhibit B attached hereto; and

c. a self-service 100LL fuel pump and above ground appurtenances thereto (the “Self Service Facility”), the location of which is more particularly described in Exhibit C attached hereto.

1.03 Acceptance. Lessee acknowledges that, subject to Lessor’s obligations under paragraph 1.05 below: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purposes, or the presence of environmental, geologic, or other site conditions that may affect Lessee’s use of the Leased Premises; (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; (iii) Lessee has inspected and performed all desired tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee accepts the Leased Premises in their present condition.

1.04 Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations adopted November 2, 2015, pursuant to City Ordinance Number 2015-46 (the “Rules and Regulations”), a copy of which is attached hereto as Exhibit D, and (ii) San Marcos Regional Airport Minimum Standards last updated August 18, 2015, as amended with respect to the fuel flowage fee on June 5, 2018 (the “Minimum Standards”), a copy of which standards as of August 18, 2015, are attached hereto as Exhibit E. Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee’s ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.

1.05 Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Leased Premises) as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by Lessor to the United States of America and, as applicable, the State of Texas. In connection with such sponsor assurances, a list of which is set forth in Exhibit F attached hereto, Lessee agrees that this Lease and Lessee’s rights and privileges hereunder shall be subordinate to such sponsor assurances.

1.06 Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways owned by the City for automobiles and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations (“Applicable Law”) of the City, the Federal Aviation Administration (“FAA”) and other governmental authorities with jurisdiction over the Airport and this Lease.
ARTICLE 2: COMMENCEMENT, TERM AND RENT

2.01 **Commencement.** Rental ("Rent") shall accrue commencing upon the Effective Date. Rent shall be payable at the place designated in Section 2.04.

2.02 **Term.** The term of this Lease ("Term") will commence on the Effective Date and will terminate on December 21, 2032 (the "Expiration Date"), subject to earlier termination or renewal as provided herein. Lessee shall have the option to extend the Term in accordance with Exhibit G attached hereto. As used herein, "Lease Year" means each period of twelve (12) full calendar months from and after the Effective Date.

2.03 **Rent.**

   a. Subject to the provisions of (b) below, Lessee hereby promises and agrees to pay Lessor (i) "fixed rent" for use of the FBO Space equal to $2,295.00 per quarter, and (ii) a quarterly fuel flowage fee as approved by City Council on June 5, 2018, and stated in the Minimum Standards (e.g., nine cents [$0.09] multiplied by the number of gallons of aviation fuel or gasoline for aircraft use delivered to Lessee at the Leased Premises for retail sales or other uses per quarter), which fuel flowage fee may be reviewed and updated by Council no sooner than February 28, 2032. Commencing on the first day of the calendar quarter immediately succeeding the Effective Date (the "Rent Commencement Date"), fixed Rent shall be paid, in advance, in quarterly installments. Commencing on the first day of the calendar quarter immediately succeeding the Rent Commencement Date, fuel flowage fees shall be paid quarterly, in arrears. Rent will be prorated in the event of any partial calendar quarter or Lease Year. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.

   b. Notwithstanding the provisions of (a) above, Lessor and Lessee acknowledge and agree that (i) as of the Effective Date, the amount of rent credits approved by Lessor pursuant to the Original Lease equals $562,011.72 (the "Approved Credit"); (ii) during the Term and any extension thereof, until such time as $133,872.48 of the Approved Credit has been depleted, Lessee may receive a credit against fixed Rent from the Approved Credit, and (iii) the remaining $421,872.48 of the Approved Credit shall be made available to Lessee as a credit against fixed rent due by Lessee pursuant to the amended and restated Hangar Lease; and (iv) in the event Lessee constructs additional capital improvements during the Term which are approved and a related rent credit is authorized by Lessor, Lessee shall receive a credit against fixed Rent equal to the related expenditures, such credit to commence immediately upon completion of construction or installation of the subject improvements and to continue during the Term and any extension thereof until such credit has been depleted. Notwithstanding Lessee’s right to a Rent credit hereunder, in no event shall Lessor be responsible for amounts in excess of Rent payable by Lessee during the Term and any extension thereof.

2.04 **Form and Place of Payment.** Rent shall be due on or before the first day of each calendar quarter. A payment shall be considered past due if, after the fifth (5th) day of the calendar quarter in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.
2.05 **Late Charges.** Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5th) day of the calendar quarter in which such Rent is due will be considered late, and a $15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.

2.06 **No Release.** Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) is **obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.**

2.07 **Holdover.** In the event Lessee holds over after the expiration of this Lease, such hold over status will create a tenancy from calendar quarter to calendar quarter. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the quarter-to-quarter holdover rate. Holdover tenancy will be subject to all other terms and conditions of this Lease.

2.08 **Other Fees and Charges.** Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use offsite of the Leased Premises, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use (and in no event shall Lessor charge Lessee for use unless all other tenants at the Airport are also required to, and do, pay for such use). New charges for Airport Facilities (including, without limitation, tie-down fees), if any, will be established by resolution hereafter adopted by Lessor.

2.09 **Records.** To provide Lessor with evidence of fuel delivery, Lessee shall direct its fuel supplier to deliver copies of fuel delivery/sales invoices to Lessor contemporaneous with delivery of the same to Lessee.

**ARTICLE 3: USE AND CARE OF PREMISES**

3.01 **Authorized Use.** During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: aviation related activities and business, including, but not limited to, aviation fuel sales; commercial office space; fixed base operator; pilot’s lounge; aviation-related office use; and all other uses ancillary to any of the foregoing (herein, the “**Authorized Use**”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.

3.02 **Conduct of Business.**

a. Except during any period of repair, reconstruction or Alteration, Lessee shall not fail to occupy and use the Leased Premises for the Authorized Use and, subject to Applicable Laws, shall not fail to keep the FBO Space open for business during daylight hours as traffic requires.
b. Lessee agrees to keep the FBO Space locked when Lessee is not present therein. If the FBO Space is found unlocked by Lessor or Airport Manager, Lessor may overlock the FBO Space until Lessee’s lock is replaced and Lessee notifies Lessor that the FBO Space has been locked by Lessee. At all times during the Term, Lessee shall provide Lessor with a currently operative key to the FBO Space.

c. Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s).

3.03 No Insurance Invalidation; Risk of Lessee. Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor’s prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.

3.04 No Waste or Nuisance; Compliance with Laws. Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with Applicable Laws of the City (except to the extent any of the same which are enacted after the Effective Date preclude or adversely affect Lessee’s rights hereunder), the FAA and other governmental authorities with jurisdiction over the Leased Premises.

3.05 Trash and Debris. Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents, contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee’s expense.

3.06 No Outside Storage. With respect to that portion of the Leased Premises described in Exhibit A, Lessee shall store all equipment, materials and supplies within the confines of the building located thereon, and outside storage is specifically prohibited without the advance written consent of Lessor.

3.07 Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities at the Airport to the same extent as other Airport users.

3.08 Parking. Lessee shall have nonexclusive use of the public parking lot adjacent to that portion of the Leased Premises described in Exhibit A for Lessee’s employees and customers.

3.09 Additional Airport Facilities. Notwithstanding any provision of this Lease, Lessee shall have no obligation to build or construct any improvements or facilities on or off the Leased Premises which constitute Airport Facilities, including, without limitation, offsite utility lines or other improvements, and any agreement to the contrary shall be made set forth in a writing signed and dated by Lessee and identifying the specific improvement(s). Except as provided in any such agreement, Lessor and Lessee that, in the event Lessee constructs Airport Facilities, Lessee may be entitled to, and may receive, a just and fair credit against Rent in consideration for such work and funds expended by Lessee related thereto. The foregoing provision shall survive expiration or earlier termination of this Agreement.
ARTICLE 4: MAINTENANCE AND REPAIR OF PREMISES

4.01 Lessee Obligations. So long as the FBO Space continues to be designated by Lessor as a city-owned, public terminal, Lessee shall, at its sole cost and expense, perform day-to-day repair and maintenance of the interior of the FBO Space, keeping the same in a safe condition and good state of repair, including, without limitation, items such as light bulbs and bathroom supplies, if applicable, and heating and ventilation equipment; provided, Lessor, and not Lessee, shall be responsible for Major Repairs (as defined below) to the FBO Space. In addition, from and after the Effective Date, Lessee shall (a) maintain the flower beds outside of the FBO Space, (b) be responsible for janitorial and pest control services interior of the FBO Space, (c) be responsible for fire alarm monitoring with respect to the FBO Space, and (d) maintain and repair the Fuel Facilities and Self Service Facility (exclusive of any property or improvements located below the surface of the Leased Premises [the “Subsurface Property”]) in a safe condition and good state of repair in accordance with Air Transport Association of America, Inc., ATA Specification 103 (Standards for Jet Fuel Quality Control at Airports), and shall conduct annual inspections of the same, with copies of the inspection reports to be delivered to Lessor annually; provided, in no event shall Lessee be responsible for (i) Major Repairs to the Fuel Facilities, (ii) the compliance of Subsurface Property with Applicable Laws, (iii) the replacement of any exterior sidewalk, or (iv) the cost of maintenance, repair and/or replacement occasioned by the gross negligence or willful misconduct of Lessor or any person or entity claiming by or through Lessor. Subject to the foregoing and Section 6.01, Lessee shall keep all fixtures constructed or installed on the Leased Premises by Lessee (collectively, the “Improvements”), in good condition and repair. In addition, Lessee shall be responsible for the cost of repair and/or replacement directly attributable to the gross negligence or willful misconduct of Lessee, its employees, sublessees, concessionaires, contractors, licensees and invitees. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary repairs or perform any other necessary repair and/or maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable cost of such work shall be payable by Lessee within thirty (30) days of Lessee’s receipt of such notice. As used herein, “Major Repairs” means and refers to any required repair, maintenance or replacement which costs in excess of $5,000.00.

4.02 Lessor’s Right of Access. When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following notice to Lessee during Lessee’s regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.
ALERTING 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES

5.01 Alterations. Except for alterations required by Applicable Law and alterations which do not affect the structural integrity of the Leased Premises, all alterations to the Leased Premises, including alterations made following a casualty or eminent domain event (“Alterations”) must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed. All such plans, specifications and work shall conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the “ADA”). Notwithstanding the foregoing right of Lessee to construct alterations required by Applicable Law and certain alterations without first obtaining the City’s consent, to the extent permits or other authorizations are required by Applicable Law, Lessee shall comply with the same.

5.02 Condition on Surrender. Subject to the provisions of Section 4.01, Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted; provided, upon expiration or earlier termination of this Lease, Lessee will, at Lessor’s option exercised upon ninety (90) days advance written notice delivered to Lessee, remove the Self Service Facility, inclusive of removal of the fence and concrete slab.

5.03 No Liens. Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.

5.01 Exterior Lighting and Signage.

a. Except as set forth in any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of permitted or approved Alterations and “for lease” signs on the Leased Premises without the consent of Lessor, subject to compliance with applicable sign ordinances and rules.

b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition.
c. To the extent applicable, Lessee will install signage indicating that portions of the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be reasonably approved by Lessor prior to installation.

ARTICLE 6: UTILITIES AND TAXES

6.01 Utilities. Except as provided in Section 4.01, Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, impact fees, the installation of meters, any deposits and any other customary prerequisites for such utility service; provided, Lessor and Lessee acknowledge and agree that, with respect to electricity, (i) the only electricity for which Lessee is responsible from and after the Effective Date is metered by meters 142947 (relating to ramp lights), 314416 (relating to the fuel farm) and, subject to (ii) below, 346078 (relating to the Leased Premises and the adjacent parking lot), or replacements thereof; (ii) within thirty (30) days of the Effective Date, Lessee shall cause the electric utility provider to bill Lessee directly for electricity service metered by meters 142947 and 314416; and (iii) with respect to parking lot utilities, Lessee shall have no responsibility therefor (including connection fees, impact fees, the installation of meters, deposits and other costs and expenses), and Lessor shall, within thirty (30) days of the Effective Date, cause the electric utility provider to either (a) separate the billings for the Leased Premises and parking lot represented by meter 346078 and separately bill Lessee for electricity for the Leased Premises and Lessor for electricity for the parking lot, or (b) install a separate meter for the parking lot and separately bill Lessor for parking lot electricity. Until such time as billings for electric utility service are issued in Lessee’s name pursuant to the above, Lessee will reimburse Lessor for electric utilities consistent with the above agreements. If applicable, Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor’s property. In addition, Lessee shall maintain and repair all utility service lines located on and serving the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, Rent shall be abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.

6.02 Taxes.

a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) the Improvements, and (ii) Lessee’s equipment, inventory and other personal property, including, but not limited to, any Lessee aircraft used for commercial purposes.

b. Lessee shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Leased Premises.

c. Lessee may, at Lessee’s expense, contest the validity or amount of any taxes for which Lessee is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, any Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor’s reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such
amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent. Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein.

ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE

7.01 Grant of Rights. Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:

a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, “Airport Facilities” includes, but is not limited to, runways, taxiways, landing areas, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.

b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR

8.01 Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.

8.02 Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee’s business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee’s business at the Leased Premises.

8.03 Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to
the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.

8.04 **War; National Emergency.** During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments owing under this Lease shall likewise be suspended until Lessee’s normal operations resume at the Leased Premises. In addition, if Lessee’s normal business operations are materially affected for a period in excess of one eighty (180) days, Lessee may terminate this Lease upon written notice to Lessor, in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07, Lessee may remove its personal and other property within thirty (30) days after the date of Lessee’s notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee’s leasehold estate or for any loss or damage caused to Lessee by the United States of America.

8.05 **Operation as Public Airport.** Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

**ARTICLE 9: OPERATION OF THE AIRPORT**

9.01 **Non Discrimination Requirements.**

a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee’s election, this Lease shall be modified to reflect the more favorable material terms.

b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee’s use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.
IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

9.02 Airport Development. The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit. If the future development of the Airport requires the relocation of Lessee’s Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises in a location which is consistent with and suitable for Lessee’s current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee’s business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee’s reasonable agreement, taking into account impacts on Lessee’s use thereof) or promptly reconstruct the Improvements at no cost to Lessee.

9.03 Aeronautical Services Grant and Requirements. The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:

a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.

b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

ARTICLE 10: INSPECTION AND PREMISES ACCEPTANCE

10.01 Fire Safety. Lessee will permit the Fire Marshal to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to insure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.

10.02 Acceptance. Lessee agrees and covenants that Lessee has inspected the Leased Premises and is fully advised of its own rights without reliance upon any representation made by Lessor as to the condition of the Leased Premises, and accepts same in their present condition.

ARTICLE 11: INSURANCE AND INDEMNITY

11.01 Liability Insurance: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of commercial general liability insurance as set forth in the Minimum Standards and related to Lessee’s lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. To the extent not already in Lessor’s possession, Lessee shall provide certificates of insurance which satisfy the
foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).

11.02 Casualty Coverage: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of fire and extended coverage for all contents, goods, stock and any personal property which is or may be situated upon the Leased Premises, to the extent the same are insurable by Lessee. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with this section and the Minimum Standards. To the extent not already in Lessor’s possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).

11.03 Indemnity and Hold Harmless.

a. Indemnity. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS (“CLAIMS”), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “LESSEE PARTIES”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR’S CITY ATTORNEY.

b. Limitation of Liability. The foregoing and any other indemnity of Lessee herein shall not be interpreted as requiring Lessee to indemnify any of the Indemnified Parties from any
liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations.

c. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.

d. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.

e. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any accident on the Leased Premises or Airport. To the extent Lessee’s officers are aware of any defects in Airport runways, taxiways, landing areas, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee’s obligation, and that such notice is provided as a courtesy to Lessor).

f. Security. Lessor does not guarantee police protection or security to Lessee or its property and, except as provided in subsection b above, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

ARTICLE 12: CONDEMNATION

12.01 Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the condemning authority.

12.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the FBO Space, Fuel Facilities and/or Self Service Facility unsuitable for the business of Lessee, then this Lease shall terminate; provided, in the event the taking is of (i) the FBO Space but not of the Fuel Facilities and Self Service Facility, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude the FBO Space and continue the Lease in place with respect to the Fuel Facilities and Self Service Facility; and (ii) the Fuel Facilities and/or Self Service Facility, at Lessee’s option, this Lease shall not terminate but shall be amended to substitute replacement facilities at a location reasonably approved by Lessee or to include the Fuel Facilities and/or Self Service Facility in the Hangar Lease or other leasehold of Lessee at the Airport. If the partial taking is not extensive enough to render the FBO Space, Fuel Facilities and/or Self Service Facility unsuitable for the business of Lessee, then this Lease shall continue in effect with respect to the remainder of the Leased Premises, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.
12.03 **Rent.** If this Lease is terminated as provided in this section, rent shall be paid up to the date that title vests in the condemning authority, and Lessor shall make an equitable refund of any rent paid by Lessee in advance.

12.04 **Division of Award:** Lessor and Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. Without limiting the generality of the preceding sentence, Lessor has no interest in any award made to Lessee for Lessee’s moving and relocation expenses or for the loss of Lessee’s leasehold interest, fixtures and other tangible personal property if a separate award for such items is made to Lessee. The termination of this Lease under this section shall not affect the rights of the respective parties to such awards.

12.05 **Definition of Taking.** As used in this Article 12, “taken” or “taking” shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

**ARTICLE 13: DAMAGE BY CASUALTY**

13.01 **Notice Required.** Lessee shall give immediate verbal notice, followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.

13.02 **Restoration Upon Casualty Loss.**

a. If the Leased Premises are totally destroyed by fire, tornado or other casualty not the fault (in whole or in part) of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, or if not totally destroyed, if the Leased Premises should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, this Lease shall terminate, and rent shall be abated from the date of the casualty; provided, in the event the casualty relates to (i) the FBO Space but not the Fuel Facilities and Self Service Facility, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude the FBO Space and continue the Lease in place with respect to the Fuel Facilities and Self Service Facility; and (ii) the Fuel Facilities and/or Self Service Facility, at Lessee’s option, this Lease shall not terminate but shall be amended to substitute replacement facilities at a location reasonably approved by Lessee or to include the Fuel Facilities and/or Self Service Facility in the Hangar Lease or other leasehold of Lessee at the Airport; and, provided further, Lessee may waive termination, in which event Lessor shall rebuild or repair the Leased Premises with due diligence, and rent shall be abated for the length of time necessary for the reconstruction or repairs based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease.

b. If the Leased Premises are damaged by fire, tornado or other casualty not the fault of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 180 working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, this Lease shall not terminate except as provided in subsection c below.

c. If such damage to the Leased Premises occurs, Lessor shall proceed to rebuild or repair the Leased Premises to substantially the condition in which they existed upon the
Effective Date. Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged Improvements made by Lessee. If the Leased Premises are untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be adjusted based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease. In the event that Lessor fails to complete such rebuilding or repairs within one hundred eighty (180) working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, Lessee may terminate this Lease as to the portion of the Leased Premises affected by the casualty or in its entirety upon thirty (30) days’ written notice to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations under this Lease or, as applicable, with respect to the terminated portion of the Leased Premises as of the effective date of termination.

ARTICLE 14: ASSIGNMENT AND SUBLETTING

14.01 Assignment by Lessee. Except with respect to a Permitted Assignment (as defined below), Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, including by operation of law, without the prior written consent of Lessor; provided (i) no change in the direct or indirect control of Lessee or any ownership interests therein shall be considered an assignment, and (ii) Lessor shall not unreasonably withhold, condition or delay its consent to a proposed assignment. In connection with any request by Lessee for Lessor’s consent to a proposed assignment, Lessor’s denial of such consent shall be based upon the following:

a. In the reasonable judgment of Lessor, the assignee (i) is of a character or engaged in a business or proposes to use the Leased Premises in a manner which is not in keeping with Airport standards or would diminish the value of the Airport, or (ii) in Lessor’s reasonable opinion, is not creditworthy (provided, consent shall not be denied if Lessee agrees to remain liable under this Lease);

b. The occupancy of the Leased Premises by the proposed assignee would cause Lessor’s insurance to be cancelled (or increased, unless such costs will be reimbursed by the proposed assignee);

c. The use is not a use generally in keeping with uses allowed at the Leased Premises; or

d. The use is prohibited at the Airport.

Such consent shall be deemed to have been granted if written notice of non-consent is not received by Lessee within thirty (30) days of a written request for consent.

14.02 Sublease. Notwithstanding the provisions of Section 14.01, Lessee may sublease or otherwise permit the use of office space to subtenants or other users without Lessor’s prior consent provided that (i) the sublease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, and (ii) the terms of the sublease or other use or occupancy agreement are consistent with the terms and conditions of this Lease. Additionally, Lessee shall provide Airport Management with a list of subtenants no more than two times per calendar year.

14.03 No Release. Except for a Permitted Assignment or assignment to a Qualified Lessee (as defined below) to which Lessor has consented pursuant to Section 14.01, no assignment, sublease or grant
of use and occupancy rights shall relieve Lessee of its obligations to Lessor hereunder. Any assignment, transfer or sublease that is not permitted under this Lease and has not been authorized by Lessor in writing shall be void. As used herein:

a. “Permitted Assignment” means the transfer of all or part of Lessee’s interest in this Lease or all or part of the Leased Premises to the following types of entities without the written consent of Lessor:

(i) Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);

(ii) Any transfer to an affiliate (by common ownership) or subsidiary of Lessee;

(iii) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged, consolidated or reorganized, so long as Lessee’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation or reorganization.

(iv) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee’s or of Lessee’s business operations in the Leased Premises.

(v) Any transfer to a Qualified Lessee.

b. “Qualified Lessee” means a person or entity with a net worth equal to or greater than an amount equal to three hundred percent (300%) of the then-unpaid Rent obligations of Lessee hereunder.

14.04 Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor’s obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION

15.01 Events of Default. The following events shall constitute “events of default” by Lessee under this Lease:

a. Rent. Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for ten (10) days following written notice thereof (provided, however, that Lessor shall be obligated to give only two such notices in any calendar year, and after such two notices, Lessor will no longer be obligated to give any other notice under this section within such calendar year).

b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee’s obligation which it has failed to perform is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced,
thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or

c. **Certain Voluntary Acts.** Lessee (i) files, or consents by answer or otherwise to the filing against it if, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee’s property; or

d. **Receivership; Bankruptcy.** Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee’s property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or

e. **Vacation or Failure to Operate.** Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days; or

f. **Levy or Attachment.** Except as permitted pursuant to a SNDA executed by Lessor, Lessee and Lessee’s lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.

**15.02 Lessor Remedies.** If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor’s rights or remedies as a result of the event of default, Lessor may do the following:

a. **Terminate this Lease.** Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and, except as provided in Section 11.05.b., without being liable for any resulting damages. Lessee agrees to pay to Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor’s request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements (exclusive of Lessee’s removable trade fixtures and equipment), and the same shall become the property of Lessor.

b. **Relet the Leased Premises and Receive the Rent.** Lessor may terminate Lessee’s right to possession of the Leased Premises and enjoyment of the rents, issues and profits there
from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee’s obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.

c. **Enter and Perform.** Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.

d. **Other Remedies.** Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.

e. **Default by Lessor.** Lessor shall be deemed to be in default of this Lease (herein, a “Lessor Default”) if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor’s breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 3.08, 7.01(a), 9.02 and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period, Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.03 **Lessees Remedies.** If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

a. **Terminate this Lease.** Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee’s rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or

b. **Other Remedies.** Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

15.04 **Acceptance of Rent.** The acceptance by Lessor of Lessee’s quarterly payments subsequent to the occurrence of any event of default shall be considered to be compensation for Lessee’s use and occupancy of the Leased Premises, and shall in no way constitute a waiver by Lessor of its right to exercise any remedy provided for any event of default.

**ARTICLE 16: LESSOR’S LIEN**

16.01 **Subordination of Lessor’s Lien.** Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord’s liens on the Improvements or Lessee’s
personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

**ARTICLE 17: LESSEE’S MORTGAGE OF LEASEHOLD INTEREST**

17.01 *Mortgage of Leasehold Estate.* Lessor grants permission to Lessee for the mortgaging of Lessee’s leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. *In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.*

**ARTICLE 18: MISCELLANEOUS**

18.01 *Gender Neutral.* When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

18.02 *Severability.* If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.

18.03 *Amendment.* This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.

18.04 *Headings.* The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.

18.05 *Nonwaiver of Rights.* No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

18.06 *Force Majeure.* Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, “*force majeure*”) shall be excluded from the computation of any such period of time.

18.07 *Quiet Enjoyment.* Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
18.08 **No Partnership.** This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.

18.09 **No Brokers.** Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.

18.10 **Governing Law; Venue; Dispute Resolution.** The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas. In the event a claim, dispute, or controversy (defined for the purposes of this Lease as “Claim”) arises out of or relates to this Lease, Lessor and Lessee agree that, as a condition precedent to litigation, Lessor (or, at Lessor’s direction, Airport Manager) shall meet and attempt to resolve the matter within five (5) business days of a party’s request.

18.11 **Charitable Immunity or Exemption.** If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.

18.12 **Notices.** Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

**If to Lessor:**
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

**If to Lessee:**
Berry Aviation, Inc.
1807 Airport Drive
San Marcos, Texas 78666
Attn: Harry M. Berry III, Chairman and CEO

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

18.13 **Entire Agreement.** This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.

18.14 **Action through Airport Management.** All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation
Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.

18.15 Consent. In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.

18.16 Attorney Fees. Each party will be required to pay its own attorneys’ fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney’s fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.

18.17 Recordation. Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.

18.18 Reservation of Immunities. TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS LEASE.

18.19 No Third Party Beneficiaries. This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

18.20 Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.

18.21 Exhibits. The exhibits to this Lease are as follows:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Exhibit A</td>
<td>Location of FBO Space</td>
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<tr>
<td>Exhibit B</td>
<td>Location of Fuel Facilities</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Location of Self Service Facility</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Copy of Rules and Regulations</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Copy of Minimum Standards</td>
</tr>
<tr>
<td>Exhibit F</td>
<td>List of Sponsor Assurances</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Renewal Option</td>
</tr>
</tbody>
</table>
18.22 Termination of Original Lease. Effective as of the Effective Date, the Original Lease is terminated and, except for Lessor’s obligation to credit any sums previously paid by Lessee to Lessor thereunder against sums due hereunder, the parties shall have no further rights or obligations thereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of the Effective Date.

LESSOR:
CITY OF SAN MARCOS, TEXAS
By:____________________________________
Name Printed:___________________________
Title:___________________________________

LESSEE:
BERRY AVIATION, Inc., a Texas corporation
By:___________________________________
Name Printed:___________________________
Title:______________________________

ATTEST:
_____________________________________

______________________________

Harry M. Berry III, Chairman and CEO
EXHIBIT A
Location of FBO Space
EXHIBIT B
Location of Fuel Facilities
EXHIBIT C
Location of Self Service Facility

TO: BERRY AVATION
EXCLUSIVELY, AND FOR USE WITH THIS TRANSACTION ONLY
I HEREBY STATE TO THE BEST OF MY SKILL AND KNOWLEDGE
THAT THE PLAT IS TRUE AND CORRECT ACCORDING TO AN
ACTUAL SURVEY MADE ON THE GROUND ON OCTOBER 9, 2003,
AND THAT ALL CORNERS ARE MONUMENTED AS SHOWN HEREIN.

KILE SMITH, P.L.L.C. NO. 5307

ENGINEERS SURVEYORS
1112 HIGHWAY 80 EAST
SAN MARCOS, TEXAS 78666
512-396-2900

PLAT OF 75 SQUARE FEET, MORE OR
LESS, IN THE WILLIAM PETTUS TWO
LEAGUE GRANT SURVEY, CITY OF SAN
MARCOS, CALMARTIN COUNTY, TEXAS

SURVEYOR'S NOTES
1. FENCES HEREIN
2. BEARINGS, DISTANCES, AND AREAS IN PARENTHESES ARE FROM
RECORD INFORMATION
3. ACCORDING TO RECORDS FROM THE F.E.W.A. FLOOD INSURANCE
RATE MAP NO. 001000-2014-E, DATED 7/14/90, THE SITE IS
WITHIN THE 100 YEAR FLOODPLAIN
4. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT
TITLE REPORT, AND THIS SURVEYOR HAS NOT RESEARCHED THE
DEED RECORDS FOR PREVIOUS CONVEYANCES IN TITLE OR EASEMENTS.
THEREFORE, CERTAIN CONVEYANCES MAY HAVE BEEN GRANTED WHICH
ARE NOT REFLECTED HEREIN.

KILE SMITH, P.L.L.C. NO. 5307
ENGINEERS SURVEYORS
1112 HIGHWAY 80 EAST
SAN MARCOS, TEXAS 78666
512-396-2900

PLAT OF 75 SQUARE FEET, MORE OR
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THEREFORE, CERTAIN CONVEYANCES MAY HAVE BEEN GRANTED WHICH
ARE NOT REFLECTED HEREIN.
EXHIBIT D
Copy of Rules and Regulations
Chapter 10 - AVIATION

Footnotes:

--- (1) ---

Editor's note—Ord. No. 2015-46, § 1, adopted November 2, 2015, amended Chapter 10 in its entirety to read as herein set out. Former Chapter 10, §§ 10.001, 10.026—10.037, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Cross reference—Airport commission, § 2.331 et seq.

ARTICLE 1. - GENERAL

Sec. 10.001. - Minimum standards for commercial aeronautical activities.

(a) The minimum standards for commercial aeronautical activities at the regional airport owned by the city are approved and adopted by resolution and filed in the office of the city clerk, the same as if set out fully in this section. The minimum standards govern the activities of all tenants at the airport including fixed base operators and operators of specialized aviation services. The adoption of minimum standards is recommended by Federal Aviation Administration Advisory Circular 150/5190-7.

(b) Copies of the minimum standards adopted in subsection (a) of this section are maintained for public inspection in the office of the city clerk and airport management.

(Ord. No. 2015-46, § 1.11-2-15.)

Secs. 10.002-10.025. - Reserved.

ARTICLE 2. - STANDARD OPERATING PROCEDURES AND REGULATIONS

Sec. 10.026. - Definitions.

In this article:

Accident means an unintentional occurrence which results in property damage, personal injury or death.

Airport means all lands within the legal boundaries of the San Marcos Regional Airport under the control of the city.

Airport management means the company or entity contracted by the city to operate, maintain, manage and develop the airport on behalf of the city.

Commercial activities means the activities and operations of any aeronautical business or nonprofit organization with a valid lease agreement authorized by the city council including fixed-based operators, specialized aviation services, flight schools, flight clubs, and any other aeronautically related activity.

Federal Aviation Administration (FAA) means the federal agency established by the Federal Aviation Act of 1958 and reestablished in 1967 under the Department of Transportation.
Fixed base operator (FBO) means any person engaged in a business of an aviation nature under provisions, contracts or leases with the city and in accordance with applicable federal air regulations.

Motor vehicle means any self-propelled ground conveyance other than an aircraft.

Movement area means the area of the airport containing taxiways and runways separated from the ramp by two yellow lines, one solid and one dashed, requiring direct communication with the air traffic control tower during operating hours.

(Order No. 2015-46, § 1, 11-2-15.)

Sec. 10.027. - Authority.

The procedures and regulations in this article are promulgated under the power granted to the city under Federal Law (Title 49 of the Code of Federal Register) and State Law (Chapter 22 of the Texas Transportation Code) and the home-rule authority granted to the city under Article XI, Section 5 of the Texas Constitution.

(Order No. 2015-46, § 1, 11-2-15.)

Sec. 10.028. - Enforcement.

(a) Applicability. All aircraft, pilots, operators, companies, business organizations, government agencies and all persons coming upon airport property for any purpose are subject to this article.

(b) Compliance. The city council and airport management and its duly authorized representatives are empowered to enforce compliance with this article. In addition to the penalty prescribed in section 1.015, violators can be removed or evicted from the airport premises or denied use of the airport or its facilities if the action is determined by airport management or a city official charged with enforcing City code provisions to be reasonably necessary to protect public property or persons or ensure safety.

(Order No. 2015-46, § 1, 11-2-15.)

Sec. 10.029. - Revisions; validity; liability.

(a) Revisions. The city council reserve the right to revise, make changes to or waive the procedures and regulations in this article with only notice required by state law.

(b) Validity. The voiding of any particular procedure or regulation in this article does not affect the validity of the remainder of these procedures and regulations.

(c) Liability. The city assumes no responsibility for loss, injury or damage to persons or property because of fire, theft, vandalism, wind, flood, earthquake or collision, nor does it assume any liability for injury to persons while at the airport.

(Order No. 2015-46, § 1, 11-2-15.)

Sec. 10.030. - Safety.

(a) Policy. The policy of the airport is that safety is of primary and overriding priority. All persons on the airport are required to comply with this policy. This article is intended to promote safety as well as good operating practices. If any deviation is required in the interest of safety, such deviation is both authorized and encouraged. However, any deviation shall be reported to airport management as soon as practical after the occurrence.
(b) **Hazard identification.** Hazard identification and abatement are continuing programs at this airport. Any person with knowledge of a hazard at the airport shall immediately report this information to airport management.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.031. - Operations.

(a) **Aeronaual activities.** All aeronaual activities at the airport shall be conducted in conformity with the current regulations of the Federal Aviation Administration and other laws and rules promulgated by applicable federal, state and local agencies with jurisdiction over airport matters. Only properly registered and legally certified pilots are authorized to operate at the airport.

(b) **Tiedown of aircraft.** Aircraft not hangared will be tied down and secured. The aircraft owner and the owner's agent and the pilot are legally responsible for tiedown and security of the aircraft at all times including inclement weather. Inspection of tiedown equipment is the responsibility of the owner and the owner's agent and the pilot.

(c) **Parking of aircraft.**

1. Aircraft will not be parked in a manner that impedes the normal movement of other aircraft and traffic. It is the responsibility of the pilot when leaving a parked aircraft on the airport to ensure the brakes are set, the aircraft is properly chocked, and the aircraft is tied down.

2. Aircraft will not park within or under a structure for which they are not the rightful lessee or owner. Any unauthorized aircraft may be towed, seized, impounded, and/or locked by airport management at the owner's expense. Airport management will not be held liable for any damage that may occur as a result.

(d) **Unairworthy and/or abandoned aircraft.** Unairworthy aircraft shall not be parked or stored anywhere on the airport. Exception: aircraft awaiting repairs to return the aircraft to an airworthy condition may be parked or stored up to six months. Any parking or outside storage of unairworthy aircraft in excess of six months shall require written permission of airport management. In the event of failure to comply with this provision, such disabled aircraft and any abandoned or unairworthy aircraft may be removed by airport management at the owner's expense and without liability on the part of the airport for any damage which may result in the course of such removal. Airport management may recommend parking fees to the city council.

(e) **Responsibility for disposal of disabled aircraft.** The owner of wrecked and disabled aircraft shall be responsible for the prompt removal and disposal of such aircraft after release by airport management and the Federal Aviation Administration or National Transportation Safety Board.

(f) **Damage.** Any person damaging any light fixture, or other airport property will immediately report the damage to airport management. Persons causing damage to approach, runway and/or taxiway lights or fixtures, or other airport property as a result of negligent acts may be liable for the replacement or repair costs. Tenants shall be held fully responsible for any damage to any building, equipment, or real property owned by the airport. Any damage to or malfunctioning of buildings, structures, utilities or other property owned by the airport shall be reported to airport management.

(g) **Taxing aircraft.**

1. **Speed.** Aircraft will be taxed at safe and prudent speed and under full control of the pilot at all times in accordance with Federal Aviation Administration Advisory Circular 120-74B.

2. **Consideration.** No person will start or run an aircraft in a manner to risk damage to other aircraft or property or in a manner to blow paper, debris or other objects across the taxiway or runway or in a manner to endanger any operations on the airport.

(h) **Air traffic control tower and radio procedures.** All pilots are required to communicate with the tower during operating hours prior to entering the movement area. The airport frequencies are: tower
126.825 and ground 126.125. Pilots are encouraged to announce their intentions and communicate with other pilots via CTAF when the tower is closed, in accordance with Federal Aviation Administration Advisory Circular 90-66.

(i) **Traffic patterns.**

(1) **Direction.** All VFR traffic is expected to make left traffic patterns to all runways when the tower is closed.

(2) **Altitude.** Recommended traffic pattern altitude for the airport is 1600 feet MSL/1000 feet AGL.

(j) **Authority to suspend operations.** Airport management or its designated representative may suspend or restrict any or all operations on the airport whenever such action is determined necessary.

(k) **Closing of airport.** In the event airport management believes conditions at the airport are unsafe, it is within its authority to close the entire airport or any part thereof. A notice to airmen (NOTAM) will be immediately filed with Federal Aviation Administrative Flight Safety Services.

(Ord. No. 2015-46, § 1.11-2-15.)

Sec. 10.032. - Public and tenant usage.

(a) **Commercial activities.** No person will use the airport for business or commercial activities without obtaining the approval of the city council through airport management.

(b) **Advertisements.** No person shall post, distribute, or display signs, advertisements, circulars, or any other printed material on airport property without the prior approval of airport management. Airport management is authorized to rescind any permission granted if the advertisement does not remain in compliance with this ordinance and the minimum standards adopted by the city council.

(c) **Demonstrations, shows and exhibitions.** No person will engage in any show, demonstration, or exhibition without prior written permission from airport management.

(d) **Lost articles.** Any person finding lost articles on the airport will deposit them at the airport management office located at 4400 Airport Highway 21, San Marcos, TX 78666. Articles unclaimed after 60 days by the owner may be turned over to the finder or otherwise legally disposed of by the city as determined by the city manager or his designee.

(e) **Right of entry.** Airport management has the right of entry at reasonable times for repairs, maintenance, modification or inspection of all rooms, areas and buildings on the airport.

(f) **Construction or alteration.** No construction work or alterations to grounds or structures, other than minor repairs or maintenance, will be performed on the airport without written permission from the city as determined by the city manager or his designee. No person may modify any equipment or building, or change any mechanical, electrical, electronic, or plumbing equipment owned by the airport without first obtaining written permission from airport management. No person may move or install any equipment, signs, or other structure in the public areas of the airport without first obtaining written permission from airport management.

(g) **Restricted areas.** No person shall enter any restricted area on the airport without the authorization of airport management.

(h) **Sanitation.**

(1) **Disposal.** No person will dispose of garbage, papers, refuse or other waste materials on the airport, except as provided by city ordinance.

(2) **Burning.** No open fires are allowed on the airport without the approval of the city fire marshal or his designee. No trash or refuse will be burned on the airport at any time.

(3) **Use of sewers and drains.** No materials may be put in the sanitary sewer system, or any other drainage system, which do not conform to the regulations of the city.
(i) Alcohol and narcotics.

(1) Legal compliance. All applicable local, state and federal laws pertaining to handling or use of alcoholic beverages, narcotics, and drugs apply on the airport.

(2) Under the influence. No person under the influence of alcohol or other substance shall operate a motor vehicle or aircraft on the airport. The city, through its appropriate law enforcement agency, reserves the right to remove or evict violators from the airport premises or deny use of the airport or its facilities by the violator.

(j) Disorderly conduct. No person on the airport shall commit any disorderly, obscene, or indecent act or commit any act prohibited by Texas Penal Code § 42.01.

(k) Preservation of property. It is unlawful for any person to:

(1) Destroy, injure, deface or disturb any building, sign, equipment, marker, structure, lawn, or public property on the airport.

(2) Trespass on agricultural areas without the approval of airport management.

(3) Abandon property on the airport.

(4) Interfere with, tamper, or injure any part of the airport operation, or any aircraft on the airport.

(l) Hunting and firearms. Except as authorized by state law, no person may carry firearms on the airport. No hunting or shooting is allowed on the airport.

(m) Storage. No person shall use any property of the airport for outside storage without first obtaining written permission from airport management. No tenant or lessee of airport property shall store or stock material or equipment in such a manner as to constitute a hazard to any person or property, or in such a manner as to create an unattractive appearance.

(n) Pets and animals. It is unlawful for the owner or person responsible for a pet or animal to permit same to be at large. The term "at large" means a dog or cat which is not restrained by leash and which is also off the premises of its owner or the person responsible for it. Pets and animals found running at large will be picked up and impounded.

(o) Drip pans. Whenever oil leakage, dripping or spillage is possible, drip pans shall be placed under each engine of an aircraft.

(p) Authority to detain aircraft. Airport management has the authority to detain any aircraft for non-payment of any debt due to the airport.

(q) Denial of use. Airport management is authorized to deny use of the airport to any aircraft or pilot violating these or Federal Regulations at the airport or elsewhere.

(r) Special events. Special event(s) means an activity which may not completely comply with these rules or which, although it may comply with these rules, will require an accommodation by other users of the airport. Special events include, but are not limited to, fly-ins, ramp space rentals, skydiving exhibitions, balloon operations, or similar events or activities. Any person wishing to sponsor a special event shall obtain the prior written approval of airport management. Airport management shall require such safeguards as deemed necessary to protect the airport, the city, the county, aircraft using the airport, and the general public. These requirements may include, but are not limited to, bonds, insurance policies, additional security personnel, facilities, special operating procedures, city permits, and any required waiver/authorization to the Federal Aviation Regulations issued by the FAA. Airport management is prohibited by the FAA from closing the airport for any activity which is not an aeronautical activity. The city council may establish, upon recommendation from airport management, general reasonable fees and requirements for special events. The fee schedule adopted by the city council will provide limited flexibility to allow airport management, with the approval of the city manager or his designee, to adjust fees for special events that may require specialized accommodations. Any signage for the special event must be approved by airport management.
(s) **Unlawful to drop handbills or other matter.** It is unlawful for any person in any aircraft flying over the airport or over the territory within the boundaries of the airport to cause or permit to be thrown out, discharged, or dropped, any handbills, circulars, card or other matter whatsoever which falls upon the airport property.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.033. - Fire prevention.

(a) **Applicability and compliance.** All persons, companies, and agencies engaged in any activity at the airport, whether occupying airport-owned facilities or otherwise, shall comply with fire regulations as issued by the city and shall comply with all applicable county, state and federal laws and regulations related to fire prevention or safety.

(b) **Enforcement.** Airport management or other duly authorized officials may direct the removal of fire hazards, arrangement and modification of equipment, or alter operating procedures in the interest of fire prevention.

(c) **Fire prevention.** All persons using the airport, or the facilities of the airport will exercise the utmost care to guard against fire and injury to persons and property.

(d) **Cleaning of parts.** The cleaning of engine parts or other parts of aircraft will be done with non-flammable liquids unless the engine or aircraft part being cleaned is located a safe distance away from other aircraft or airport facilities. If volatile liquids are employed, cleaning operations must be in open and clear areas or in a suitable room of the repair facility and separated from storage and operational areas by fire resistant partitions in compliance with the requirements of the National Board of Fire Underwriters.

(e) **Hangar floors.** Floors will be kept clean and free from oil.

(f) **Empty containers.** All empty oil, paint and varnish cans, bottles and other containers will be removed immediately from the premises and not allowed to remain on floors, wall stringers, or overhead storage areas in or about hangars, shops and other buildings. Empty containers must be disposed of in accordance with the stormwater pollution prevention plan for the airport.

(g) **Trash.** No boxes, crates, rubbish, paper, or litter of any kind will be stored in or about hangars, except in proper receptacles provided for this purpose. Commercial operators shall be responsible for providing containers for all trash on their leased premises and shall arrange for the regular removal of the trash. Commercial operators will provide an appropriate receptacle for trash removal to be used by its contractors, employees, and invitees.

(h) **Flammable, corrosive and toxic materials.** Containers of gasoline, kerosene or other flammable liquids, explosives, toxic or corrosive substances will not be stored in hangars.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.034. - Fueling and flammables.

(a) **Fueling and defueling procedures.**

1. **Hot refueling.** Hot refueling is the fueling of aircraft while the engine is running. Hot refueling shall be permitted only under special circumstances and then only when authorized by airport management. Hot refueling may be permitted only by appropriately trained and certified FBO personnel in accordance with generally accepted industry standards.

2. **Electrical storm.** No aircraft will be fueled or defueled during an electrical storm.

3. **Smoking.** No person will smoke within 100 feet of an aircraft being fueled or defueled.
(4) Radio operation. No person will operate a radio transmitter or electrical systems in an aircraft while it is being fueled or defueled.

(5) Grounding. During fueling and defueling, the aircraft and dispensing apparatus will both be properly grounded.

(6) Equipment status. Fueling hoses and equipment will be maintained in a safe, operational, and non-leaking condition and will be approved by the National Board of Fire Underwriters, or equivalent standard.

(7) Spillage. No person will start the engine where fuel spillage is on the ground in the vicinity of the aircraft. A person responsible for spillage will take proper measures to ensure removal of the spilled fuel pursuant to the stormwater pollution prevention plan for the airport.

(8) Fire extinguishers. Adequate fire extinguishers will be within reach of all persons engaged in fueling or defueling operations. All extinguishers will be inspected and re-certified as required by law. All persons engaged in fueling and defueling will be familiar with the proper use of fire extinguishers.

(9) Passengers. No aircraft will be fueled or defueled while passengers are on board the aircraft unless the aircraft doors are in the open position.

(10) Location of aircraft. No aircraft will be fueled while parked in a hangar.

(b) Cleaning of aircraft. No person will use volatile liquids in the cleaning of an aircraft, aircraft engines, propellers, parts, or for any other purposes, unless such operations are conducted in the open or in a facility specifically equipped and approved for that purpose.

(c) Storage.

(1) Flammables. No person will keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport, unless such materials are kept in an aircraft in the proper receptacles installed in the aircraft for such purposes or in rooms or areas specifically approved for such storage.

(2) Waste oil. No person will keep or store waste oils in or about the hangars unless stored in a proper receptacle pending removal. Waste oil must be disposed of in accordance with the storm water pollution prevention plan for the airport.

(d) Liquid disposal. No fuels, oils, dopes, paints, solvents, or acids will be disposed of or dumped on the ramp area, agricultural lands or elsewhere on the airport. All disposal will be in accordance with city ordinances, Environmental Protection Agency (EPA) rules, and FAA standards.

(Ord. No. 2015-48, § 1.11-2.15.)

Sec. 10.035. - Motor vehicles.

(a) General requirements. Persons will operate motor vehicles on the airport in accordance with the procedures and regulations of this section and in full compliance with all state licensing, registration, and operating requirements.

(b) Speed. No person will operate a motor vehicle on the airport in a reckless or negligent manner, or in excess of a safe and prudent speed. Posted speed limits will not be exceeded. The posted speed limit for the ramp is 15 miles per hour and the posted speed limit for roadways is 35 miles per hour.

(c) Parking.

(1) Location. No person will park a motor vehicle at the airport other than in areas specifically established for public and tenant parking. No persons shall park a motor vehicle so as to obstruct roadways or taxiways. No person shall park a motor vehicle in public aircraft parking areas.
(2) **Abandoned vehicles.** No personal shall park a motor vehicle on the airport for an extended period of time without prior notification to airport management.

(3) **Towing for violation.** Airport management has the authority to tow or otherwise remove motor vehicles which are parked on the airport in violation of this section. The vehicle will be towed at the owner's expense and without liability for damage which may result in the course of such moving.

(d) **Vehicle repairs.** No person will clean or make any repairs to motor vehicles on the airport, except for airport support vehicles and minor emergency repairs.

(e) **Operation restrictions.**

(1) **Ramp.** No motor vehicles, other than support vehicles, are permitted to operate on the airport parking ramp, except for the loading and unloading of aircraft occupants or cargo without the approval of airport management. Vehicle operators must utilize the ramp vehicle lane and will obey all markings pertaining to speed and stops.

(2) **Runways and taxiways.** No person or motor vehicle is permitted within the movement area except as specifically authorized by airport management or air traffic control.

(3) **Right-of-way procedures.** All motor vehicles will pass to the rear of taxiing aircraft and no vehicle will approach closer than 100 feet of any aircraft when an aircraft's engine is operating.

(4) **Airport based support vehicles.** Support vehicles regularly using the ramp, such as fuel trucks or tugs, shall be equipped with a two-way radio that can communicate with air traffic control and an amber strobe, LED, or rotating beacon visible from at least 300 feet.

(Ord. No. 2015-46, § 1.11-2.15)

Sec. 10.036. - Emergency procedures.

(a) **Emergency notification and response.** Emergency notification and response procedures are as follows:

(1) **Generally.** The city provides emergency services of fire, police, and medical response to the airport.

(2) **Notification procedures.** In addition to standard FAA emergency notification procedures, local emergency notification may be initiated during emergencies by contacting the air traffic control tower, operating hours through San Marcos Tower/CTAF on 126.825. During all hours, emergency notification can be initiated by calling San Marcos Police 911. Airport management can be notified at (512) 218-8039.

(b) **Volunteer assistance.** Volunteer assistance and/or access to the scene of any aircraft accident will be approved and controlled by the authorized emergency response personnel and the appropriate law enforcement authorities, and air traffic control if operating hours.

(c) **Accident reporting.** In addition to required FAA notification and reporting actions, the operator of any aircraft involved in an incident or accident at the airport will notify airport management within 24 hours. When a written report is required by the FAA, a copy of such report will suffice for the airport requirement.

(Ord. No. 2015-46, § 1.11-2.15)
EXHIBIT E
Copy of Minimum Standards
San Marcos Regional Airport

Airport Management Office
4400 Airport Highway 21
San Marcos, Texas 78666
Phone: (512) 216-6039
Fax: (512) 216-6043

Updated August 18, 2015

SAN MARCOS
REGIONAL AIRPORT

Minimum Standards
San Marcos Regional Airport  
Minimum Standards

Revisions

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San Marcos Regional Airport
Minimum Standards

Section 1
General

1.1 Introduction

The City of San Marcos, as Owner of the San Marcos Airport, establishes these Minimum Standards for persons who are or wish to become Commercial Operators, or anyone who leases land, and/or who makes use of Airport property. These Minimum Standards consider the significant role of the Airport in aviation, facilities that currently exist at the Airport, services being offered at the Airport, and the future development planned for the Airport. These Minimum Standards serve the following purposes:

1. Ensure that all commercial operators, tenants, and the City of San Marcos are not exposed to illegal, unsafe, or irresponsible practices.

2. Serve the public interest and discourage substandard business practices and construction, thereby protecting both the established aeronautical activity and the San Marcos Airport customers.

1.2 Purpose*

In accordance with the Airport and Airway Improvement Act of 1982 and the Airport Improvement Program (AIP) sponsor assurances, the owner or operator of the Airport (the Airport Sponsor) that has been developed or improved with federal grant assistance or conveyances of Federal property assistance is required to operate the Airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These federal obligations involve several distinct requirements. Most important is that the Airport and its facilities must be available for public use as an Airport. The terms imposed on those who use the Airport and its services must be reasonable and applied without unjust discrimination, whether by the Airport Sponsor or by a contractor or licensee who has been granted a right by the Airport sponsor to offer services or commodities normally required to serve aeronautical users of the Airport.

Federal law requires that recipients of federal grants sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an Airport Sponsor assumes in exchange for federal assistance. The FAA's policy recommending minimum standards stems from the Airport Sponsor's grant assurances and similar property conveyance obligations to make the Airport available for public use on reasonable conditions and without unjust discrimination.
1.3 Policy *

The Airport Sponsor of a federally obligated Airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the Airport Sponsor. The Airport Sponsor’s purpose in imposing standards is to ensure a safe, efficient, and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory.

1.4 Objective *

The FAA objective in recommending the development of minimum standards serves to promote safety in all Airport activities, protect Airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all Airport users, promote the orderly development of Airport land, and ensure efficiency of operations. Therefore, Airport Sponsors should strive to develop minimum standards that are fair and reasonable to all on-Airport aeronautical service providers and relevant to the aeronautical activity to which it is applied.

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. Under certain circumstances, an Airport Sponsor could deny Airport users the opportunity to conduct aeronautical activities at the Airport for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. These standards should be tailored to the specific aeronautical activity and the Airport to which they are to be applied. Considerations for applying these standards may include the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;

2. Impose conditions that ensure safe and efficient operation of the Airport in accordance with FAA rules, regulations, and guidance;

3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;

4. Ensure standards are relevant to the activity to which they apply; and

5. Ensure standards provide the opportunity for newcomers to meet the minimum standards to offer their aeronautical services within the market demand for such services.

* Federal Aviation Administration Advisory Circular Number 150/5190-7, August 28, 2006
1.5 Application of Minimum Standards

Any Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must comply with these Minimum Standards and any amendments thereto. If there is a conflict between a Minimum Standard and the provision of a lease, permit, or agreement, the provision in the lease, permit, or agreement governs.

Whenever an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant conducts multiple aeronautical activities under one lease, permit or agreement with the City, the Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant must comply with these Minimum Standards for each activity being conducted. If the Minimum Standards for one of the aeronautical activities are inconsistent with the Minimum Standards for another aeronautical activity, the City may apply the Minimum Standards that are most beneficial to Airport operations.

The City may waive or modify any Minimum Standard for the benefit of any governmental agency or when the City determines that a waiver or modification is in the best interest of Airport operations and will not result in unjust discrimination among Aeronautical Commercial Operators, Nonprofits, or Executive Hangar Tenants.

In addition to the requirements set forth in this document, an annual review of existing leases may be conducted for each tenant/lessee at any time to ensure compliance with these Minimum Standards.

1.6 Insurance

All individuals and entities providing commercial aeronautical activities shall protect the public generally, its customers or clients, and the City of San Marcos from any and all unlawful damages, claims, or liability and shall carry comprehensive general liability insurance with a company authorized to do business in the State of Texas with limits of not less than that specified herein; and such policies must be written with the City of San Marcos named as an additional insured; such policies must be approved by the Airport and a certificate of insurance furnished to same. It is further understood that as circumstances may justify in the future, the City may modify these insurance requirements.

All tenants will have three months, or until expiration date of current insurance policy, whichever is greater, to update their insurance coverage in order to comply with these Minimum Standards.

All insurance requirements can be found in Appendix A of this document.

1.7 Personnel

Each Aeronautical Commercial Operator must employ a sufficient number of trained, on-duty personnel to provide for the safe, efficient, and orderly conduct of all its operations utilizing the
San Marcos Regional Airport
Minimum Standards

Airport, and for proper compliance with its obligations under its lease, permit, or agreement. Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must control the conduct and demeanor of its personnel, subtenants, invitees, and, upon objection by the City concerning the conduct or demeanor of any such person, the Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must immediately take all lawful steps necessary to remove the cause of the objection.

Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must conduct its operations in a safe, orderly, efficient, and proper manner so as not to unreasonably disturb, endanger, or be offensive to others.

1.8 Common Rights and Privileges

All Aeronautical Commercial Operators, Nonprofits, and Executive Hangar Tenants shall have the right to use common areas of the airport (including runways, taxiways, and roadways).

The City reserves the right to take any actions it considers necessary to protect the aerial approaches to the Airport against obstructions.

The City reserves the right to enter upon any premises at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of the Minimum Standards.

1.9 Land and Facility Use

The City reserves the right to lease an existing facility or any portion of an existing facility to an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant in order to maximize facility use and business opportunities. A lease of this nature shall be at the City’s sole discretion, and shall be considered to meet the minimum facility requirements as specified in these Minimum Standards.

1.10 Compliance

In the event modified or updated Minimum Standards create a situation whereby an existing tenant is not in compliance, the City has the sole right to establish a plan for correcting such non-compliance. The City will work with the tenant to help provide a fair and reasonable solution in a timely manner.
Section 2  
Aeronautical Operators & Tenants

2.1 Authority

Airport Management reserves the right to adjust and/or combine the square footage of building space or area if more than one category of service is provided by one individual, firm, or corporation. Airport Management also reserves the right to make any changes to these Minimum Standards dictated by changing conditions or circumstances. The time of operations shown for each category is considered reasonable but may be adjusted from time to time as agreed on by Airport Management and the Lessee in writing.

2.2 Fixed Base Operator (FBO)

A Fixed Base Operator (FBO) is an Aeronautical Commercial Operator engaged in the sale of products, services, and facilities to aircraft operators including aviation fuels and lubricants; ground services and support; tie-down, hangar, and parking; aircraft maintenance, and aircraft rental/flight training.

A Fixed Base Operator shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with FBOs.

2. Provide at least one type of fuel for aircraft use (100LL or Jet A).

3. Maintain one metered and filter equipped dispenser, fixed or mobile, for dispensing each separate type of fuel offered.

   - For mobile fuel dispensing of each type of fuel offered, lessee shall furnish a separate fuel truck or fuel trailer with a minimum capacity of five hundred (500) gallons each. Mobile dispensing equipment shall be properly maintained, operated, and equipped in accordance with applicable Federal Aviation Administration, Airport Lessor, and National Fire Protection Association recommendations, requirements, and regulations.

   - For fixed fuel dispensing, lessee shall furnish separate dispensing pumps and meters for each type of fuel offered. Such fixed fuel dispensing equipment shall be attended or automated so that fuel is available to the public without discrimination, any unusual requirements, or any advance arrangements of any kind.
4. Furnish fuel storage tanks with a minimum capacity of ten thousand (10,000) gallons each for either 100LL or Jet A. Fuel storage tanks shall be ground mounted in properly bunkered and approved closures in a location approved by the Airport Lessor and shall comply with applicable uniform building code standards, fire codes and ordinances, and the recommendations of the National Fire Protection Association.

5. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

6. Provide personnel on duty during normal business hours seven days a week.

2.3 Specialized Aviation Service Operation (SASO)

A Specialized Aviation Service Operation (SASO) is an Aeronautical Commercial Operator that is authorized to offer a single or limited service according to established Minimum Standards. Examples of a SASO include, but are not limited to, the following commercial aeronautical activities: aircraft maintenance, avionics maintenance, avionics sales, flight training, aircraft charter, aircraft sales, aircraft storage, specialized commercial aeronautical operations, and aircraft refurbishing.

A SASO shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with the intended facility use.

2. Ensure that customers, clients, and/or employees have the appropriate and current FAA pilot’s license and current Airman Medical Certificate as necessary.

3. Have adequate facilities or arrangements for storing, parking, servicing, and repairing all of its aircraft.

4. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

2.4 Temporary Aeronautical Commercial Activity (TACA)

A Temporary Aeronautical Commercial Activity is a single aeronautical service offered on a temporary basis without an established place of business on the Airport. Examples of a TACA include, but are not limited to, mobile versions of Specialized Aviation Service Operations (SASO). The TACA must be permitted by San Marcos Airport and may be denied access to the Airport. San Marcos Airport may or may not allow this type of servicing to exist on the Airport.
2.5 Executive Hangar

An Executive Hangar is a small to medium size hangar, owned or leased by an individual or business to store their own aircraft. The uses of an Executive Hangar shall be limited to the storage of wholly owned or leased aircraft and service and maintenance on wholly owned or leased aircraft. Executive Hangar Tenants may not hangar aircraft owned by others nor offer, nor provide, any services whatsoever to others, except however, other’s aircraft may be temporarily hangared without compensation.

Executive Hangar Tenants shall:

1. Construct a hangar with a minimum structure size of 50’ x 50’.

2. Determine the necessity of certain Development Design Standards, such as restroom facilities and vehicle parking, with the assistance of Airport Management prior to construction.

2.6 Nonprofit

A Nonprofit serves and/or educates the aviation community without the intent to distribute profits or dividends or without the intent to operate as a commercial business. The City may request articles of incorporation filed with the Secretary of State to ascertain nonprofit status.

Due to the variety of nonprofit aviation organizations, minimum leased area, building size, and insurance requirements will be determined on a case-by-case basis.

Section 3
Application Process

3.1 Improvements to Airport Property

Prospective tenants wishing to establish a permanent business on Airport property or to construct a hangar for personal use must first complete a Project Development Questionnaire.

All improvements constructed on Airport property are subject to the requirements of these Minimum Standards, the Airport’s Development Design Standards, and all applicable municipal, state, and federal codes. Plans for construction will be approved by the City and Airport Management prior to the commencement of work.

A Project Development Questionnaire packet may be found at Airport Management office.
San Marcos Regional Airport
Minimum Standards

3.2 Temporary Aeronautical Commercial Activities (TACA)

Temporary or mobile business activities are permitted after the proper Temporary Permit Application has been completed and approved by Airport Management, all applicable fees have been paid, and proper proof of insurance has been provided.

A Temporary Permit Application may be found in Appendix B of this document or online.

3.3 Additional Requirements

The City or designated representative may require the Applicant to provide additional information to ensure compliance with the City of San Marcos ordinances, Airport Standard Operating Procedures and Regulations, or these Minimum Standards.

Applicant shall satisfy the Airport that they are technically and financially able to perform the services associated with the proposed nature of their business. This may include the responsibility for demonstrating continued financial solvency and business ability by submitting financial statements, credit references, a business plan, and any other data that Airport Management and the City may require from time to time. In each instance, the City shall make the final determination as to qualifications and financial ability of the applicant.

3.4 Action on Application

All applications will be reviewed and acted upon by Airport Management within 30 days from the receipt of the application. Applications may be denied for one or more of the following reasons:

1. The applicant does not meet qualifications, standards, and requirements established by these Minimum Standards.

2. The applicant’s proposed operations or construction will create a safety hazard on the Airport.

3. The granting of the application will require the expenditure of local funds, labor, or materials on the facilities described in or related to the application, or the operation will result in a financial loss to the Airport.

4. There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.

5. The proposed operation, development, or construction does not comply with the approved Airport Layout Plan (ALP).
Appendix A: Insurance Requirements
San Marcos Airport Minimum Insurance Requirements

Basic airport operations minimum requirements:

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>COMPREHENSIVE AIRPORT LIABILITY</th>
<th>AIRCRAFT LIABILITY</th>
<th>HANGARKEEPERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FBO</td>
<td>$2,000,000</td>
<td>≥ $1,000,000</td>
<td>Value of aircraft in care, custody, or control</td>
</tr>
<tr>
<td>SASO</td>
<td>$1,000,000</td>
<td>≥ $1,000,000</td>
<td>Value of aircraft in care, custody, or control</td>
</tr>
<tr>
<td>TEMPORARY AERONAUTICAL ACTIVITY</td>
<td>$1,000,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>NONPROFIT</td>
<td>$1,000,000</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>EXECUTIVE HANGAR</td>
<td>N/A</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>T-HANGAR/T-SHELTER</td>
<td>N/A</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

REMARKS:
- All: CIL with coverage for Bodily Injury & Property Damage
- All: CIL with coverage for Bodily Injury & Property Damage

Other minimum requirements based on other miscellaneous activities:

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>COMPREHENSIVE AIRPORT LIABILITY</th>
<th>AIRCRAFT LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIR CHARTER</td>
<td>$1,000,000</td>
<td>≥ $2,000,000*</td>
</tr>
<tr>
<td>AIR CARGO</td>
<td>$1,000,000</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>AIRCRAFT SALES</td>
<td>$1,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>FUEL STORAGE TANKS</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>PRODUCT LIABILITY</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

REMARKS:
* Minimums increase based on passenger capacity

Property Insurance:

All tenants who own or lease property at the Airport are required to carry Property Liability insurance. If the hangar/facility is owned, the lessee must carry insurance equal to the market replacement value of the building and underlying slab. If the hangar/facility is leased, lessee must insure the contents of the facility.

Auto Insurance:

Any vehicle operating in the Aircraft Operations Area (AOA), whether owned, not owned, or hired, must carry Automobile Liability of at least $500,000.
San Marcos Regional Airport
Minimum Standards

Appendix B: Temporary Permit Application
San Marcos Regional Airport
Temporary Permit Application

Brief description of temporary business or activity, event, or signage:


Requested permit date[s]: ____________________ to ____________________

These activities are governed by the Airport minimum standards.

Applicant: ________________________________
Authorized Representative: ____________________ Title: ____________________
Address: ________________________________
City, State, Zip: ________________________________
Phone (work): _______________ (fax): _______________ (emergency): _______________
Email Address: ________________________________

The Applicant hereby requests the above action(s) from the city for the privilege of conducting commercial aeronautical activities on the Airport in consideration of this request being granted agree to the following:

FEE PAYMENT: Based on requested activity and date range.

PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to only the approved business activity listed above for the approved date(s).

INFORMATION CHANGES: The Applicant shall notify Airport Management Office in writing within fifteen (15) days of any change to the information provided on this form.

COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations.

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of this permit.

Authorized Representative’s Signature ____________________ Date ____________________
For office use only:

Application has been ☐ APPROVED.

Approved permit use:


Approved permit date(s):

Approved by: ___________________________ On: __________

Application has been ☐ DENIED.

Reason for denial:


Denied by: ___________________________ On: __________
EXHIBIT F
List of Sponsor Assurances
(to be attached)
EXHIBIT G
RENEWAL OPTION

This Renewal Option is attached to and a part of that certain Airport Facility Lease Agreement for Commercial FBO Use effective as of July 1, 2018 (the “Lease”), by and between the City of San Marcos, a municipal corporation of the State of Texas (“Lessor”), and Berry Aviation, Inc., a Texas corporation (“Lessee”). For and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor grants to Lessee the option to extend the Lease, as hereinafter set forth.

Contingent upon satisfaction of all of the following conditions, Lessee is hereby granted the option to extend the Term (the “Primary Term”) for three (3) successive periods, the first containing approximately one hundred twenty (120) calendar months and expiring on April 18, 2042, the second containing one hundred twenty (120) full calendar months and expiring on April 18, 2052, and the third containing sixty (60) full calendar months and expiring on April 18, 2057 (such extension periods herein “Renewal Term 1”, “Renewal Term 2” and “Renewal Term 3”, respectively, and each a “Renewal Term”), said conditions being that:

(i) Lessee shall not be in default beyond any applicable cure period at the time it attempts to exercise an option hereunder; and

(ii) Lessee shall have given notice to Lessor not less than one hundred eighty (180) days prior to the expiration of the Primary Term, Renewal Term 1, or Renewal Term 2, as applicable, of Lessee’s exercise of such option.

Time is of the essence in the exercise of the options herein granted and should Lessee fail to exercise its right to any option by timely notice, such option and all successive options shall lapse and be of no further force or effect.

In the event that Lessee effectively exercises any option herein granted, then all of the terms and provisions of the Lease as are applicable during the Primary Term shall likewise be applicable during Renewal Term 1, Renewal Term 2 and Renewal Term 3, as applicable, except that fixed Rent per calendar quarter (subject to proration with respect to any partial calendar quarter) shall be payable as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rent Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2033 through April 18, 2037:</td>
<td>$2,524.50</td>
</tr>
<tr>
<td>April 19, 2037 through April 18, 2042:</td>
<td>$2,776.95</td>
</tr>
<tr>
<td>April 19, 2042 through April 18, 2047:</td>
<td>$3,054.65</td>
</tr>
<tr>
<td>April 19, 2047 through April 18, 2052:</td>
<td>$3,360.11</td>
</tr>
<tr>
<td>April 19, 2052 through April 18, 2057:</td>
<td>$3,696.12</td>
</tr>
</tbody>
</table>

Other than as provided herein, Lessee shall have no further right to renew or extend the Term. Lessee’s rights under this Renewal Option shall immediately terminate if the Lease or Lessee’s right to possession of the Leased Premises is terminated.

References in this Renewal Option and the Lease to the “Term” or the “Lease Term” shall be understood to refer to both the Primary Term and (if Lessee’s option therefor is effectively exercised in accordance with the provisions hereof) also the stated Renewal Term(s), as applicable, unless such interpretation is expressly negated.

AGENDA CAPTION:
Consider approval of Resolution 2018-107R, approving an Amended and Restated Revised Lease of Unimproved Property for Construction and Operation of Business Facilities with Berry Aviation, Inc. for an aircraft hangar and tract of land at the San Marcos Regional Airport; authorizing the City Manager to execute the Agreement; and declaring an effective date.

Meeting date: June 19, 2018

Department: Airport-Texas Aviation Partners

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)]

Choose an item.

**Background Information:**
In May 2017, City Council approved a 40-year ground lease for the construction of a maintenance facility for Berry Aviation Inc. ("Berry"). Berry has requested that their existing leases be amended to extend the term to match that of the ground lease. The proposed new deal clarifies and cleans up areas of confusion with two amended, new leases that improve our mutual business arrangement at the airport. This lease includes a 55,000 square foot City-owned hangar and an approximately 20,000 square foot hangar owned by Berry Aviation.

Additional changes were made, including:
- Separating hangar facilities from FBO and fueling facilities
- Clarification of leased premises and associated maintenance costs
- Addition of ground leased area to accommodate vehicle parking and storage
- Addition of periodic rent increases
- Removal of 1% gross revenue requirement, consistent with current leasing policy

There is a comparison of Berry's current lease and the proposed new lease prepared by Texas Aviation Partners attached as background. There are two agenda items relating to Berry: one approves Berry's Fixed Based Operator business and the other one Berry's aircraft business.

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

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

**Recommendation:**
Texas Aviation Partners recommends approval.
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED REVISED LEASE OF UNIMPROVED PROPERTY FOR CONSTRUCTION AND OPERATION OF A BUSINESS FACILITIES WITH BERRY AVIATION, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The terms and conditions of the Amended and Restated Revised Lease of Unimproved Property for Construction and Operation of Business Facilities with Berry Aviation, Inc. attached hereto as Exhibit A is hereby approved.

PART 2. The City Manager is hereby expressly authorized to execute the Agreement in the form attached hereto as Exhibit A on behalf of the City.

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

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
**Berry Lease Comparison**

The proposed lease terms represent a good business arrangement for the City and its largest airport employer. The goal of the new leases is to align the expiration date with that of Berry’s new maintenance facility currently under construction and to update the terms to be more in line with those offered to other FBOs.

Berry’s original leases from 1993 had the City paying for all utilities and repairs and maintenance to the facilities. Additionally, the old leases reference underground storage tanks that have since been decommissioned and replaced by above ground tanks. The new leases include language to ensure the facilities are being maintained by the tenant and that the City’s fuel tanks are being maintained by the tenant to EPA/TCEQ standards.

Additionally, there have been disagreements on numerous provisions in the existing lease including the ramp area around the hangars and who should maintain them. A new survey is being done to clarify the premises and to remove any question about what they are leasing and their responsibilities.

Texas Aviation Partners has been diligently negotiating these terms with Sonny Berry and his outside Counsel for almost two years.

<table>
<thead>
<tr>
<th></th>
<th>EXISTING LEASE TERMS</th>
<th>PROPOSED LEASE TERMS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expiration</strong></td>
<td>• FBO/Large Hangar: Dec. 21, 2032 (10-year extension available at new terms)</td>
<td>April 18, 2057 (to coincide with new maintenance facility currently under construction)</td>
</tr>
<tr>
<td></td>
<td>• Small Hangar: April 11, 2029</td>
<td></td>
</tr>
<tr>
<td><strong>Current Annual Rent</strong></td>
<td>$46,950.96</td>
<td>$51,793.20</td>
</tr>
<tr>
<td><strong>Revenue Sharing</strong></td>
<td>4% of fuel delivered 1% gross revenue</td>
<td>$0.09 per gallon of fuel delivered No gross revenue (consistent with new airport leases)</td>
</tr>
<tr>
<td><strong>Rent Escalations</strong></td>
<td>None</td>
<td>10% every 5 years beginning in 2032 (Paying $91,735.33 per year by end of lease)</td>
</tr>
<tr>
<td><strong>Remaining Rent Credits</strong></td>
<td>$562,011.72 (credit balance $0.00 by mid-2031)</td>
<td>$562,011.72 (credit balance $0.00 by mid-2031)</td>
</tr>
<tr>
<td><strong>Utilities</strong></td>
<td>City pays water, electricity, and alarm monitoring at FBO</td>
<td>Berry pays water, electricity, and alarm monitoring at FBO</td>
</tr>
<tr>
<td><strong>Repairs and Maintenance</strong></td>
<td>City responsible for all R&amp;M to FBO and large hangar. Unclear language regarding fuel tanks.</td>
<td>City responsible for R&amp;M items over $5,000, including fuel tank repairs. Berry must provide annual fuel tank inspection reports.</td>
</tr>
<tr>
<td><strong>Total Rent June 2018 - Expiration</strong></td>
<td>$680,626.99 (Ex. 2032)</td>
<td>$2,463,893.43 (Ex. 2057)</td>
</tr>
</tbody>
</table>
CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT
AMENDED AND RESTATED REVISED LEASE OF UNIMPROVED PROPERTY FOR CONSTRUCTION AND OPERATION OF BUSINESS FACILITIES
BY AND BETWEEN
CITY OF SAN MARCOS, TEXAS,
AS LESSOR
AND
BERRY AVIATION, INC.,
AS LESSEE
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<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.19</td>
<td>No Third Party Beneficiaries</td>
<td>21</td>
</tr>
<tr>
<td>18.20</td>
<td>Survival</td>
<td>21</td>
</tr>
<tr>
<td>18.21</td>
<td>Exhibits</td>
<td>21</td>
</tr>
<tr>
<td>18.22</td>
<td>Termination of Original Lease</td>
<td>22</td>
</tr>
</tbody>
</table>
CITY OF SAN MARCOS, TEXAS

SAN MARCOS REGIONAL AIRPORT

AMENDED AND RESTATED REVISED LEASE OF UNIMPROVED PROPERTY FOR CONSTRUCTION AND OPERATION OF BUSINESS FACILITIES

THIS AMENDED AND RESTATED REVISED LEASE OF UNIMPROVED PROPERTY FOR CONSTRUCTION AND OPERATION OF BUSINESS FACILITIES ("Lease") is made between the City of San Marcos, a municipal corporation of the State of Texas ("Lessor" or "City"), and Berry Aviation, Inc., a Texas corporation ("Lessee"), effective as of July 1, 2018 (the "Effective Date").

RECITALS:

A. Lessor and Lessee entered into that certain Revised Lease of Unimproved Property for Construction and Operation of Business Facilities effective as of April 12, 1999 (the "Original Lease").

B. As an accommodation to Lessor, and subject to amendment and restatement of the FBO Lease (as defined below) in form agreed by Lessor and Lessee, Lessee has agreed that the hangar facilities leased to Lessee pursuant to that certain Lease of Airport Property effective as of December 12, 1992, as amended by that certain Amendment Number One to Lease of Airport Property dated as of September 28, 2004, and Amendment Number Two to Lease of Airport Property dated as of June 7, 2006 (collectively, the "FBO Lease") will be excluded from the FBO Lease and included herein.

C. Lessor and Lessee desire to amend and restate the Original Lease on the terms stated herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the Recitals, the covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee amend and restate the Original Lease as follows:

ARTICLE 1: LEASE OF PREMISES; ACCEPTANCE OF EXISTING CONDITIONS; COMPLIANCE WITH REGULATIONS

1.01 Airport. Lessor is the owner of the San Marcos Regional Airport (the "Airport"), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.

1.02 Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the following described real property (hereinafter referred to as the "Leased Premises"), located at the Airport in Caldwell County, Texas:
a. approximately 40,206 square feet of land located at 1748 Airport Drive, San Marcos, Texas, as more particularly described in Exhibit A attached hereto (sometimes referred to herein as the “Ground Lease Premises”); and

b. that certain parcel of land containing approximately 137,650 square feet of land, inclusive of an approximately 57,600 square foot aircraft hangar and related improvements thereon, located at 1749 Airport Drive, San Marcos, Texas, including, without limitation, the aircraft hangar and other facilities located thereon, as more particularly described in Exhibit B attached (sometimes referred to herein as the “Air Carrier Complex”).

1.03 Acceptance. Lessee acknowledges that, subject to Lessor’s obligations under paragraph 1.05 below: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purposes, or the presence of environmental, geologic, or other site conditions that may affect Lessee’s use of the Leased Premises; (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; (iii) Lessee has inspected and performed all desired tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee accepts the Leased Premises in their present condition.

1.04 Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations adopted November 2, 2015, pursuant to City Ordinance Number 2015-46 (the “Rules and Regulations”), a copy of which is attached hereto as Exhibit C, and (ii) San Marcos Regional Airport Minimum Standards last updated August 18, 2015, as amended with respect to the fuel flowage fee on June 5, 2018 (the “Minimum Standards”), a copy of which standards as of August 18, 2015, are attached hereto as Exhibit D. Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee’s ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.

1.05 Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Leased Premises) as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by Lessor to the United States of America and, as applicable, the State of Texas. In connection with such sponsor assurances, a list of which is set forth in Exhibit E attached hereto, Lessee agrees that this Lease and Lessee’s rights and privileges hereunder shall be subordinate to such sponsor assurances.

1.06 Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways owned by the City for automobiles and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations (“Applicable Law”) of the City, the Federal Aviation Administration (“FAA”) and other governmental authorities with jurisdiction over the Airport and this Lease.
ARTICLE 2: COMMENCEMENT, TERM AND RENT

2.01 Commencement. Rental (“Rent”) shall accrue commencing upon the Effective Date. Rent shall be payable at the place designated in Section 2.04.

2.02 Term. The term of this Lease (“Term”) will commence on the Effective Date and will terminate on April 18, 2057 (the “Expiration Date”), subject to earlier termination or renewal as provided herein. As used herein, “Lease Year” means each period of twelve (12) full calendar months from and after the Effective Date.

2.03 Rent.

a. Subject to the provisions of (b) below, Lessee hereby promises and agrees to pay Lessor fixed rent for the land and improvements comprising the Leased Premises, as follows:

<table>
<thead>
<tr>
<th>Rent Commencement Date</th>
<th>Fixed Rent/Quarter – Ground Lease Premises</th>
<th>Fixed Rent/Quarter – Air Carrier Complex</th>
<th>Paved Ramp Area Ground Rent/Quarter</th>
<th>Quarterly Total</th>
</tr>
</thead>
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<tr>
<td>– February 28, 2032</td>
<td>$2,010.30</td>
<td>$8,640.00</td>
<td>$0.25</td>
<td>$10,650.55</td>
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<tr>
<td>March 1, 2032 – February 28, 2037</td>
<td>$2,211.33</td>
<td>$9,504.00</td>
<td>$0.28</td>
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<td>March 1, 2037 – February 28, 2042</td>
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<td>March 1, 2052 – through February 28, 2057</td>
<td>$3,237.61</td>
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<td>March 1, 2057, through April 18, 2057</td>
<td>$3,561.37</td>
<td>$15,306.29</td>
<td>$0.44</td>
<td>$18,868.10</td>
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</tbody>
</table>
Commencing on the first day of the calendar quarter immediately succeeding the Effective Date (the “Rent Commencement Date”), Rent shall be paid, in advance, in quarterly installments. Rent will be prorated in the event of any partial quarter or Lease Year. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.

b. Notwithstanding the provisions of (a) above, Lessor and Lessee acknowledge and agree that (i) in accordance with the FBO Lease, as amended and restated on or about the Effective Date, rent credits approved by Lessor and applicable to this Lease equal $421,872.48 as of the Effective Date (the “Approved Credit”); (ii) during the Term and any extension thereof, until such time as the Approved Credit has been depleted, Lessee may receive a credit against fixed Rent from the Approved Credit; and (iii) in the event Lessee constructs additional capital improvements during the Term which are approved and a related rent credit is authorized by Lessor, Lessee shall receive a credit against fixed Rent equal to the related expenditures, such credit to commence immediately upon completion of construction or installation of the subject improvements and to continue during the Term and any extension thereof until such credit has been depleted. Notwithstanding Lessee’s right to a Rent credit hereunder, in no event shall Lessor be responsible for amounts in excess of Rent payable by Lessee during the Term and any extension thereof.

2.04 Form and Place of Payment. Rent shall be due on or before the first day of each calendar quarter. A payment shall be considered past due if, after the fifth (5th) day of the calendar quarter in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.

2.05 Late Charges. Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5th) day of the calendar quarter in which such Rent is due will be considered late, and a $15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.

2.06 No Release. Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) is obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.

2.07 Holdover. In the event Lessee holds over after the expiration of this Lease, such hold over status will create a tenancy from calendar quarter to calendar quarter. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the quarter-to-quarter holdover rate. Holdover tenancy will be subject to all other terms and conditions of this Lease.

2.08 Other Fees and Charges. Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use offsite of the Leased Premises, in addition to Rent, in an amount equal to the lowest
amount Lessor charges similar tenants and users at the Airport for use (and in no event shall Lessor charge Lessee for use unless all other tenants at the Airport are also required to, and do, pay for such use). New charges for Airport Facilities (including, without limitation, tie-down fees), if any, will be established by resolution hereafter adopted by Lessor.

2.09 Intentionally Omitted.

ARTICLE 3: USE AND CARE OF PREMISES

3.01 Authorized Use. During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: aviation related activities and business, including, but not limited to, aircraft repair and maintenance; aircraft and aircraft parts storage; commercial office space; aviation-related office use; and all other uses ancillary to any of the foregoing (herein, the “Authorized Use”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.

3.02 Conduct of Business.

a. Except during any period of repair, reconstruction or Alteration, Lessee shall occupy and use the Leased Premises for the Authorized Use.

b. Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s).

3.03 No Insurance Invalidation; Risk of Lessee. Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor’s prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.

3.04 No Waste or Nuisance; Compliance with Laws. Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with Applicable Laws of the City (except to the extent any of the same which are enacted after the Effective Date preclude or adversely affect Lessee’s rights hereunder), the FAA and other governmental authorities with jurisdiction over the Leased Premises.

3.05 Trash and Debris. Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents, contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee’s expense.
3.06 No Outside Storage. Except for storage in the area labeled “Parking and Equipment Area” on Exhibit F attached hereto, Lessee shall store all equipment, materials and supplies within the confines of the building located thereon, and outside storage is specifically prohibited without the advance written consent of Lessor. For avoidance of doubt, the Parking and Equipment Area may be used for, without limitation, aviation equipment and parts storage, vehicle parking, tug parking and aircraft parking.

3.07 Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities at the Airport to the same extent as other Airport users.

3.08 Parking. Lessee may use areas of the Leased Premises for parking, including, without limitation, the area adjacent to the hangar constructed by Lessee and, in the event Lessee desires to improve any such area for parking, Lessee may do so, including, without limitation, by paving the same or installing caliche thereon. In addition to on-site parking, which shall be exclusive to Lessee, its employees and customers, Lessee’s customers and employees shall have the nonexclusive right to park in the area described as “Offsite Parking” on Exhibit G attached hereto, which area Lessor shall keep the same in good condition and repair.

3.09 Additional Airport Facilities. Notwithstanding any provision of this Lease, Lessee shall have no obligation to build or construct any improvements or facilities on or off the Leased Premises which constitute Airport Facilities, including, without limitation, offsite utility lines or other improvements, and any agreement to the contrary shall be made set forth in a writing signed and dated by Lessee and identifying the specific improvement(s). Except as provided in any such agreement, Lessor and Lessee that, in the event Lessee constructs Airport Facilities, Lessee may be entitled to, and may receive, a just and fair credit against Rent in consideration for such work and funds expended by Lessee related thereto. The foregoing provision shall survive expiration or earlier termination of this Agreement.

ARTICLE 4: MAINTENANCE AND REPAIR OF PREMISES

4.01 Lessee Obligations. Except as provided below and in Section 6.01, Lessee shall keep all fixtures constructed or installed on the Leased Premises (collectively, the “Improvements”), in good condition and repair. In addition, Lessee shall be responsible for the cost of repair and/or replacement directly attributable to the gross negligence or willful misconduct of Lessee, its employees, sublessees, concessionaires, contractors, licensees and invitees. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary repairs or perform any other necessary repair and/or maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable cost of such work shall be payable by Lessee within thirty (30) days of Lessee’s receipt of such notice. Notwithstanding the foregoing, (i) with respect to Lessor improvements located on or within the Air Carrier Complex (e.g., the approximately 57,600 square foot hangar), Lessor, and not Lessee, shall be responsible for Major Repairs (as defined below); and (ii) in no event shall Lessee be responsible for the cost of maintenance, repair and/or replacement occasioned by the gross negligence or willful misconduct of Lessor or any person or entity claiming by or through Lessor. As used herein, “Major Repairs” means and refers to any required repair, maintenance or replacement which costs in excess of $5,000.00.
4.02 **Lessor’s Right of Access.** When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following notice to Lessee during Lessee’s regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.

**ARTICLE 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

5.01 **Alterations.** Except for alterations required by Applicable Law and alterations which do not affect the structural integrity of the Leased Premises, all alterations to the Leased Premises, including alterations made following a casualty or eminent domain event ("Alterations") must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed. All such plans, specifications and work shall conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the "ADA"). Notwithstanding the foregoing right of Lessee to construct alterations required by Applicable Law and certain alterations without first obtaining the City’s consent, to the extent permits or other authorizations are required by Applicable Law, Lessee shall comply with the same.

5.02 **Condition on Surrender.** Subject to the provisions of Section 4.01, Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted.

5.03 **No Liens.** Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.

5.01 **Exterior Lighting and Signage.**

a. Except as set forth in any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of permitted or
approved Alterations and “for lease” signs on the Leased Premises without the consent of Lessor, subject to compliance with applicable sign ordinances and rules.

b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, 8lighty and good physical condition.

c. To the extent applicable, Lessee will install signage indicating that portions of the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be reasonably approved by Lessor prior to installation.

**ARTICLE 6: UTILITIES AND TAXES**

**6.01 Utilities.** Except as provided in Section 4.01, Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, impact fees, the installation of meters, any deposits and any other customary prerequisites for such utility service. If applicable, *Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor’s property.* In addition, Lessee shall maintain and repair all utility service lines located on and serving the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, Rent shall be abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.

**6.02 Taxes.**

a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) the Improvements constructed by or on behalf of Lessee, and (ii) Lessee’s equipment, inventory and other personal property, including, but not limited to, any Lessee aircraft used for commercial purposes.

b. Lessee shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Leased Premises.

c. Lessee may, at Lessee’s expense, contest the validity or amount of any taxes for which Lessee is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, any Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor’s reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent.
Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein.

ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE

7.01 Grant of Rights. Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:

a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, “Airport Facilities” includes, but is not limited to, runways, taxiways, landing areas, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.

b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR

8.01 Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.

8.02 Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee’s business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee’s business at the Leased Premises.

8.03 Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United States of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.
8.04 War; National Emergency. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments owing under this Lease shall likewise be suspended until Lessee’s normal operations resume at the Leased Premises. In addition, if Lessee’s normal business operations are materially affected for a period in excess of one eighty (180) days, Lessee may terminate this Lease upon written notice to Lessor, in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07, Lessee may remove its personal and other property within thirty (30) days after the date of Lessee’s notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee’s leasehold estate or for any loss or damage caused to Lessee by the United States of America.

8.05 Operation as Public Airport. Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

ARTICLE 9: OPERATION OF THE AIRPORT

9.01 Non Discrimination Requirements.

a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee’s election, this Lease shall be modified to reflect the more favorable material terms.

b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee’s use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR
EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

9.02 Airport Development. The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit. If the future development of the Airport requires the relocation of Lessee’s Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises in a location which is consistent with and suitable for Lessee’s current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee’s business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee’s reasonable agreement, taking into account impacts on Lessee’s use thereof) or promptly reconstruct the Improvements at no cost to Lessee.

9.03 Aeronautical Services Grant and Requirements. The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:

a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.

b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

ARTICLE 10: INSPECTION AND PREMISES ACCEPTANCE

10.01 Fire Safety. Lessee will permit the Fire Marshal to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to insure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.

10.02 Acceptance. Lessee agrees and covenants that Lessee has inspected the Leased Premises and is fully advised of its own rights without reliance upon any representation made by Lessor as to the condition of the Leased Premises, and accepts same in their present condition.

ARTICLE 11: INSURANCE AND INDEMNITY

11.01 Liability Insurance: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of commercial general liability insurance as set forth in the Minimum Standards and related to Lessee’s lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. To the extent not already in Lessor’s possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).
11.02 **Casualty Coverage:** Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of fire and extended coverage for all contents, goods, stock and any personal property which is or may be situated upon the Leased Premises, to the extent the same are insurable by Lessee. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with this section and the Minimum Standards. To the extent not already in Lessor’s possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).

11.03 **Indemnity and Hold Harmless.**

a. **Indemnity.** LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS (“CLAIMS”), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “LESSEE PARTIES”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR’S CITY ATTORNEY.

b. **Limitation of Liability.** The foregoing and any other indemnity of Lessee herein shall not be interpreted as requiring Lessee to indemnify any of the Indemnified Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations.

c. **Waiver of Consequential Damages.** EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL,
EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.

d. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.

e. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any accident on the Leased Premises or Airport. To the extent Lessee’s officers are aware of any defects in Airport runways, taxiways, landing areas, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee’s obligation, and that such notice is provided as a courtesy to Lessor).

f. Security. Lessor does not guarantee police protection or security to Lessee or its property and, except as provided in subsection b above, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

ARTICLE 12: CONDEMNATION

12.01 Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the condemning authority.

12.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the Leased Premises unsuitable for the business of Lessee, then this Lease shall terminate; provided, in the event the taking is of (i) that portion of the Leased Premises described in Exhibit A hereto, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude such portion of the Leased Premises and continue the Lease in place with respect to that portion of the Leased Premises described in Exhibit B hereto; and (ii) that portion of the Leased Premises described in Exhibit B hereto, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude such portion of the Leased Premises and continue the Lease in place with respect to that portion of the Leased Premises described in Exhibit A hereto. If the partial taking is not extensive enough to render, as applicable, that portion of the Leased Premises described in Exhibit A or that portion of the Leased Premises described in Exhibit B hereto unsuitable for the business of Lessee, then this Lease shall continue in effect with respect to the remainder of the Leased Premises, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.

12.03 Rent. If this Lease is terminated as provided in this section, rent shall be paid up to the date that title vests in the condemning authority, and Lessor shall make an equitable refund of any rent paid by Lessee in advance.
12.04 **Division of Award:** Lessor and Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. Without limiting the generality of the preceding sentence, Lessor has no interest in any award made to Lessee for Lessee’s moving and relocation expenses or for the loss of Lessee’s leasehold interest, fixtures and other tangible personal property if a separate award for such items is made to Lessee. The termination of this Lease under this section shall not affect the rights of the respective parties to such awards.

12.05 **Definition of Taking.** As used in this Article 12, “taken” or “taking” shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

**ARTICLE 13: DAMAGE BY CASUALTY**

13.01 **Notice Required.** Lessee shall give immediate verbal notice, followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.

13.02 **Restoration Upon Casualty Loss.**

a. If the Leased Premises are totally destroyed by fire, tornado or other casualty not the fault (in whole or in part) of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, or if not totally destroyed, if the Leased Premises should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, this Lease shall terminate, and rent shall be abated from the date of the casualty; provided, in the event the casualty relates to (i) that portion of the Leased Premises described in Exhibit A hereto, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude such portion of the Leased Premises and continue the Lease in place with respect to that portion of the Leased Premises described in Exhibit B hereto; and (ii) that portion of the Leased Premises described in Exhibit B hereto, at Lessee’s option, this Lease shall not terminate but shall be amended to exclude such portion of the Leased Premises and continue the Lease in place with respect to that portion of the Leased Premises described in Exhibit A hereto; and, provided further, Lessee may waive termination, in which event, as applicable, (a) Lessor shall rebuild or repair the Lessor Improvements at the Air Carrier Complex, and (b) Lessee shall rebuild or repair Improvements constructed by Lessee, acting with due diligence, and rent shall be abated for the length of time necessary for the reconstruction or repairs based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease.

b. If the Leased Premises are damaged by fire, tornado or other casualty not the fault of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 180 working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, this Lease shall not terminate except as provided in subsection c below.

c. If such damage to the Leased Premises occurs, Lessor shall proceed to rebuild or repair Lessor improvements at the Air Carrier Complex to substantially the condition in which they existed upon the Effective Date. Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged Improvements made by Lessee. If the Leased
Premises are untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be adjusted based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease. In the event that Lessor fails to complete such rebuilding or repairs within one hundred eighty (180) working days after the date of Lessor’s receipt of insurance proceeds in connection with the casualty, Lessee may terminate this Lease as to the portion of the Leased Premises affected by the casualty or in its entirety upon thirty (30) days’ written notice to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations under this Lease or, as applicable, with respect to the terminated portion of the Leased Premises as of the effective date of termination.

ARTICLE 14: ASSIGNMENT AND SUBLETTING

14.01 Assignment by Lessee. Except with respect to a Permitted Assignment (as defined below), Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, including by operation of law, without the prior written consent of Lessor; provided (i) no change in the direct or indirect control of Lessee or any ownership interests therein shall be considered an assignment, and (ii) Lessor shall not unreasonably withhold, condition or delay its consent to a proposed assignment. In connection with any request by Lessee for Lessor’s consent to a proposed assignment, Lessor’s denial of such consent shall be based upon the following:

a. In the reasonable judgment of Lessor, the assignee (i) is of a character or engaged in a business or proposes to use the Leased Premises in a manner which is not in keeping with Airport standards or would diminish the value of the Airport, or (ii) in Lessor’s reasonable opinion, is not creditworthy (provided, consent shall not be denied if Lessee agrees to remain liable under this Lease);

b. The occupancy of the Leased Premises by the proposed assignee would cause Lessor’s insurance to be cancelled (or increased, unless such costs will be reimbursed by the proposed assignee);

c. The use is not a use generally in keeping with uses allowed at the Leased Premises; or

d. The use is prohibited at the Airport.

Such consent shall be deemed to have been granted if written notice of non-consent is not received by Lessee within thirty (30) days of a written request for consent.

14.02 Sublease. Notwithstanding the provisions of Section 14.01, Lessee may sublease or otherwise permit the use of office space to subtenants or other users without Lessor’s prior consent provided that (i) the sublease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, and (ii) the terms of the sublease or other use or occupancy agreement are consistent with the terms and conditions of this Lease. Additionally, Lessee shall provide Airport Management with a list of subtenants no more than two times per calendar year.

14.03 No Release. Except for a Permitted Assignment or assignment to a Qualified Lessee (as defined below) to which Lessor has consented pursuant to Section 14.01, no assignment, sublease or grant of use and occupancy rights shall relieve Lessee of its obligations to Lessor hereunder. Any
assignment, transfer or sublease that is not permitted under this Lease and has not been authorized by Lessor in writing shall be void. As used herein:

a. "Permitted Assignment" means the transfer of all or part of Lessee’s interest in this Lease or all or part of the Leased Premises to the following types of entities without the written consent of Lessor:

1. Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);
2. Any transfer to an affiliate (by common ownership) or subsidiary of Lessee;
3. Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged, consolidated or reorganized, so long as Lessee’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation or reorganization.
4. Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee’s or of Lessee’s business operations in the Leased Premises.
5. Any transfer to a Qualified Lessee.

b. "Qualified Lessee" means a person or entity with a net worth equal to or greater than an amount equal to three hundred percent (300%) of the then-unpaid Rent obligations of Lessee hereunder.

14.04 Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor’s obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION

15.01 Events of Default. The following events shall constitute “events of default” by Lessee under this Lease:

a. Rent. Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for ten (10) days following written notice thereof (provided, however, that Lessor shall be obligated to give only two such notices in any calendar year, and after such two notices, Lessor will no longer be obligated to give any other notice under this section within such calendar year).

b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee’s obligation which it has failed to perform is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced,
thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or

c.  **Certain Voluntary Acts.** Lessee (i) files, or consents by answer or otherwise to the filing against it if, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee’s property; or

d.  **Receivership; Bankruptcy.** Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee’s property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or

e.  **Vacation or Failure to Operate.** Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days; or

f.  **Levy or Attachment.** Except as permitted pursuant to a SNDA executed by Lessor, Lessee and Lessee’s lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.

**15.02 Lessor Remedies.** If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor’s rights or remedies as a result of the event of default, Lessor may do the following:

a.  **Terminate this Lease.** Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and, except as provided in Section 11.05.b., without being liable for any resulting damages. Lessee agrees to pay to Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor’s request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements (exclusive of Lessee’s removable trade fixtures and equipment), and the same shall become the property of Lessor.

b.  **Relet the Leased Premises and Receive the Rent.** Lessor may terminate Lessee’s right to possession of the Leased Premises and enjoyment of the rents, issues and profits there
from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee’s obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.

c. **Enter and Perform.** Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.

d. **Other Remedies.** Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.

e. **Default by Lessor.** Lessor shall be deemed to be in default of this Lease (herein, a “**Lessor Default**”) if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor’s breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 3.08, 7.01(a), 9.02 and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period, Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.03 **Lessee’s Remedies.** If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

a. **Terminate this Lease.** Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee’s rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or

b. **Other Remedies.** Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

15.04 **Acceptance of Rent.** The acceptance by Lessor of Lessee’s quarterly payments subsequent to the occurrence of any event of default shall be considered to be compensation for Lessee’s use and occupancy of the Leased Premises, and shall in no way constitute a waiver by Lessor of its right to exercise any remedy provided for any event of default.

**ARTICLE 16: LESSOR’S LIEN**

16.01 **Subordination of Lessor’s Lien.** Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord’s liens on the Improvements or Lessee’s
personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

**ARTICLE 17: LESSEE’S MORTGAGE OF LEASEHOLD INTEREST**

17.01 **Mortgage of Leasehold Estate.** Lessor grants permission to Lessee for the mortgaging of Lessee’s leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. *In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.*

**ARTICLE 18: MISCELLANEOUS**

18.01 **Gender Neutral.** When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

18.02 **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.

18.03 **Amendment.** This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.

18.04 **Headings.** The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.

18.05 **Nonwaiver of Rights.** No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

18.06 **Force Majeure.** Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, “force majeure”) shall be excluded from the computation of any such period of time.

18.07 **Quiet Enjoyment.** Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
18.08 **No Partnership.** This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.

18.09 **No Brokers.** Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.

18.10 **Governing Law; Venue; Dispute Resolution.** The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas. In the event a claim, dispute, or controversy (defined for the purposes of this Lease as “Claim”) arises out of or relates to this Lease, Lessor and Lessee agree that, as a condition precedent to litigation, Lessor (or, at Lessor’s direction, Airport Manager) shall meet and attempt to resolve the matter within five (5) business days of a party’s request.

18.11 **Charitable Immunity or Exemption.** If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.

18.12 **Notices.** Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

**If to Lessor:**

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

**If to Lessee:**

Berry Aviation, Inc.  
1807 Airport Drive  
San Marcos, Texas 78666  
Attn: Harry M. Berry III, Chairman and CEO

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

18.13 **Entire Agreement.** This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.
18.14 **Action through Airport Management.** All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.

18.15 **Consent.** In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.

18.16 **Attorney Fees.** Each party will be required to pay its own attorneys’ fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney’s fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.

18.17 **Recordation.** Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.

18.18 **Reservation of Immunities.** TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS LEASE.

18.19 **No Third Party Beneficiaries.** This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

18.20 **Survival.** Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.

18.21 **Exhibits.** The exhibits to this Lease are as follows:

- **Exhibit A** Location of Ground Lease Premises
- **Exhibit B** Air Carrier Complex
- **Exhibit C** Copy of Rules and Regulations
- **Exhibit D** Copy of Minimum Standards
- **Exhibit E** List of Sponsor Assurances
- **Exhibit F** Outside Storage
18.22 Termination of Original Lease. Effective as of the Effective Date, the Original Lease is terminated and, except for Lessor’s obligation to credit any sums previously paid by Lessee to Lessor thereunder against sums due hereunder, the parties shall have no further rights or obligations thereunder.
IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of the Effective Date.

LESSOR:
CITY OF SAN MARCOS, TEXAS

By: _________________________________
Name Printed:_______________________
Title:_______________________________

LESSEE:
BERRY AVIATION, Inc., a Texas corporation

By: _________________________________
Harry M. Berry III, Chairman and CEO

ATTEST:

____________________________________
EXHIBIT A

Location of Ground Lease Premises

(to be attached prior to execution)
EXHIBIT B

Air Carrier Complex

(to be attached prior to execution)
EXHIBIT C
Copy of Rules and Regulations

Chapter 10 - AVIATION[1]

Footnotes:

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Editor's note—Ord. No. 2015-46, § 1, adopted November 2, 2015, amended chapter 10 in its entirety to read as herein set out. Former chapter 10, §§ 10.001, 10.026—10.037, pertaining to similar subject matter. See Code Comparative Table for complete derivation.

Cross reference—Airport commission, § 2.331 et seq.

ARTICLE 1. - GENERAL

Sec. 10.001. - Minimum standards for commercial aeronautical activities.

(a) The minimum standards for commercial aeronautical activities at the regional airport owned by the city are approved and adopted by resolution and filed in the office of the city clerk, the same as if set out fully in this section. The minimum standards govern the activities of all tenants at the airport including fixed base operators and operators of specialized aviation services. The adoption of minimum standards is recommended by Federal Aviation Administration Advisory Circular 150/5190-7.

(b) Copies of the minimum standards adopted in subsection (a) of this section are maintained for public inspection in the office of the city clerk and airport management.

(Ord. No. 2015-46, § 1, 11-2-15.)


ARTICLE 2. - STANDARD OPERATING PROCEDURES AND REGULATIONS

Sec. 10.026. - Definitions.

In this article:

Accident means an unintentional occurrence which results in property damage, personal injury or death.

Airport means all lands within the legal boundaries of the San Marcos Regional Airport under the control of the city.

Airport management means the company or entity contracted by the city to operate, maintain, manage and develop the airport on behalf of the city.

Commercial activities means the activities and operations of any aeronautical business or nonprofit organization with a valid lease agreement authorized by the city council including fixed-based operators, specialized aviation services, flight schools, flight clubs, and any other aeronautically related activity.

Federal Aviation Administration (FAA) means the federal agency established by the Federal Aviation Act of 1958 and reestablished in 1967 under the Department of Transportation.
Fixed base operator (FBO) means any person engaged in a business of an aviation nature under provisions, contracts or leases with the city and in accordance with applicable federal air regulations.

Motor vehicle means any self-propelled ground conveyance other than an aircraft.

Movement area means the area of the airport containing taxiways and runways separated from the ramp by two yellow lines, one solid and one dashed, requiring direct communication with the air traffic control tower during operating hours.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.027. - Authority.

The procedures and regulations in this article are promulgated under the power granted to the city under Federal Law (Title 46 of the Code of Federal Register) and State Law (Chapter 22 of the Texas Transportation Code) and the home-rule authority granted to the city under Article XI, Section 5 of the Texas Constitution.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.028. - Enforcement.

(a) Applicability. All aircraft, pilots, operators, companies, business organizations, government agencies and all persons coming upon airport property for any purpose are subject to this article.

(b) Compliance. The city council and airport management and its duly authorized representatives are empowered to enforce compliance with this article. In addition to the penalty prescribed in section 1.015, violators can be removed or evicted from the airport premises or denied use of the airport or its facilities if the action is determined by airport management or a city official charged with enforcing City code provisions to be reasonably necessary to protect public property or persons or ensure safety.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.029. - Revisions; validity; liability.

(a) Revisions. The city council reserve the right to revise, make changes to or waive the procedures and regulations in this article with only notice required by state law.

(b) Validity. The voiding of any particular procedure or regulation in this article does not affect the validity of the remainder of these procedures and regulations.

(c) Liability. The city assumes no responsibility for loss, injury or damage to persons or property because of fire, theft, vandalism, wind, flood, earthquake or collision, nor does it assume any liability for injury to persons while at the airport.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.030. - Safety.

(a) Policy. The policy of the airport is that safety is of primary and overriding priority. All persons on the airport are required to comply with this policy. This article is intended to promote safety as well as good operating practices. If any deviation is required in the interest of safety, such deviation is both authorized and encouraged. However, any deviation shall be reported to airport management as soon as practical after the occurrence.
(b) **Hazard Identification.** Hazard identification and abatement are continuing programs at this airport. Any person with knowledge of a hazard at the airport shall immediately report this information to airport management.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.031. - Operations.

(a) **Aeronautical activities.** All aeronautical activities at the airport shall be conducted in conformity with the current regulations of the Federal Aviation Administration and other laws and rules promulgated by applicable federal, state and local agencies with jurisdiction over airport matters. Only properly registered aircraft and legally certified pilots are authorized to operate at the airport.

(b) **Tiedown of aircraft.** Aircraft not hangared will be tied down and secured. The aircraft owner and the owner's agent and the pilot are legally responsible for tiedown and security of the aircraft at all times including inclement weather. Inspection of tiedown equipment is the responsibility of the owner and the owner's agent and the pilot.

(c) **Parking of aircraft.**

(1) Aircraft will not be parked in a manner that impedes the normal movement of other aircraft and traffic. It is the responsibility of the pilot when leaving a parked aircraft on the airport to ensure the brakes are set, the aircraft is properly chocked, and the aircraft is tied down.

(2) Aircraft will not park within or under a structure for which they are not the rightful lessee or owner. Any unauthorized aircraft may be towed, seized, impounded, and/or locked by airport management at the owner's expense. Airport management will not be held liable for any damage that may occur as a result.

(d) **Unairworthy and/or abandoned aircraft.** Unairworthy aircraft shall not be parked or stored anywhere on the airport. Exception: aircraft awaiting repairs to return the aircraft to an airworthy condition may be parked or stored up to six months. Any parking or outside storage of unairworthy aircraft in excess of six months shall require written permission of airport management. In the event of failure to comply with this provision, such disabled aircraft and any abandoned or unairworthy aircraft may be removed by airport management at the owner's expense and without liability on the part of the airport for any damage which may result in the course of such removal. Airport management may recommend parking fees to the city council.

(e) **Responsibility for disposal of disabled aircraft.** The owner of wrecked and disabled aircraft shall be responsible for the prompt removal and disposal of such aircraft after release by airport management and the Federal Aviation Administration or National Transportation Safety Board.

(f) **Damage.** Any person damaging any light fixture, or other airport property will immediately report the damage to airport management. Persons causing damage to approach, runway and/or taxiway lights or fixtures, or other airport property as a result of negligent acts may be liable for the replacement or repair costs. Tenants shall be held fully responsible for any damage to any building, equipment, or real property owned by the airport. Any damage to or malfunctioning of buildings, structures, utilities or other property owned by the airport shall be reported to airport management.

(g) **Taxing aircraft.**

(1) **Speed.** Aircraft will be taxaed at a safe and prudent speed and under full control of the pilot at all times in accordance with Federal Aviation Administration Advisory Circular 120-74B.

(2) **Consideration.** No person will start or run an aircraft in a manner to risk damage to other aircraft or property or in a manner to blow paper, debris or other objects across the taxiway or runway or in a manner to endanger any operations on the airport.

(h) **Air traffic control tower and radio procedures.** All pilots are required to communicate with the tower during operating hours prior to entering the movement area. The airport frequencies are:
126.825 and ground 126.125. Pilots are encouraged to announce their intentions and communicate with other pilots via CTAF when the tower is closed, in accordance with Federal Aviation Administration Advisory Circular 90-66.

(i) **Traffic patterns.**

(1) **Direction.** All VFR traffic is expected to make left traffic patterns to all runways when the tower is closed.

(2) **Altitude.** Recommended traffic pattern altitude for the airport is 1600 feet MSL/1000 feet AGL.

(j) **Authority to suspend operations.** Airport management or its designated representative may suspend or restrict any or all operations on the airport whenever such action is determined necessary.

(k) **Closing of airport.** In the event airport management believes conditions at the airport are unsafe, it is within its authority to close the entire airport or any part thereof. A notice to airmen (NOTAM) will be immediately filed with Federal Aviation Administrative Flight Safety Services.

(Ord. No. 2015-46, § 1, 11-2-15.)

Sec. 10.032. - Public and tenant usage.

(a) **Commercial activities.** No person will use the airport for business or commercial activities without obtaining the approval of the city council through airport management.

(b) **Advertisements.** No person shall post, distribute, or display signs, advertisements, circulars, or any other printed material on airport property without the prior approval of airport management. Airport management is authorized to rescind any permission granted if the advertisement does not remain in compliance with this ordinance and the minimum standards adopted by the city council.

(c) **Demonstrations, shows and exhibitions.** No person will engage in any show, demonstration, or exhibition without prior written permission from airport management.

(d) **Lost articles.** Any person finding lost articles on the airport will deposit them at the airport management office located at 4400 Airport Highway 21, San Marcos, TX 78666. Articles unclaimed after 60 days by the owner may be turned over to the finder or otherwise legally disposed of by the city as determined by the city manager or his designee.

(e) **Right of entry.** Airport management has the right of entry at reasonable times for repairs, maintenance, modification or inspection of all rooms, areas and buildings on the airport.

(f) **Construction or alteration.** No construction work or alterations to grounds or structures, other than minor repairs or maintenance, will be performed on the airport without written permission from the city as determined by the city manager or his designee. No person may modify any equipment or building, or change any mechanical, electrical, electronic, or plumbing equipment owned by the airport without first obtaining written permission from airport management. No person may move or install any equipment, signs, or other structure in the public areas of the airport without first obtaining written permission from airport management.

(g) **Restricted areas.** No person shall enter any restricted area on the airport without the authorization of airport management.

(h) **Sanitation.**

(1) **Disposal.** No person will dispose of garbage, papers, refuse or other waste materials on the airport, except as provided by city ordinance.

(2) ** Burning.** No open fires are allowed on the airport without the approval of the city fire marshal or his designee. No trash or refuse will be burned on the airport at any time.

(3) **Use of sewers and drains.** No materials may be put in the sanitary sewer system, or any other drainage system, which do not conform to the regulations of the city.
(i) **Alcohol and narcotics.**

   (1) **Legal compliance.** All applicable local, state and federal laws pertaining to handling or use of alcoholic beverages, narcotics, and drugs apply on the airport.

   (2) **Under the influence.** No person under the influence of alcohol or other substance shall operate a motor vehicle or aircraft on the airport. The city, through its appropriate law enforcement agency, reserves the right to remove or evict violators from the airport premises or deny use of the airport or its facilities by the violator.

(j) **Disorderly conduct.** No person on the airport shall commit any disorderly, obscene, or indecent act or commit any act prohibited by Texas Penal Code § 42.01.

(k) **Preservation of property.** It is unlawful for any person to:

   (1) Destroy, injure, deface or disturb any building, sign, equipment, marker, structure, lawn, or public property on the airport.

   (2) Trespass on agricultural areas without the approval of airport management.

   (3) Abandon property on the airport.

   (4) Interfere with, tamper, or injure any part of the airport operation, or any aircraft on the airport.

(l) **Hunting and firearms.** Except as authorized by state law, no person may carry firearms on the airport. No hunting or shooting is allowed on the airport.

(m) **Storage.** No person shall use any property of the airport for outside storage without first obtaining written permission from airport management. No tenant or lessee of airport property shall store or stock material or equipment in such a manner as to constitute a hazard to any person or property, or in such a manner as to create an unattractive appearance.

(n) **Pets and animals.** It is unlawful for the owner or person responsible for a pet or animal to permit same to be at large. The term "at large" means a dog or cat which is not restrained by leash and which is also off the premises of its owner or the person responsible for it. Pets and animals found running at large will be picked up and impounded.

(o) **Drip pans.** Whenever oil leakage, dripping or spillage is possible, drip pans shall be placed under each engine of an aircraft.

(p) **Authority to detain aircraft.** Airport management has the authority to detain any aircraft for nonpayment of any debt due to the airport.

(q) **Denial of use.** Airport management is authorized to deny use of the airport to any aircraft or pilot violating these or Federal Regulations at the airport or elsewhere.

(r) **Special events.** Special event(s) means an activity which may not completely comply with these rules or which, although it may comply with these rules, will require an accommodation by other users of the airport. Special events include, but are not limited to, fly-ins, ramp space rentals, skydiving exhibitions, balloon operations, or similar events or activities. Any person wishing to sponsor a special event shall obtain the prior written approval of airport management. Airport management shall require such safeguards as deemed necessary to protect the airport, the city, the county, aircraft using the airport, and the general public. These requirements may include, but are not limited to, bonds, insurance policies, additional security personnel, facilities, special operating procedures, city permits, and any required waiver/authorization to the Federal Aviation Regulations issued by the FAA. Airport management is prohibited by the FAA from closing the airport for any activity which is not an aeronautical activity. The city council may establish, upon recommendation from airport management, general reasonable fees and requirements for special events. The fee schedule adopted by the city council will provide limited flexibility to allow airport management, with the approval of the city manager or his designee, to adjust fees for special events that may require specialized accommodations. Any signage for the special event must be approved by airport management.
(s) **Unlawful to drop handbills or other matter.** It is unlawful for any person in any aircraft flying over the airport or over the territory within the boundaries of the airport to cause or permit to be thrown out, discharged, or dropped, any handbills, circulars, card or other matter whatsoever which falls upon the airport property.

(Cod. No. 2015-46, § 1.11-2-15)

Sec. 10.033. - Fire prevention.

(a) **Applicability and compliance.** All persons, companies, and agencies engaged in any activity at the airport, whether occupying airport-owned facilities or otherwise, shall comply with fire regulations as issued by the city and shall comply with all applicable county, state and federal laws and regulations related to fire prevention or safety.

(b) **Enforcement.** Airport management or other duly authorized officials may direct the removal of fire hazards, arrangement and modification of equipment, or alter operating procedures in the interest of fire prevention.

(c) **Fire prevention.** All persons using the airport, or the facilities of the airport will exercise the utmost care to guard against fire and injury to persons and property.

(d) **Cleaning of parts.** The cleaning of engine parts or other parts of aircraft will be with non-flammable liquids unless the engine or aircraft part being cleaned is located a safe distance away from other aircraft or airport facilities. If volatile liquids are employed, cleaning operations must be in open and clear areas or in a suitable room of the repair facility and separated from storage and operational areas by fire resistant partitions in compliance with the requirements of the National Board of Fire Underwriters.

(e) **Hangar floors.** Floors will be kept clean and free from oil.

(f) **Empty containers.** All empty oil, paint and varnish cans, bottles and other containers will be removed immediately from the premises and not allowed to remain on floors, wall stringers, or overhead storage areas in or about hangars, shops and other buildings. Empty containers must be disposed of in accordance with the stormwater pollution prevention plan for the airport.

(g) **Trash.** No boxes, crates, rubbish, paper, or litter of any kind will be stored in or about hangars, except in proper receptacles provided for this purpose. Commercial operators shall be responsible for providing containers for all trash on their leased premises and shall arrange for the regular removal of the trash. Commercial operators will provide an appropriate receptacle for trash removal to be used by its contractors, employees, and invitees.

(h) **Flammable, corrosive and toxic materials.** Containers of gasoline, kerosene or other flammable liquids, explosives, toxic or corrosive substances will not be stored in hangars.

(Cod. No. 2015-46, § 1.11-2-15)

Sec. 10.034. - Fueling and flammables.

(a) **Fueling and defueling procedures.**

1. **Hot refueling.** Hot refueling is the fueling of aircraft while the engine is running. Hot refueling shall be permitted only under special circumstances and then only when authorized by airport management. Hot refueling may be permitted only by appropriately trained and certified FBO personnel in accordance with generally accepted industry standards.

2. **Electrical storm.** No aircraft will be fueled or defueled during an electrical storm.

3. **Smoking.** No person will smoke within 100 feet of an aircraft being fueled or defueled.
(4) **Radio operation.** No person will operate a radio transmitter or electrical systems in an aircraft while it is being fueled or defueled.

(5) **Grounding.** During fueling and defueling, the aircraft and dispensing apparatus will both be properly grounded.

(6) **Equipment status.** Fueling hoses and equipment will be maintained in a safe, operational, and non-leaking condition and will be approved by the National Board of Fire Underwriters, or equivalent standard.

(7) **Spillage.** No person will start the engine where fuel spillage is on the ground in the vicinity of the aircraft. A person responsible for spillage will take proper measures to ensure removal of the spilled fuel pursuant to the stormwater pollution prevention plan for the airport.

(8) **Fire extinguishers.** Adequate fire extinguishers will be within reach of all persons engaged in fueling or defueling operations. All extinguishers will be inspected and recertified as required by law. All persons engaged in fueling and defueling will be familiar with the proper use of fire extinguishers.

(9) **Passengers.** No aircraft will be fueled or defueled while passengers are on board the aircraft unless the aircraft doors are in the open position.

(10) **Location of aircraft.** No aircraft will be fueled while parked in a hangar.

(b) **Cleaning of aircraft.** No person will use volatile liquids in the cleaning of an aircraft, aircraft engines, propellers, parts, or for any other purposes, unless such operations are conducted in the open or in a facility specifically equipped and approved for that purpose.

(c) **Storage.**

(1) **Flammables.** No person will keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport, unless such materials are kept in an aircraft in the proper receptacles installed in the aircraft for such purposes or in rooms or areas specifically approved for such storage.

(2) **Waste oil.** No person will keep or store waste oils in or about the hangars unless stored in a proper receptacle pending removal. Waste oil must be disposed of in accordance with the stormwater pollution prevention plan for the airport.

(d) **Liquid disposal.** No fuels, oils, dopes, paints, solvents, or acids will be disposed of or dumped on the ramp area, agricultural lands or elsewhere on the airport. All disposal will be in accordance with city ordinances, Environmental Protection Agency (EPA) rules, and FAA standards.

(Ord. No. 2015-46, § 1.11-2:15.)

Sec. 10.035. - Motor vehicles.

(a) **General requirements.** Persons will operate motor vehicles on the airport in accordance with the procedures and regulations of this section and in full compliance with all state licensing, registration, and operating requirements.

(b) **Speed.** No person will operate a motor vehicle on the airport in a reckless or negligent manner, or in excess of a safe and prudent speed. Posted speed limits will not be exceeded. The posted speed limit for the ramp is 15 miles per hour and the posted speed limit for roadways is 35 miles per hour.

(c) **Parking.**

(1) **Location.** No person will park a motor vehicle at the airport other than in areas specifically established for public and tenant parking. No person shall park a motor vehicle so as to obstruct roadways or taxiways. No person shall park a motor vehicle in public aircraft parking areas.
(2) Abandoned vehicles. No personal shall park a motor vehicle on the airport for an extended period of time without prior notification to airport management.

(3) Towing for violation. Airport management has the authority to tow or otherwise remove motor vehicles which are parked on the airport in violation of this section. The vehicle will be towed at the owner's expense and without liability for damage which may result in the course of such moving.

(d) Vehicle repairs. No person will clean or make any repairs to motor vehicles on the airport, except for airport support vehicles and minor emergency repairs.

(e) Operation restrictions.

(1) Ramp. No motor vehicles, other than support vehicles, are permitted to operate on the airport parking ramp, except for the loading and unloading of aircraft occupants or cargo without the approval of airport management. Vehicle operators must utilize the ramp vehicle lane and will obey all markings pertaining to speed and stops.

(2) Runways and taxiways. No person or motor vehicle is permitted within the movement area except as specifically authorized by airport management or air traffic control.

(3) Right-of-way procedures. All motor vehicles will pass to the rear of taxiing aircraft and no vehicle will approach closer than 100 feet of any aircraft when an aircraft's engine is operating.

(4) Airport based support vehicles. Support vehicles regularly using the ramp, such as fuel trucks or tugs, shall be equipped with a two-way radio that can communicate with air traffic control and an amber strobe, LED, or rotating beacon visible from at least 300 feet.

(Ord. No. 2015-46, § 11-2-15.)

Sec. 10.036. - Emergency procedures.

(a) Emergency notification and response. Emergency notification and response procedures are as follows:

(1) Generally. The city provides emergency services of fire, police, and medical response to the airport.

(2) Notification procedures. In addition to standard FAA emergency notification procedures, local emergency notification may be initiated during emergencies by contacting the air traffic control tower, operating hours through San Marcos Tower/CTAF on 126.825. During all hours, emergency notification can be initiated by calling San Marcos Police 911. Airport management can be notified at (512) 218-8039.

(b) Volunteer assistance. Volunteer assistance and/or access to the scene of any aircraft accident will be approved and controlled by the authorized emergency response personnel and the appropriate law enforcement authorities, and air traffic control if during operating hours.

(c) Accident reporting. In addition to required FAA notification and reporting actions, the operator of any aircraft involved in an incident or accident at the airport will notify airport management within 24 hours. When a written report is required by the FAA, a copy of such report will suffice for the airport requirement.

(Ord. No. 2015-46, § 11-2-15.)
EXHIBIT D

Copy of Minimum Standards
San Marcos Regional Airport

Airport Management Office
4400 Airport Highway 21
San Marcos, Texas 78666
Phone: (512) 216-6039
Fax: (512) 216-6043

Updated August 18, 2015

Minimum Standards
San Marcos Regional Airport  
Minimum Standards

Revisions

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1
San Marcos Regional Airport
Minimum Standards

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San Marcos Regional Airport
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Section 1
General

1.1 Introduction

The City of San Marcos, as Owner of the San Marcos Airport, establishes these Minimum Standards for persons who are or wish to become Commercial Operators, or anyone who leases land, and/or who makes use of Airport property. These Minimum Standards consider the significant role of the Airport in aviation, facilities that currently exist at the Airport, services being offered at the Airport, and the future development planned for the Airport. These Minimum Standards serve the following purposes:

1. Ensure that all commercial operators, tenants, and the City of San Marcos are not exposed to illegal, unsafe, or irresponsible practices.

2. Serve the public interest and discourage substandard business practices and construction, thereby protecting both the established aeronautical activity and the San Marcos Airport customers.

1.2 Purpose*

In accordance with the Airport and Airway Improvement Act of 1982 and the Airport Improvement Program (AIP) sponsor assurances, the owner or operator of the Airport (the Airport Sponsor) that has been developed or improved with federal grant assistance or conveyances of Federal property assistance is required to operate the Airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These federal obligations involve several distinct requirements. Most important is that the Airport and its facilities must be available for public use as an Airport. The terms imposed on those who use the Airport and its services must be reasonable and applied without unjust discrimination, whether by the Airport Sponsor or by a contractor or licensee who has been granted a right by the Airport sponsor to offer services or commodities normally required to serve aeronautical users of the Airport.

Federal law requires that recipients of federal grants sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an Airport Sponsor assumes in exchange for federal assistance. The FAA’s policy recommending minimum standards stems from the Airport Sponsor’s grant assurances and similar property conveyance obligations to make the Airport available for public use on reasonable conditions and without unjust discrimination.
1.3 Policy*

The Airport Sponsor of a federally obligated Airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the Airport Sponsor. The Airport Sponsor's purpose in imposing standards is to ensure a safe, efficient, and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory.

1.4 Objective*

The FAA objective in recommending the development of minimum standards serves to promote safety in all Airport activities, protect Airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all Airport users, promote the orderly development of Airport land, and ensure efficiency of operations. Therefore, Airport Sponsors should strive to develop minimum standards that are fair and reasonable to all on-Airport aeronautical service providers and relevant to the aeronautical activity to which it is applied.

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. Under certain circumstances, an Airport Sponsor could deny Airport users the opportunity to conduct aeronautical activities at the Airport for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. These standards should be tailored to the specific aeronautical activity and the Airport to which they are to be applied. Considerations for applying these standards may include the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;
2. Impose conditions that ensure safe and efficient operation of the Airport in accordance with FAA rules, regulations, and guidance;
3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;
4. Ensure standards are relevant to the activity to which they apply; and
5. Ensure standards provide the opportunity for newcomers to meet the minimum standards to offer their aeronautical services within the market demand for such services.

* Federal Aviation Administration Advisory Circular Number 150/5190-7, August 28, 2006
1.5 Application of Minimum Standards

Any Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must comply with these Minimum Standards and any amendments thereto. If there is a conflict between a Minimum Standard and the provision of a lease, permit, or agreement, the provision in the lease, permit, or agreement governs.

Whenever an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant conducts multiple aeronautical activities under one lease, permit or agreement with the City, the Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant must comply with these Minimum Standards for each activity being conducted. If the Minimum Standards for one of the aeronautical activities are inconsistent with the Minimum Standards for another aeronautical activity, the City may apply the Minimum Standards that are most beneficial to Airport operations.

The City may waive or modify any Minimum Standard for the benefit of any governmental agency or when the City determines that a waiver or modification is in the best interest of Airport operations and will not result in unjust discrimination among Aeronautical Commercial Operators, Nonprofits, or Executive Hangar Tenants.

In addition to the requirements set forth in this document, an annual review of existing leases may be conducted for each tenant/lessee at any time to ensure compliance with these Minimum Standards.

1.6 Insurance

All individuals and entities providing commercial aeronautical activities shall protect the public generally, its customers or clients, and the City of San Marcos from any and all unlawful damages, claims, or liability and shall carry comprehensive general liability insurance with a company authorized to do business in the State of Texas with limits of not less than that specified herein; and such policies must be written with the City of San Marcos named as an additional insured; such policies must be approved by the Airport and a certificate of insurance furnished to same. It is further understood that as circumstances may justify in the future, the City may modify these insurance requirements.

All tenants will have three months, or until expiration date of current insurance policy, whichever is greater, to update their insurance coverage in order to comply with these Minimum Standards.

All insurance requirements can be found in Appendix A of this document.

1.7 Personnel

Each Aeronautical Commercial Operator must employ a sufficient number of trained, on-duty personnel to provide for the safe, efficient, and orderly conduct of all its operations utilizing the
San Marcos Regional Airport
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Airport, and for proper compliance with its obligations under its lease, permit, or agreement. Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must control the conduct and demeanor of its personnel, subtenants, invitees, and, upon objection by the City concerning the conduct or demeanor of any such person, the Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must immediately take all lawful steps necessary to remove the cause of the objection.

Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must conduct its operations in a safe, orderly, efficient, and proper manner so as not to unreasonably disturb, endanger, or be offensive to others.

1.8 Common Rights and Privileges

All Aeronautical Commercial Operators, Nonprofits, and Executive Hangar Tenants shall have the right to use common areas of the airport (including runways, taxiways, and roadways).

The City reserves the right to take any actions it considers necessary to protect the aerial approaches to the Airport against obstructions.

The City reserves the right to enter upon any premises at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of these Minimum Standards.

1.9 Land and Facility Use

The City reserves the right to lease an existing facility or any portion of an existing facility to an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant in order to maximize facility use and business opportunities. A lease of this nature shall be at the City’s sole discretion, and shall be considered to meet the minimum facility requirements as specified in these Minimum Standards.

1.10 Compliance

In the event modified or updated Minimum Standards create a situation whereby an existing tenant is not in compliance, the City has the sole right to establish a plan for correcting such non-compliance. The City will work with the tenant to help provide a fair and reasonable solution in a timely manner.
Section 2
Aeronautical Operators & Tenants

2.1 Authority

Airport Management reserves the right to adjust and/or combine the square footage of building space or area if more than one category of service is provided by one individual, firm, or corporation. Airport Management also reserves the right to make any changes to these Minimum Standards dictated by changing conditions or circumstances. The time of operations shown for each category is considered reasonable but may be adjusted from time to time as agreed on by Airport Management and the Lessee in writing.

2.2 Fixed Base Operator (FBO)

A Fixed Base Operator (FBO) is an Aeronautical Commercial Operator engaged in the sale of products, services, and facilities to aircraft operators including aviation fuels and lubricants; ground services and support; tie-down, hangar, and parking; aircraft maintenance, and aircraft rental/flight training.

A Fixed Base Operator shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with FBOs.

2. Provide at least one type of fuel for aircraft use (100LL or Jet A).

3. Maintain one metered and filter equipped dispenser, fixed or mobile, for dispensing each separate type of fuel offered.

   ▪ For mobile fuel dispensing of each type of fuel offered, lessee shall furnish a separate fuel truck or fuel trailer with a minimum capacity of five hundred (500) gallons each. Mobile dispensing equipment shall be properly maintained, operated, and equipped in accordance with applicable Federal Aviation Administration, Airport Lessor, and National Fire Protection Association recommendations, requirements, and regulations.

   ▪ For fixed fuel dispensing, lessee shall furnish separate dispensing pumps and meters for each type of fuel offered. Such fixed fuel dispensing equipment shall be attended or automated so that fuel is available to the public without discrimination, any unusual requirements, or any advance arrangements of any kind.
San Marcos Regional Airport
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4. Furnish fuel storage tanks with a minimum capacity of ten thousand (10,000) gallons each for either 100LL or Jet A. Fuel storage tanks shall be ground mounted in properly bunkered and approved closures in a location approved by the Airport Lessor and shall comply with applicable uniform building code standards, fire codes and ordinances, and the recommendations of the National Fire Protection Association.

5. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

6. Provide personnel on duty during normal business hours seven days a week.

2.3 Specialized Aviation Service Operation (SASO)

A Specialized Aviation Service Operation (SASO) is an Aeronautical Commercial Operator that is authorized to offer a single or limited service according to established Minimum Standards. Examples of a SASO include, but are not limited to, the following commercial aeronautical activities: aircraft maintenance, avionics maintenance, avionics sales, flight training, aircraft charter, aircraft sales, aircraft storage, specialized commercial aeronautical operations, and aircraft refurbishing.

A SASO shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with the intended facility use.

2. Ensure that customers, clients, and/or employees have the appropriate and current FAA pilot’s license and current Airman Medical Certificate as necessary.

3. Have adequate facilities or arrangements for storing, parking, servicing, and repairing all of its aircraft.

4. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

2.4 Temporary Aeronautical Commercial Activity (TACA)

A Temporary Aeronautical Commercial Activity is a single aeronautical service offered on a temporary basis without an established place of business on the Airport. Examples of a TACA include, but are not limited to, mobile versions of Specialized Aviation Service Operations (SASO). The TACA must be permitted by San Marcos Airport and may be denied access to the Airport. San Marcos Airport may or may not allow this type of servicing to exist on the Airport.
2.5 Executive Hangar

An Executive Hangar is a small to medium size hangar, owned or leased by an individual or business to store their own aircraft. The uses of an Executive Hangar shall be limited to the storage of wholly owned or leased aircraft and service and maintenance on wholly owned or leased aircraft. Executive Hangar Tenants may not hangar aircraft owned by others nor offer, nor provide, any services whatsoever to others, except however, other’s aircraft may be temporarily hangared without compensation.

Executive Hangar Tenants shall:

1. Construct a hangar with a minimum structure size of 50’ x 50’.

2. Determine the necessity of certain Development Design Standards, such as restroom facilities and vehicle parking, with the assistance of Airport Management prior to construction.

2.6 Nonprofit

A Nonprofit serves and/or educates the aviation community without the intent to distribute profits or dividends or without the intent to operate as a commercial business. The City may request articles of incorporation filed with the Secretary of State to ascertain nonprofit status.

Due to the variety of nonprofit aviation organizations, minimum leased area, building size, and insurance requirements will be determined on a case-by-case basis.

Section 3
Application Process

3.1 Improvements to Airport Property

Prospective tenants wishing to establish a permanent business on Airport property or to construct a hangar for personal use must first complete a Project Development Questionnaire.

All improvements constructed on Airport property are subject to the requirements of these Minimum Standards, the Airport’s Development Design Standards, and all applicable municipal, state, and federal codes. Plans for construction will be approved by the City and Airport Management prior to the commencement of work.

A Project Development Questionnaire packet may be found at Airport Management office.
3.2 Temporary Aeronautical Commercial Activities (TACA)

Temporary or mobile business activities are permitted after the proper Temporary Permit Application has been completed and approved by Airport Management, all applicable fees have been paid, and proper proof of insurance has been provided.

A Temporary Permit Application may be found in Appendix B of this document or online.

3.3 Additional Requirements

The City or designated representative may require the Applicant to provide additional information to ensure compliance with the City of San Marcos ordinances, Airport Standard Operating Procedures and Regulations, or these Minimum Standards.

Applicant shall satisfy the Airport that they are technically and financially able to perform the services associated with the proposed nature of their business. This may include the responsibility for demonstrating continued financial solvency and business ability by submitting financial statements, credit references, a business plan, and any other data that Airport Management and the City may require from time to time. In each instance, the City shall make the final determination as to qualifications and financial ability of the applicant.

3.4 Action on Application

All applications will be reviewed and acted upon by Airport Management within 30 days from the receipt of the application. Applications may be denied for one or more of the following reasons:

1. The applicant does not meet qualifications, standards, and requirements established by these Minimum Standards.

2. The applicant’s proposed operations or construction will create a safety hazard on the Airport.

3. The granting of the application will require the expenditure of local funds, labor, or materials on the facilities described in or related to the application, or the operation will result in a financial loss to the Airport.

4. There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.

5. The proposed operation, development, or construction does not comply with the approved Airport Layout Plan (ALP).
Appendix A: Insurance Requirements
## San Marcos Airport Minimum Insurance Requirements

### Basic airport operations minimum requirements:

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>COMPREHENSIVE AIRPORT LIABILITY</th>
<th>AIRCRAFT LIABILITY</th>
<th>HANGAKEYPERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FBO</td>
<td>$2,000,000</td>
<td>≥ $1,000,000</td>
<td>Value of aircraft in care, custody, or control</td>
</tr>
<tr>
<td>SASSO</td>
<td>$1,000,000</td>
<td>≥ $1,000,000</td>
<td>Value of aircraft in care, custody, or control</td>
</tr>
<tr>
<td>TEMPORARY AERONAUTICAL ACTIVITY</td>
<td>$1,000,000</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>NONPROFIT</td>
<td>$1,000,000</td>
<td>≥ $1,000,000</td>
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</tr>
<tr>
<td>EXECUTIVE HANGAR</td>
<td>N/A</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>T-HANGAR/T-SHELTER</td>
<td>N/A</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>REMARKS</td>
<td>All: CIL with coverage for Bodily Injury &amp; Property Damage</td>
<td>All: CIL with coverage for Bodily Injury &amp; Property Damage</td>
<td></td>
</tr>
</tbody>
</table>

### Other minimum requirements based on other miscellaneous activities:

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>COMPREHENSIVE AIRPORT LIABILITY</th>
<th>AIRCRAFT LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIR CHARTER</td>
<td>$1,000,000</td>
<td>≥ $2,000,000*</td>
</tr>
<tr>
<td>AIR CARGO</td>
<td>$1,000,000</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>AIRCRAFT SALES</td>
<td>$1,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>FUEL STORAGE TANKS</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>PRODUCT LIABILITY</td>
<td>≥ $1,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>REMARKS</td>
<td>* Minimums increase based on passenger capacity</td>
<td></td>
</tr>
</tbody>
</table>

### Property Insurance:

All tenants who own or lease property at the Airport are required to carry Property Liability insurance. If the hangar/facility is owned, the lessee must carry insurance equal to the market replacement value of the building and underlying slab. If the hangar/facility is leased, lessee must insure the contents of the facility.

### Auto Insurance:

Any vehicle operating in the Aircraft Operations Area (AOA), whether owned, not owned, or hired, must carry Automobile Liability of at least $500,000.
Appendix B: Temporary Permit Application
San Marcos Regional Airport  
Temporary Permit Application

Brief description of temporary business or activity, event, or signage:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Requested permit date(s): ____________________________ to ____________________________

These activities are governed by the Airport minimum standards.

Applicant:____________________________________________________________________

Authorized Representative: ____________________________ Title: _______________________

Address: ___________________________________________________________________

City, State, Zip: ____________________________________________________________________

Phone (work): ____________________________ (fax): ____________________________ (emergency): ____________________________

Email Address: __________________________________________________________________

The Applicant hereby requests the above action(s) from the city for the privilege of conducting commercial aeronautical activities on the Airport in consideration of this request being granted agrees to the following:

FEE PAYMENT: Based on requested activity and date range.

PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to only the approved business activity listed above for the approved date(s).

INFORMATION CHANGES: The Applicant shall notify Airport Management Office in writing within fifteen (15) days of any change to the information provided on this form.

COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations.

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of copy of this permit.

Authorized Representative's Signature ___________________________________________ Date ____________________________
For office use only:

Application has been □ APPROVED.

Approved permit use:

__________________________________________________________________________

__________________________________________________________________________

Approved permit date(s):

Approved by: __________________________________________________________________ On: __________

Application has been □ DENIED.

Reason for denial:

__________________________________________________________________________

__________________________________________________________________________

Denied by: __________________________________________________________________ On: __________
EXHIBIT E

List of Sponsor Assurances

(to be attached)
EXHIBIT F
Outside Storage
Exhibit G

Off-site Parking

Within six months after the Effective Date, Lessor will pave the off-site parking area.
AGENDA CAPTION:
Consider approval of Resolution 2018-108R, approving and authorizing the termination for convenience of the agreement with M2 Federal, Inc. concerning Hutchison Street Bio-Filtration Pond Improvements Project (contract number 218-153); authorizing the City Manager or his designee to execute the said termination on behalf of the City.

Meeting date: June 19, 2018

Department: Engineering and Capital Improvements - Laurie Moyer, Director (by Lynda Williams, Purchasing Manager)

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

Fiscal Note:
Prior Council Action: Council approved this contract at the January 30, 2018 Council Meeting. Previously, this project was designed and implemented during the Downtown Improvement Project.

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

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
- [☐] Economic Development - Choose an item.
- [☒] Environment & Resource Protection - Natural Resources necessary for community's health, well-being, and prosperity secured for future development
- [☐] Land Use - Choose an item.
- [☐] Neighborhoods & Housing - Choose an item.
- [☐] Parks, Public Spaces & Facilities - Choose an item.
- [☐] Transportation - Choose an item.
Master Plan: Stormwater Master Plan

Background Information:
This action is to terminate the construction contract for the Hutchison Street Biofiltration Pond. The construction schedule for this project and the CM Allen Reconstruction project is placing two contractors within the same workspace. After conversations with M2 Federal, the Biofiltration Pond contractor, agreement was made to not go forward with the construction at this time.

A Notice to Proceed for the Hutchison Pond project has not yet been established so no work has been performed and during the CM Allen Reconstruction project access will be limited in this area. The work will be re-bid at a later date to avoid the conflict of construction.

Council Committee, Board/Commission Action:

Alternatives:
Continue with construction with risk of delay and conflict between contractors.

Recommendation:
Termination of contract
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AND AUTHORIZING THE TERMINATION FOR CONVENIENCE OF THE AGREEMENT WITH M2 FEDERAL, INC. CONCERNING HUTCHISON STREET BIO-FILTRATION POND IMPROVEMENTS PROJECT (CONTRACT NUMBER 218-153); AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID TERMINATION ON BEHALF OF THE CITY.

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

PART 1. The authorization of the termination for convenience of the agreement with M2 Federal, Inc. concerning the Hutchison Street Bio-Filtration Pond Improvements Project (contract number 218-153) is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGENDA CAPTION:
Consider approval of Resolution 2018-109R, authorizing the City Manager or his designee to apply for flood protection grant funds from the Texas Water Development Board (“TWDB”); authorizing the City Manager to enter into a contract with the TWDB to receive such flood protection grant funds; authorize the matching of City funds; authorizing the matching of flood protection grant funds received from TWDB with CBDG-DR funds or in-kind services.

Meeting date: June 19, 2018

Amount & Source of Funding
Funds Required: 50% Match In-Kind services & Flood DR Funds

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:
Stormwater

Comprehensive Plan Element (s):
☐ Economic Development - Choose an item.
☒ Environment & Resource Protection - Population Prepared for and resilient to Man-Made & Natural Disasters

☐ Land Use - Choose an item.

☐ Neighborhoods & Housing - Choose an item.

☐ Parks, Public Spaces & Facilities - Choose an item.

☐ Transportation - Choose an item.

Master Plan: Flood Protection Master Plan
Background Information:
The Texas Water Development Board (TWDB) is currently requesting applications for possible award of grants for flood protection planning, flood early warning systems or the implementation of local strategies for alerting and responding to floods. Applications will be evaluated for merit based on various criteria including purpose of the project, severity of flooding hazards, how the project will reduce loss of life, project schedule, budget, qualifications of the project team, etc. The TWDB will award 50% of the total cost of the project. In-kind services and/or CDBG DR funds may be used for any part of the local share. Projects awarded grants must be completed by August 31, 2021.

Funding from this grant will be used to enhance, implement and or install recommendations from the City’s on-going Flood Emergency Warning System (FEWS) project including:

- New stream and or rain gages
- Information technology to monitor, detect and assimilate data for flood protection

The project will be coordinated with Hays County. Should funds be awarded, additional Council actions may be required.

The grant application requirements include the following:

Written Assurance

- The City of San Marcos has the authority to plan and implement projects in the project area.
- The proposed project does not duplicate existing projects with the exception of replacing outdated equipment.

Resolution

- The City of San Marcos’s representative is authorized to apply for a grant from the Texas Water Development Board.
- Granting authority for the City of San Marcos to enter into a contract with the Texas Water Development Board.
- The intent to commit local matching funds in cash and/or in-kind services.

Council Committee, Board/Commission Action:

N/A

Alternatives:

N/A
Recommendation:
Staff recommends approval of this resolution
RESOLUTION 2018-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO APPLY FOR FLOOD PROTECTION GRANT FUNDS FROM THE TEXAS WATER DEVELOPMENT BOARD (“TWDB”); AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE TWDB TO RECEIVE SUCH FLOOD PROTECTION GRANT FUNDS; AUTHORIZE THE MATCHING OF FLOOD PROTECTION GRANT FUNDS RECEIVED FROM TWDB WITH CBDG-DR FUNDS OR IN-KIND SERVICES.

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

PART 1. The authorization of the City Manager or his designee to apply for Flood Protection Grant funds from the Texas Water Development Board (“TWDB”) is approved.

PART 2. The authorization to match Flood Protection Grant Funds from the TWDB with CBDG-DR funds or in-kind services is approved.

PART 3. The City Manager or his designee is authorized to execute the appropriate documents on behalf of the City is approved.

PART 4. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGENDA CAPTION:
Consider approval of Resolution 2018-110R, approving the award of a construction contract to M.A. Smith Contracting Company, Inc. for the CM Allen Parkway Improvements Project in the estimated amount of $2,775,080.54; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

Department: Engineering and Capital Improvements - Laurie Moyer, Director (by Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $2,775,080.54
Account Number: C557
Funds Available: $2,800,000
Account Name: CM Allen Street Reconstruction

Fiscal Note:

City Council Strategic Initiative:
Stormwater
Choose an item.
Choose an item.

Comprehensive Plan Element (s): [   ]
☐ Economic Development - Choose an item.
☒ Environment & Resource Protection - Natural Resources necessary for community's health, well-being, and prosperity secured for future development
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☒ Parks, Public Spaces & Facilities - Collection of connected and easily navigated parks and public spaces
☒ Transportation - Safe, Well coordinated transportation system implemented in an environmentally sensitive
Background Information:

This project includes the reconstruction of CM Allen Roadway between E. Hopkins Street and University Drive and installation of storm drain system, water quality BMPs, street lighting, sidewalks, multi-use pathway, traffic signals, traffic control, driveways, irrigation, and landscaping. The award is for the Base Bid with Alternates 2 & # which include a schedule reduction of 60 days and landscape, irrigation and water quality BMP maintenance for two years.

Seven (7) bids were received on May 24, 2018 for the CM Allen Parkway Improvements project, 218-010. An analysis of the bids has been performed and award is recommended to the low bidder, MA Smith Contracting Company, Inc., Austin, Texas.

This project will implement the direction from Council for the construction of a 2-lane roadway with on-street parallel parking and a landscaped center median. The street cross section will support the removal of parking and the conversion to a 4-lane section in the future if desired.

During construction the roadway will be completely closed between Hopkins and University for the 10-month project duration. Coordination with local businesses, Sights & Sounds and Texas State has occurred to ensure appropriate access to business and park events. Traffic will be detoured to Edward Gary. Measures have been taken at Edward Gary at Hopkins and University to facilitate traffic flow. The Hutchison intersection with Edward Gary will allow the free flow of traffic on Edward Gary.

Completion is scheduled for April 2019.

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation: Approval of award a contract to MA Smith Contracting Company, Inc., Austin, Texas, for the amount of $2,775,080.54.
RESOLUTION 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONSTRUCTION CONTRACT TO MA SMITH CONTRACTING COMPANY, INC. FOR THE CM ALLEN PARKWAY IMPROVEMENTS PROJECT IN THE ESTIMATED AMOUNT OF $2,775,080.54; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a construction contract to MA Smith Contracting Company, Inc. for the CM Allen Parkway Improvements Project in the estimated amount of $2,775,080.54 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
## BID TABULATION
### CM Allen Parkway Improvements
May 24, 2018, at 2:00 P.M.

**IFB 218-010**

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Base Bid</th>
<th>Base Bid + Add Alt 1</th>
<th>Base Bid + Add Alt 2</th>
<th>Base Bid + Add Alt 3</th>
<th>Base Bid + Add Alt 1&amp;3</th>
<th>Base Bid + Add Alt 2&amp;3</th>
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<tbody>
<tr>
<td>MA Smith Contracting Company, Inc. Austin, Texas</td>
<td>$2,578,245.54</td>
<td>$2,608,245.54</td>
<td>$2,638,245.54</td>
<td>$2,715,080.54</td>
<td>$2,745,080.54</td>
<td>$2,775,080.54</td>
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<tr>
<td>Capital Excavation Company Austin, Texas</td>
<td>$2,716,194.32</td>
<td>$2,731,194.32</td>
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<td>Austin Underground, Inc. Lago Vista, Texas</td>
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<td>Curran Contracting Company Converse, Texas</td>
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<td>Denbow Company, Inc. Dripping Springs, Texas</td>
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<tr>
<td>Company Name</td>
<td>Amount 1</td>
<td>Amount 2</td>
<td>Amount 3</td>
<td>Amount 4</td>
<td>Amount 5</td>
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<td>Aaron Concrete Contractors, LP</td>
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<td>Austin, Texas</td>
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<td>Jerdon Enterprise, LP</td>
<td>$3,552,852.40</td>
<td>$3,639,852.40</td>
<td>$3,726,852.40</td>
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<td>San Antonio, Texas</td>
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<td></td>
<td></td>
<td></td>
<td>$3,791,992.40</td>
<td></td>
</tr>
</tbody>
</table>
Components:

- Crosswalk at Hutchinson with refuge
Components:

- Includes LID features treating 3.45 acres of mostly impervious cover
Components:

• 12-foot Multiuse Pathway from Hopkins to Dog Beach
• 10-foot sidewalk link to river
Components:

- Underground Electric and Pedestrian/Street Lighting
Components:

- Parallel Parking- 27 spaces
- Has flexibility to restripe to 4-lanes again
Construction Details:

- Shut Down CM Allen Completely
  - Detour traffic to Edward Gary
  - Businesses have access other points of access
  - Saves about 4 months of construction and 10% of construction cost
- Adjacent business and Parks Dept. prefer this to keeping CM Allen open during construction
Construction Details:

• Coordinated with Parks Department on Sights and Sounds accommodation during construction
• Handicap access provided from Parks Dept. parking lot via temporary ramps
• Estimated construction cost = $3M
Schedule:

• Bids to be opened at the end of this month.

• Bid includes contractor identified incentives to complete project both 30 and 60 days early.

• Construction to begin in July/August 2018

• Construction to last 12 months. Early completion alternative.
Questions?
June 6, 2018

City of San Marcos
Attn.: Mr. Gregory J. Schwarz
630 East Hopkins Street
Austin, Texas 78666

E-Mail: gschwarz@sanmarcostx.gov

RE: North CM Allen Parkway Reconstruction Project (200 - 300 Block)
Sealed Bid No. IFB 218-010
V&A Job No.: 2253-006

Dear Mr. Schwarz:

Vickrey & Associates, Inc. (V&A) has reviewed the bid as submitted by M.A. Smith Contracting Company, Inc. on May 24, 2018 which was provided per request from the City of San Marcos. The value of the bid received from M.A. Smith Contracting Company, Inc. aligns with the construction cost budget established by the City of San Marcos.

References have been contacted to verify the qualifications of M.A. Smith Contracting Company, Inc. Individuals who were contacted were Angelina Points, the Director of Public Works for the City of Belton, Texas; Tony Valdez, a Project Engineer for Travis County, Texas; and Randy Harvey with the City of Austin, Texas. Angelina Points with the City of Belton stated that they would not hire this firm if Hardin Smith was the Project Manager, but they would hire this firm if assigned a different Project Manager. Tony Valdez with Travis County stated that he would hire this firm again. Randy Harvey with the City of Austin spoke directly to Gregory Schwarz with the City of San Marcos and gave M.A. Smith Contracting Company, Inc. an excellent reference. The overall responses from the references contacted verify that M.A. Smith Contracting Company, Inc. is qualified and performs well, depending on the Project Manager assigned to the project.

V&A recommends that the City of San Marcos proceed with the award of a contract to M.A. Smith Contracting Company, Inc. to include the Base Bid work and Additive Alternates No. 2 and No. 3 for a total value of $2,775,080.54. The construction cost was estimated at $2,670,000.

Sincerely,

VICKREY & ASSOCIATES, INC.

J.Rob Clark, P.E.
Associate, Sr. Project Manager

RC/ agt
AGENDA CAPTION:
Consider approval of Resolution 2018-111R, approving the authorized change in service to increase the value of the contract with Freese and Nichols, Inc. for the CDBG-DR Uhland Road Improvements Project in the amount of $109,570.00; authorizing the City Manager or his designee to execute the said authorized change in service on behalf of the City and declaring an effective date

Meeting date: June 19, 2018

Department: Engineering & Capital Improvements

Amount & Source of Funding
Funds Required: $109,570
Account Number: CDBG DR 13028132 - 56251
Funds Available: $3,512,581.00
Account Name: Uhland Road Drainage Improvement

Fiscal Note:
Prior Council Action: One of five approved CDBG DR projects, Council approved resolution 2017-131R on 5th September 2017 for the original agreement between for professional services between the City and Freese and Nichols, Inc.

City Council Strategic Initiative: Stormwater
Goal #5 Maintain & Improve City's Infrastructure
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
**Background Information:**
This Change in Service is to add **geotechnical investigation, subsurface utility engineering (SUE), and additional engineering design to the original scope of work.** The City's on-call contracts with geotechnical and SUE firms are in the process of being renewed after expiration. To maintain schedule and expedience to support the design efforts, these tasks will be undertaken by the design engineer. Additionally, further design is required following conflicts identified in the preliminary design analysis.

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

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

**Recommendation:**
Staff recommends approval of this Change in Service
RESOLUTION 2018-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AUTHORIZED CHANGE IN SERVICE TO INCREASE THE VALUE OF THE CONTRACT WITH FRESEE AND NICHOLS, INC. FOR THE CDBG - DR UHLAND ROAD IMPROVEMENTS PROJECT IN THE AMOUNT OF $109,570.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CHANGE IN SERVICE 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 authorized change in service to increase the value of the contract with Freese and Nichols, Inc. for the CDBG - DR Uhland Road Improvements Project in the amount of $109,570.00 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
ATTACHMENT D

AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS

CONTRACT: Uhland Road Improvements
CONSULTANT: Freese and Nichols, Inc.

AUTHORIZED NO.: 
ORIGINAL CONTRACT DATE: September 5, 2017
AUTHORIZED DATE: September 7, 2017

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

| Add: SUE Services Level B/A – KCI Technologies, Inc. | $49,718 |
| Add: Geotechnical Services – TTL, Inc. | $23,500 |
| Add: Wastewater design improvements along County Road - FNI, Inc. | $36,352 |

Previous Change In Services

### date; why; amount

### date; why; amount

Previous contract amount: $677,149
Net increase/decrease in contract amount: $109,570
Revised contract amount: $786,719

Requested by:

By: [Signature]

Printed name, title

Approved by:

City of San Marcos:

By: [Signature]

Kirk Abbott, Project Engineer

Printed Name and Title

Date: 5-7-18
Description of Change in Service Request by Task

Geotechnical Services

Additional services are to procure Geotechnical information from TTL, Inc. in support of the Uhland Road Improvements Project. These services include field, laboratory, and engineering tasks; and comprise 11 exploratory borings, one soil permeability test, and laboratory tests to determine soil indexes and engineering characteristics. This data including proposed pavement recommendations will be compiled and presented in and Engineering Report.

Subsurface Utility Engineering (SUE)

Additional services are to procure SUE information from KCI, Inc. in support of the Uhland Road Improvements Project. These services include up to 15 test holes surveyed, staked and marked in the field, Quality Level A & B plan sheets showing investigated utilities, field sketches and notes of any utility found, and Quality Level B data file depicting designated utilities.

Water and Wastewater (WW) Service Line Improvements along County Road (Uhland Road Project)

Additional utility design services provided by Freese and Nichols, Inc. (FNI prime consultant) are to provide for reconstruction of the 8” WW utility line on County Road so that the lowered roadway can be designed and constructed to alleviate drainage issues. The existing WW system on County Road is too shallow and will be impacted by lowering the roadway for improved drainage. The reconstruction of the County Road system will allow for correction of some issues with the existing WW line. FNI will also provide utility design services to support reconstruction of the existing water line under County Road in order that the road profile may be lowered to accept storm runoff. Also included are additional project management hours for FNI to work with the two new subconsultants on the project, and a small amount of time for management of additional record drawings.
<table>
<thead>
<tr>
<th>Task</th>
<th>Total Labor Hours</th>
<th>Total Labor Cost</th>
<th>Other Direct Costs</th>
<th>Subconsultants</th>
<th>TOTALS</th>
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<tr>
<td>3 Design Phase (60%/90%/100%)</td>
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<td>$29,194</td>
<td>$1,898</td>
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<tr>
<td>6 Record Drawing Phase</td>
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<td>$204</td>
<td>$0</td>
<td>$4,708</td>
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</table>

**SUPPLEMENTAL TOTAL:**

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<tr>
<td></td>
<td>251</td>
<td>$34,216</td>
<td>$2,136</td>
<td>$73,218</td>
<td>$109,570</td>
</tr>
</tbody>
</table>

Freese and Nichols, Inc. $36,352  
TTL, Inc. $23,500  
KCI, Inc. $49,718
AGENDA CAPTION:
Consider approval of Resolution 2018-112R, approving the award of a contract to the Jacobs Project Management Company (RFQ 218-279) for Construction Project Management Services with maximum estimated contract value of $2,299,000; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

Department: City Manager’s Office (by Lynda Williams, Purchasing Manager)

Amount & Source of Funding
Funds Required: $2,299,000 not to exceed
Account Number: FY 2018 GO Bonds, FY 2018 CO Bonds Public Services/ City Hall
Funds Available: Library $14,500,000 Police $5,500,000, Fire Station 2-$4,300,000 Fire Training Facility $2,000,000, Fire station #6-$4,300,000; Public Services CO Bonds-$1,800,000.
Account Name: FY 2018 GO Bonds Projects, FY 2018 CO Bonds

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

City Council Strategic Initiative: [Please select from the dropdown menu below]
City Facilities
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:
On May 29, 2018, the City Council received a presentation/update on the status of the May 2017 Bond Election initiatives as well as an update on the status of the Public/Community Service Maintenance facility and a future City Hall. Part of the update included the importance of an experienced and professional Project Manager/Owner’s Rep which would lead the City in the most efficient and effective manner to procure these facilities. It is important to realize that an effective project management firm can easily recoup the cost of their services by helping the City to negotiate more competitive design and construction contracts. By catching design versus constructability issues early on in the process, savings will be realized that can then be added back into the project if needed. In short, we feel the cost of this contract will result in savings to the overall projects. We will track those savings and update the City Council as needed.

On May 24, 2018, a Request for Qualifications, 218-279, was issued for professional project management services to assist the City in administering the various facility projects listed above. Nine (9) Statements of Qualifications were received and evaluated by a City staffed evaluation committee resulting in the unanimous selection of Jacobs Project Management Company, San Antonio, Texas, as the most highly qualified firm based on demonstrated competence and qualifications. The City has negotiated a fair and reasonable price. The fee proposal is broken down into numerous sections and is a not to exceed contract of $2,299,000 which will be billed hourly. If a particular phase of a project does not occur, the City will not be billed for those hours. The City was also able to negotiate a $305,000 35% Design Build Set of Plans for the Library project. This will expedite the project and will create a more realistic cost for construction. The City did seek out a fee proposal for a future city hall which is listed on the attached exhibit as Package 2B. The cost for those services would be an additional $855,000. The City is recommending that this phase be brought back at a later time for approval once the project has been developed a little more. Once that phase is brought back, Jacobs has identified a $69,000 credit discount will be applied to the project.

The contract phases are broken down as follows:
## Facility Project Fee

<table>
<thead>
<tr>
<th>Facility</th>
<th>Project Fee</th>
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<tbody>
<tr>
<td>Library</td>
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<tr>
<td>Police</td>
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<td>Fire Station 2</td>
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<tr>
<td>Fire Training Facility</td>
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<tr>
<td>Public/Community Services</td>
<td>$843,000</td>
</tr>
<tr>
<td>Maintenance Facility</td>
<td>$843,000</td>
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<tr>
<td>City Hall Assessment Phase</td>
<td>$54,000</td>
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<tr>
<td>Fire Station 6</td>
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<tr>
<td><strong>Total Project Management</strong></td>
<td><strong>$1,994,000</strong></td>
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<tr>
<td>35% Design Plans for Library</td>
<td>$305,000</td>
</tr>
<tr>
<td><strong>Total Not to Exceed</strong></td>
<td><strong>$2,299,000</strong></td>
</tr>
</tbody>
</table>

### Council Committee, Board/Commission Action:

Click or tap here to enter text.

### Alternatives:

Click or tap here to enter text.

### Recommendation:

Award a professional services agreement to Jacobs Project Management Company, San Antonio, Texas for the amount $2,299,000
RESOLUTION 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT TO THE JACOBS PROJECT MANAGEMENT COMPANY (RFQ 218-279) FOR CONSTRUCTION PROJECT MANAGEMENT SERVICES WITH MAXIMUM ESTIMATED CONTRACT VALUE OF $2,299,000.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract to the Jacobs Project Management Company (RFQ 218-279) for construction project management services with maximum estimated contract value of $2,299,000.00 is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGREEMENT BETWEEN
THE CITY OF SAN MARCOS
AND PROFESSIONAL FIRM

This Agreement is made as of June __________, 2018 the ("Effective Date"), by and between:

The Owner: The City of San Marcos, Texas

and

The Professional Firm: Jacobs Project Management Company

for

The Project: Project Management Services for City of San Marcos Facilities, 218-279

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the General Terms and Conditions as revised and attached hereto.

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 generally accepted 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, and such re-performance of services shall be the extent of Professional Firm's obligations with respect to
any deficient services.

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. Professional Firm shall be entitled to reasonably rely on such information.

The Owner will review the Professional Firm's drawings, specifications and other documents of service produced by Professional Firm 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 Steve Parker, 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:

Steve Parker  
Assistant City Manager  
630 East Hopkins Street  
San Marcos, Texas 78666  
Ph.: 512-393-8106  
E-mail: sparker@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 (7) calendar days’ notice period. This Agreement may be terminated by the Owner’s City Manager or City Manager’s Designee for any reason upon fifteen (15) calendar days’ written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

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

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

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

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.
Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

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

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

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

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

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

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

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

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

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’s City Manager or City Manager’s Designee may terminate the Agreement at any time upon thirty (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 Street  
San Marcos, Texas 78666  
Attn: City Purchasing Manager's Office  
cosmpurchasing@sanmarcostx.gov  

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

If to Professional Firm:  Jacobs Project Management Company  
911 Central Parkway North, Suite 425  
San Antonio, Texas 78232  
210-494-0088
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 of Change in Services Form in Exhibit 2 to do so. The Authorization of 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>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker's Compensation</td>
<td>Statutory Limits</td>
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<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>
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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 person</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 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 intentionally wrongful 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 include Package 1, Package 2A, and Package 3 as stipulated in the Fee Proposal, Exhibit 3, for the amount not exceed two million two hundred ninety nine thousand dollars and no cents ($2,299,000.00).

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, TX

PROFESSIONAL FIRM: JACOBS PROJECT MANAGEMENT COMPANY

By: ________________________________ By: ________________________________

Signature

Name

Title: C i t y M a n a g e r

Date: _____________________________

Attachment – City of San Marcos Standard Terms and Conditions

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
City of San Marcos
Standard Terms and Conditions

By entering into an agreement with the City, Contractor agrees to be governed by the following terms and conditions.

1. **Definitions.**
   a. **Agreement** means any contract, agreement, purchase order, response to production or any other document which references these Terms and Conditions.
   
   b. **Contractor** means any individual, company, corporation or other legal entity who has entered into an Agreement with the City.
   
   c. **City** means the City of San Marcos, Texas.
   
   d. **Deliverables** shall have the same definition, if applicable, as found in the Agreement. If not defined in the Agreement, Deliverables shall mean any goods, whether tangible, digital, or otherwise, contracted for and due to City under the Agreement.
   
   e. **Services** shall have the same definition, if applicable, as found in the Agreement. If not defined in the Agreement, Services shall mean any required performance by Contractor, contracted for and due to City under the Agreement.

2. **Workforce.** The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.

3. **Payments.** City will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*. City, a municipality in the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“TAC”) Section 3.322.

4. **Limit on Value.** Contractor acknowledges and agrees that the total aggregate value of the Agreement together with any related change orders, amendments, or addendums will not exceed forty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents ($49,999.99) without the approval of the City Council of the City.

5. **Right to Audit.**
   a. Contractor agrees that the representatives of the Finance Department of the City or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
   
   b. The Contractor shall include Section a. above in all subcontractor agreements entered into in connection with the Agreement.

6. **Access to Premise and City Rules.** Contractor will conduct all its operations on the City’s premises in conformity with all applicable federal and state laws, rules and regulations, and local ordinances and rules including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

7. **Travel Expenses.** No travel, lodging or per diem expenses in connection with the Agreement will be reimbursed unless both the City and the Contractor come to written agreement on the terms of such reimbursement.
8. **Warranty- Title.** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

9. **Warranty- Deliverables.** The Contractor warrants and represents that all Deliverables sold the City under the Agreement shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Agreement, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Agreement, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

   a. Recycled Deliverables shall be clearly identified as such.

   b. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

   c. Unless otherwise specified in the Agreement, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the nonconforming Deliverables with fully conforming Deliverables, at the City’s option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City’s rights under this section.

   d. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Agreement from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

   e. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer’s warranty, the Contractor shall transfer and assign such manufacturer’s warranty to the City. If for any reason the manufacturer’s warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer’s warranty for the benefit of the City.

10. **Warranty- Services.** The Contractor warrants and represents that all services to be provided the City under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable Federal, State and local laws, rules or regulations.

   a. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

   b. Unless otherwise specified in the Agreement, the warranty period shall be at least one year from the last date services have been paid for under the Agreement. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand...
perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City’s rights under this section.

c. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

11. Ownership and use of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.

a. Patents. As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

b. Copyrights. As to any Deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables. Should by operation of law, such Deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

c. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the Deliverables. The Contractor’s obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Section 11 a., b., and c. shall continue after the termination of this Contract with respect to such Deliverables.

12. Right to Use Specific City Marks. Contractor understands and acknowledges that the City owns all rights to the name, logos, and symbols of City (“City Marks”). All rights to the City Marks will at all times remain the property of the City. Subject to these Terms and Conditions, the City may grant to Contractor a nonexclusive right to use those specific City Marks that are directly required to complete Contractor’s obligations in the Agreement, and which are approved for use in accordance with this Section.

All use of the City Marks will be in a manner that (i) complies with applicable laws, City Rules; (ii) is consistent with Contractor’s use of other City Marks under similar situations; and (iii) will not tarnish the City Marks.
Any use of City Marks by Contractor **MUST** be approved as follows:

Requests for approval **will be in writing**, accompanied by the material requested to be approved, will be transmitted by e-mail, express mail, overnight carrier, or regular mail, and will be addressed as follows:

Director, Communications  
The City of San Marcos  
630 E Hopkins Street  
San Marcos, TX 78666  
512-393-8242  
communicationsinfo@sanmarcostx.gov

City will notify Contractor via e-mail or facsimile of City’s approval or disapproval of Contractor’s request to utilize City Marks in accordance with this Section. Reasonable effort will be made to timely notify Contractor of approval or disapproval. Contractor should make every effort to submit all uses for approval as early as practicable.

13. **Insurance**: Contractor acknowledges that City, as a municipality in the State of Texas, maintains and operates programs of self-insurance. City will maintain during the term of this Agreement a self-insurance program and, upon written request, will provide to Contractor a written description of such self-insurance program.

14. **Contractor Insurance**. In the event Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of City in the performance of the Agreement, Contractor agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in the Agreement, and will maintain worker’s compensation coverage (either by insurance or if qualified pursuant to law, through a selfinsurance program) covering all employees performing the Agreement on premises occupied by or under the control of City. Contractor may receive copies of specific requirements for coverage by contacting the Risk Management Department of the City at 512-393-8060.

15. **Compliance with Health, Safety, and Environmental Regulations**. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor’s obligations under this Section 15.

16. **Subcontracting (HUB)**. When applicable, Contractor will use good faith efforts to subcontract work performed under the Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) as submitted by Contractor. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part.

17. **Limitations**. See Agreement Article 7. **THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CITY (A TEXAS MUNICIPALITY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND THE ORDINANCES OF THE CITY OF SAN MARCOS, TEXAS.**
18. INDEMNITY. See Agreement Article 13. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

19. Termination for Convenience. The City through the City Manager or the City Manager’s Designee may terminate the Agreement at any time upon thirty (30) calendar days’ notice in writing to Contractor. Upon receipt of such notice, Contractor 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, Contractor 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 City agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

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

21. Dispute Resolution.

a. 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.

b. 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 City and the Contractor 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 City and Contractor 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.
22. **Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapter 2270 and 808, *Texas Government Code*, Contractor 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.

23. **2252 Compliance.** Section 2252 of the *Texas Government Code* restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

24. **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures.

   Nothing in the foregoing shall be deemed to relieve Contractor or its Affiliates of its obligation to pay fees owed under this Agreement.

25. **Texas Public Information Act.** Contractor understands and acknowledges that the City is a governmental entity in Texas and is subject to requests for public information under the Texas Public Information Act. Any action taken by the City to meet its legal requirements under the Texas Public Information Act or related City Ordinance will not be considered a breach of this Agreement.

26. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor’s services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

27. **Governing 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.

28. **Terms and Conditions Controlling.** In the event there is a conflict between the Agreement and these Terms and Conditions, *these Terms and Conditions* the Agreement will control.

**If Contractor is receiving State of Texas funds under the Agreement**

29. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it 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.
EXHIBIT 1  
SCOPE OF SERVICES AND DELIVERABLES

Project Management Scope of Services

The Project Manager will advise on ways to minimize the tax impact of the bond issuances by working closely with City staff, the City’s financial team, and other applicable parties in packaging projects for issuance to minimize issuance costs and tax implications.

The Project Manager will work with City staff to ensure expedited project delivery options whereby projects can be grouped together to streamline processes, minimize costs and tax impacts, to increase productivity, and to complete projects quickly.

The Project Manager will assist City staff and its financial team in exploring other avenues to offset or possibly limit debt issuances for capital expenditures including:

- Public Private Partnership opportunities
- Leasing or subleasing of property to facilitate revenue opportunities
- Cost Benefit Analysis related to Design, Build, Finance, Maintain, and Operate (DBFOM)Leasing opportunities

The City expects public involvement in the design of the Library. The Project Manager shall work with selected architecture firm(s) to conduct focus groups to assist in the planning and programming. The Project Manager will work with the City to initiate and receive public involvement in the planning and programming of the Library facility.

Other services may include all general leadership and management functions required including, but not limited to: recommendations for project delivery, procurement validating programming results, tracking budgets, providing cash-flow projections to City staff as required, preparing cost estimates and Bond Master Plan and Schedule, validating construction cost/cost of work, monitoring schedules; overseeing quality of all aspects of the project; communication with the project team; coordinating all issues, documentation, minutes, action items, and approvals to move the projects through all the various phases; providing direct interface with end-users and other stakeholders as required; briefing officials, Council/Boards, and more particularly described as follows:

The Project Manager may be required to assist in drafting and/or modifying existing Request for Qualifications/Proposals for design professionals; assist in overseeing the process and assist the City in the selection of the most qualified design professionals; and assist in follow up with and de-brief, if necessary, non-selected firms.

The Project Manager may be required to assist in creating and/or modifying existing standardized professional service and construction contracts for review and final drafting by legal staff; assist in incorporating all necessary insurance levels, bonds, and so forth in the appropriate agreement/contract; and oversee that all submittals are received and approved prior to starting work on these items.

The Project Manager may be required to assist in negotiating terms with consultants, design professionals, contractors, and so forth that are favorable to the City thereby providing not only the best value and meeting the goals of the project but also a fee that is within the project’s budget. If terms are unacceptable to the City, the City will re-bid, renegotiate, or select another firm that will meet the City’s terms. Coordination with the City Attorney will be required for this effort.

The Project Manager shall recommend to staff any forms, procedures, or standards that should be implemented to aid in project delivery. Particular attention should be given to items that expedite project delivery and/or reduce project expenditures.
The Project Manager may be required to conduct site visits and inspections to review work in place and report in a standard format to the City with reference to facilities standards/specifications, schedules, and budgets; monitor construction progress and advise the City of any observations of non-conforming scope or workmanship quality concerns; and administrate construction contract and general conditions and serve as City's representative.

The City has the option to either perform all or parts of construction inspection services at their discretion with the Project Manager adjusting their resources accordingly. The Project Manager shall not duplicate or waste resources where it is not needed.

Financial transparency related to the performance and execution of our bond election program is a huge priority for the City of San Marcos. The City of San Marcos is interested in contracting with a firm that has significant experience and innovative ideas in this area.

**Design Team Scope of Services**

**Bridging Documents** for the Public Library:

Design services to develop bridging documents (35% Design) for the San Marcos Public Library. The scope includes development of 35% design drawings and an edited table of contents for specifications for all Architectural and Engineering design disciplines required. The final product will provide sufficient information for the City of San Marcos to release a Design Build Request for Proposals to complete the design and build the San Marcos Public Library. See Exhibit 1-A for a sample of the deliverables expected for a 35% design set. It is anticipated that this effort will take approximately 3-4 months to complete.

**Bridging Documents Design Services provided by Design Team:**
- Civil
- Architectural
- Structural
- Mechanical
- Plumbing
- Electrical
- Communications
- Fire Protection
- Landscape
- Interior Design

**Meetings Included by Design Team:**
- Three-day charrette to identify/validate requirements (6 Jacobs Attendees)
- Meeting to review 50% Bridging Documents (3 Jacobs Attendees)
- Meeting to review Final Bridging Documents (3 Jacobs Attendees)
- Two attendees at Pre-Bid meeting for the Design Build project

**Assumptions & Exclusions for Design Team:**
- Design team will answer up to 15 RFIs
- Assume existing utilities are sufficient for expansion
- Design team’s services are complete once Design/Build bids are received; PM team will continue management of this effort
- Assumes one continuous design effort; No design to budget rework due to market conditions
- Surveying and geotechnical are not included
Projects:

PACKAGE 1 - IMMEDIATE

- **Public Library** - $14.5M; Design – 8 months, Construction – 12 to 15 months - Remodel of the existing 27,000 square feet existing Library located at 625 East Hopkins Street, San Marcos Texas; and New construction of a proposed 29,000 square feet expansion of the existing library located at 625 East Hopkins Street, San Marcos, Texas

- **Police Department Building** - $5.5M; Design – 6 to 8 months, Construction – 9 months – Renovation of the existing 44,000 SF building and addition of approximately 8,600 square feet to the Police Department located at 2300 IH 35 South, San Marcos, Texas

- **Fire Station 2** - $4.3M; 11,000SF, Timeline in 2019. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located within the La Cima Subdivision which is currently under construction west of IH35

- **Fire Training Facility** - $2M; Timeline 2018-2019. Master planning of 16 acres at airport property for future fire training facility and fire station. Design and construction of fire training facility.

PACKAGE 2 - INNOVATION

- **Public Services/Community Services Maintenance Facility**; Timeline: Design starting in late 2018, Construction starting in 2019 - This new facility with approximately 85,000 square feet of office and warehouse space along with other outdoor storage operations will be located on 18.5 acres off Clovis R. Barker Road. Public Private Partnership or other innovative delivery methods will be explored to finance this facility.

- **City Hall** – Timeline: Design starting in 2019, Construction starting in 2021 – This new facility will house General Fund municipal operations in the approximate square footage of 75,000 to 85,000 square feet and be located at 630 East Hopkins Street. Public Private Partnership or other innovative delivery methods will be explored to finance this facility. As an option the possibility of redevelopment of the current City Hall Municipal Complex will be considered.

PACKAGE 3 – MID-TERM

- **Fire Station 6** - $4.3M, 11,000 SF, Timeline in 2023. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located in the Trace Subdivision located east of IH35.
EXHIBIT 1-A
35 PERCENT BRIDGING DOCUMENTS DESIGN SUBMITTAL

1.1 General

The bridging documents design submittal (35 percent) consists of design narratives, drawings, outline specifications, and a cost estimate. This document shall define, by discipline, all the specific requirements of the design narratives and the drawings.

1.2 Objective

The bridging documents design submittals shall be of sufficient detail to show the user how the functional and technical needs will be met, to indicate the designer’s approach to solution of technical aspects to all reviewers, to show compliance to the criteria or justification for noncompliance, and to provide a valid estimate of construction cost. All deviations from applicable criterion such as building code, fire protection, life safety, and OSHA, shall be summarized and enumerated in the design narratives. Identify deviation, citing source and paragraph, what criteria requires and nature of deviation, followed by authority granting waiver and date. If waiver has not been granted, indicate NONE.

1.3 Civil Design.

1.3.1 Design Narrative

Establish basic criteria for each aspect of the overall civil design. Provide justification for the selection of criteria and proposed features over alternate options or possible solutions.

1.3.1.1 Water Distribution

1.3.1.1.1 Develop basic and controlling water demands and show required residual pressures. Include fire, domestic, and industrial average and/or peak demands as applicable. Show adequacy of distribution system to supply controlling demands and include information basic to this determination such as known flow tests and/or computations. State whether additional fire hydrants are needed and indicate the recommended location of each hydrant. If the water requirements for the project are considerable, state whether a determination has been made regarding the capability of the existing system to meet the additional demand or if future analysis is needed.

1.3.1.1.2 For service lines, distribution main extensions, and new distribution systems, state the proposed friction coefficient, approximate controlling elevations, special material requirements, and any special features of the design such as pressure reducing or regulating values. For irrigation systems, indicate types of sprinkler heads, effective coverage, proposed spacing, and sectionalization.

1.3.1.2 Water Supply

Water supply (including sources, treatment, storage, pumping, and supply lines) for new systems or additions.

1.3.1.2.1 Give basic information such as population, capacity factor, per capita allowances, industrial, and irrigation requirements, and fire demands.

1.3.1.2.2 Provide information on type, condition, and adequacy of existing units such as well, pumps, reservoirs, etc., and current water consumption. If these items are already described in detail in an existing report, give summary statement and appropriate reference.
1.3.1.2.3 In describing proposed works, including functional design concepts basic to
selection of type of units, materials, economy of operation, controls, etc. Provide
statement of tentative sizes or capacities of major components, any critical elevations or
dimensions, and essential related items as estimated from preliminary computations.

1.3.1.2.4 Identify the requirement for a new or additional source of water and the use
of such water at an early stage. Normally, the District will provide data on additional
water supply after the requirements have been identified. Where the scope of work
specifically includes the determination of new or additional water supply, the following
should be included: For new sources, include data on existing supplies and alternatives
for new sources such as wells and surface supplies. Provide data for all proposed water
wells and test drilling programs with full explanation of geological and other factors
affecting choice of location, type, diameter, depth, and important related characteristics.

1.3.1.3 Water Treatment.

Where water treatment is included in the job, the designer shall provide a copy of the water
analysis and describe the elements of the design, including the capacities and number of
units, monitoring equipment, and controls. The alternatives that were considered and the
reason for selecting the design over the alternatives shall be discussed demonstrating how
the design will correct the objectionable characteristics of the water.

1.3.1.4 Sewage

1.3.1.4.1 Sewage Collection. Discuss peak and average flow determinations for
building connections, individual sewer lines, and force mains based upon population
data, measurements, or computations from the number of fixture units. Indicate
controlling elevations and compliance with slope and size criteria. Confirm adequacy of
existing sewers to carry additional flow.

1.3.1.4.2 Provide basic information, such as population, capacity factor, per capita
flows, quantity, and nature of waste, etc., as applicable and develop required size and
capacity for sewage lift stations.

1.3.1.4.3 Sewage Treatment. Where waste treatment is included in the job, explain
the degree of treatment required to meet the applicable discharge standards. A
complete description of the nature of the waste shall be included. Describe the elements
of the design, including the capacities and number of units, monitoring equipment, and
controls. The alternatives that were considered and the reason for selecting the design
over the alternatives shall be discussed demonstrating how the design will achieve the
treatment goals. Pilot plant testing programs which are to be conducted will be
described, and in the case of land treatment, a soil testing program will be developed
described.

1.3.1.5 Storm Drainage and Grading

Discuss the proposed drainage design. The discussion shall include the rainfall intensity and
return period, concentration times, infiltration rates, the size of the contributing area,
method of computation, and the reasons behind the selection of each of the above. Describe
the grading plan and the controlling slopes which will be used in the design.

1.3.1.6 Roads. Street. Open Storage Areas. Hardstands. and Walks.

Discuss the geometric features of the paved areas such as widths of traffic lanes, shoulders,
parking spaces, and walks. Data relating to the design such as type, volumes and composition
of traffic; vertical and horizontal controls; and the class and category of road or street shall be included. The design section for all exterior pavements will be provided by the District in the geotechnical report. This section will be used in preparation of bidding documents and all other items related to pavements will be developed by the designer using applicable criteria and instructions. This report shall be referenced and a copy appended to the Basis for Design as an appendix.

1.3.1.7 Fencing

Describe the type and height of fences and gates. The description shall include features such as outriggers, barbed wire, or tape and gate controllers.

1.3.1.8 Dust and Erosion Control

Include a statement of the proposed type and method of accomplishing dust and erosion control, reasons for selection, extent of area treated, etc. If no treatment is proposed, justify omission.

1.3.1.9 Railroads

Include the type of service, volume, and traffic; the condition and weight of rails; type and thickness of ballast; ruling grade; type of treatment and size of ties; subgrade compaction requirements; types of track accessories, turnouts, and switches; and the name of the operating agency.

1.3.1.10 National Pollution Discharge Elimination System (NPDES) Permit.

In projects where wastewater is not discharged into an existing collection and disposal system, the NPDES permit will be referenced and appended to the design narrative. Excepted from this requirement are small storm drainage facilities where no separate permit is issued.

1.3.1.11 Environmental Impact

Review the environmental impact analysis (environmental impact assessment or environmental impact statement) to determine whether any design feature changes the conclusions or recommendations of the analysis. Should changes to the analysis be required as a result of the design, a complete description of the required changes shall be included in the Basis for Design. If no changes are required to the analysis, the designer shall indicate this conclusion in the Basis for Design.

1.3.1.12 Landscaping

Include a statement of need and justification for proposed landscaping and description of existing and proposed plantings. State any unusual climatic or soil conditions or other local factors which affect the design or selection of plant species. State that no landscaping is required if this is the case.

1.3.1.13 Corrosion Mitigation. Refer to Paragraph 1.8, Corrosion Design.

1.3.1.14 Future Expansion

Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.3.2 Computations.

Computation appropriate to level of 35 percent design.
1.3.3 Drawings

The site plans shall show existing and proposed features such as buildings, paved areas, utilities with actual or tentative sizes, hydrants, valves, fences, and landscaping. The new facility shall be superimposed on existing topography. Reference the source of the survey data and the location where filed. The drawings shall have sufficient horizontal and vertical control to clearly indicate the proposed siting of the facility in relation to existing features. A small scale location map shall be provided showing the location of the project on the base and the general relation between the new facility and major existing structures and/or streets to facilitate identification of the proposed site.

1.4 Architectural Design.

1.4.1 Design Narrative.

1.4.1.1 State what general type of architectural treatment exists both on the installation and in the immediate vicinity of the subject project. Give a description of particular framing and wall systems selected, others considered, and reasons for selection.

1.4.1.2 Provide a statement as to type of construction per criteria, e.g., fire-resistive, noncombustible, noncombustible protected, etc.

1.4.1.3 Building Wall and Roof Construction. Provide statement of required type of construction based on occupancy, area, and height, i.e., noncombustible, etc., per fire protection analysis.

1.4.1.4 The "U" or overall heat transmission factor as required by AEI.

1.4.1.5 Building Orientation. State how location on the site relative to local climate effects the placement of entries, fenestration, and roof overhangs due to prevailing wind, sun, and noise. Discuss architectural features resulting therefrom and relative costs thereof, i.e., tinted or thermal glass if required as opposed to glass ordinarily used.

1.4.1.6 Provide a tabulation of all equipment in the project to show the following: (If none, so state for each subparagraph below).

1.4.1.6.1 Contractor Furnished-Contractor Installed (CF-CI).

1.4.1.6.2 Owner Furnished-Contractor Installed (OF-CI).

1.4.1.6.3 Owner Furnished-Owner Installed (OF-OI) or not in contract (NIC).

1.4.1.7 Provide a description of materials for all major building components and of all interior and exterior finishes. The description shall include type of exterior wall construction, window types, panel materials, etc.

1.4.1.8 Color Boards. Submit in a standard 8-1/2 inch by 11 inch three-ring binder. Fold outs may be employed to 25-1/2 inch by 33 inch as long as they refold within the standard binder. Provide two color schemes for projects which involve building construction or building modification.

1.4.1.8.1 Actual material samples shall be displayed showing color, texture, pattern, finish, thickness, etc., for all appearance-related items where choice exists. These samples shall be large enough to indicate true patterns. However, care should be taken to present materials in proportion to that which will actually be installed in a given situation. Samples shall be organized by color schemes with a separate sample for each
scheme. The schemes shall be coordinated by room names and numbers shown on the architectural floor plans. Colors shall be labeled with generic color names.

1.4.1.8.2 Project title and base shall occur in the lower right-hand corner of each module.

1.4.1.9 Provide a systematic criteria/code analysis of building construction and fire protection/life safety requirements by citing applicable criteria and paragraph reference indicating what is "required" by the referenced citation and "actual" design condition for the following features. This shall include Fire Protection Life Safety Plan and Narrative. Where there is a conflict among the different codes, the most restrictive shall govern.

1.4.1.9.1 Building construction requirements:

1.4.1.9.1.1 Ground floor area, total area, height, and number of stories.

1.4.1.9.1.2 Occupancy use classification as defined in IBC, for purposes of determining area and occupancy separations.

1.4.1.9.1.3 Building height limit per IBC.

1.4.1.9.1.4 Fire area limit per IBC.

1.4.1.9.1.5 Fire resistive requirements of type of construction required to meet area/height/story limits. List from IBC. Also specific type of construction requirements for military projects under AEI chapter 9.

1.4.1.9.1.6 Mix occupancy/occupancy separation per IBC, and NFPA 101.

1.4.1.9.1.7 Area separation IBC.

1.4.1.9.2 Spacing between structures per IBC.

1.4.1.9.3 Life safety requirements, NFPA 101.

1.4.1.9.3.1 Occupancy load for exiting.

1.4.1.9.3.2 Means of egress requirements for the occupancy-occupant load, capacity of means of egress, exit units, number, arrangement, travel distance, illumination, emergency lighting, exit marking, and panic hardware requirements.

1.4.1.9.4 Additional Fire Protection and Life Safety Requirements.

1.4.1.9.4.1 Protection of vertical openings (IBC and NFPA). The codes are specific in regards to fire rating requirements but the exceptions to the requirements are not specific. The A-E is advised to obtain an acceptable interpretation from authority having jurisdiction before proceeding with design of unprotected floor openings.

1.4.1.9.4.2 Protection from hazards per NFPA 101.

1.4.1.9.4.3 Corridor separation per IBC and NFPA. The A-E shall coordinate with local authority having jurisdiction to applicable criteria.

1.4.1.9.4.4 Smoke barrier if required by occupancy.

1.4.1.9.4.5 Fire rated door.

1.4.1.9.4.6 Fire rated glass.
1.4.1.9.4.7 Fire alarm system.
1.4.1.9.5 Extinguishing and/or fire sprinkler system.
1.4.1.9.5.1 Show extinguisher location.
1.4.1.9.5.2 Fire sprinkler system requirements per NFPA.
1.4.1.9.6 Operation involving use or storage of flammable and explosive liquids, gases, or dusts. (Describe type of electrical equipment, lighting fixtures, ventilation, and other related fire protection features.)
1.4.1.9.7 ADA and TAS requirements.

1.4.1.10 Future Expansion
Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.4.2 Computations. Gross floor area computations
The floor area for each room shall be presented in tabular form in the computations. These areas will not be shown on the drawings. Break down the area into two categories, those calculated on the basis of full area and those calculated on the basis of one-half area, then show the grand total. Also show the programmed area for each room.

1.4.2.1 Calculate full areas (including all openings in floor slabs) measured to the outer surface of the inclosing walls for the following:
1.4.2.1.1 Floors, including basements.
1.4.2.1.2 Mezzanines and balconies.
1.4.2.1.3 Penthouses.
1.4.2.1.4 Enclosed passages and walks.
1.4.2.1.5 Finished usable spaces with sloping ceilings with an average height of 7 feet and minimum of 5 feet at perimeter walls.
1.4.2.1.6 Appended covered shipping and receiving platforms measured from the face of the building wall to edge of the platform.

1.4.2.2 One-half of the actual area of the following shall be calculated:
1.4.2.2.1 Covered open porches.
1.4.2.2.2 Appended, uncovered, shipping and receiving platforms at truck or railroad car floor height, measured from the face of the building wall to the edge of the platform.

1.4.3 Drawings.
1.4.3.1 Floor Plan
Show overall dimensions, functional arrangement, type of occupancy of all areas, major pieces of equipment, and interior/ exterior colors and finishes in tabular form.

1.4.3.2 Elevations
Provide all principal elevations showing any exterior electrical/mechanical equipment affecting the appearance of the structure. Also include story heights, fenestration, control joints, and site adaptation to the finished grades.

1.4.3.3 Building Section

Provide at least one principal section showing floor and roof framing, suspended ceilings, floor to floor heights, concealed or open ducts, relation of fenestration to supporting columns or walls, etc. If necessary to show special features, other primary transverse or longitudinal sections may be shown.

1.4.3.4 Provide exterior wall section for each type of wall system. These wall sections are to be cut from the floor plan not the elevation.

1.5 Structural Design.

1.5.1 Design Narrative.

Outline and define the structural methods and materials of design and construction and enumerate all criteria and assumptions on the following items:

1.5.1.1 Provide a statement referencing the geotechnical report which will be attached as an appendix to the design narrative. The geotechnical report will normally be provided by the Owner. Describe the type of foundation proposed, estimated depth of bearing, allowable bearing values, compaction requirements, and any other measures mentioned in the geotechnical report or recommended by the designer.

1.5.1.2 Describe the lateral force resisting system by defining the location and number of shear walls, materials to be used for a diaphragm, seismic joint locations, foundation ties, and any other components of the lateral force resisting system.

1.5.1.3 List all design live loads identifying them with use and area; show wind velocity and load; ground and roof snow load; and state the seismic zone, K, C, I, K, and S values. Indicate loading combinations for which structure will be designed. List documents used in determining loads with all applicable factors used in determining loads.

1.5.1.4 State the strength (working stresses or yield stresses) for all structural materials on the project.

1.5.1.5 Future Expansion

Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.5.2 Computations

Provide those design calculations required by the economic comparison to size the framing members.

1.5.3 Drawings

1.5.3.1 Foundation and Floor Plan

Show type of foundation proposed, depths of footings, relation of walls and floor slab to foundation system, overall dimensions, column spacing, joint pattern in slab-on-grade, tie beams, grade beams, etc.

1.5.3.2 Floor Framing Plan
Show spacing of framing members, overall depth of floor structure, column spacing, principal dimensions, and shape of the building.

1.5.3.3 Roof Framing Plan
Show locations of framing members, overall shape and dimensions, diaphragm, etc.

1.6 Mechanical Design.

1.6.1 Design Narrative.

1.6.1.1 Provide a statement of indoor and outdoor design temperatures for heating and cooling and proposed "U" factors for walls, ceilings, floors, etc.; personnel load; equipment heat release (if any); outside air or ventilation requirements; and any other special conditions.

1.6.1.2 State type of heating plant and justification for selection, operating pressure and temperature, and approximate capacity. Provide discussion of temperature control system. Indicate type of conducting system, e.g.; forced warm air with direct fired furnace or hot water coil, forced hot water or steam with direct radiation, or single zone variable volume air system with baseboard heating. Type of heat distribution outside of buildings; steam or high temperature hot water and whether above ground or underground. State requirement for outside air and basis for determination of quantity, i.e.; number of air changes per hour, of CFM per person, or other.

1.6.1.3 Fuel. State type, source, firm, or interruptible gas and metering arrangements. Indicate type of standby fuel for interruptible gas. Designs must meet Environmental Protection Agency emission standards or local emission standards when standards are enforced by local air pollution control agency, whichever is more stringent. when No. 5 fuel oil, No. 6 fuel oil, or coal is burned as fuel and when other hazardous emissions are produced.

1.6.1.4 Determine plumbing fixtures by listing quantity and type referred to in the Federal Specifications. Indicate male and female building population. Describe domestic water heating and storage equipment including capacity, materials, piping types, and insulation requirements.

1.6.1.5 Fire Protection
Coordinate with the architect to ensure all aspects of the fire protection plan are addressed.

1.6.1.5.1 For sprinkler systems, provide evidence that the system is in compliance with criteria referenced in Criteria Index, Volume 4.

1.6.2 Computations

1.6.2.1 Show plumbing calculations as necessary to determine number of fixtures, cold and hot water capacity requirements, and equipment or capacities of miscellaneous and special systems.

1.6.3 Drawings

1.6.3.1 Prepare a floor plan showing heating, ventilating, and air-conditioning equipment layout; chillers or refrigeration compressors; boilers, pumps, condensers, or cooling towers; air handling units; fans; typical air distribution duct layout (may be single line); hoods; and other items of major equipment required for the facility. Sprinkler system layout shall be
diagrammatic in contract drawings. Specifications shall require shop drawings of the sprinkler system be submitted by the installation contractor before construction.

1.6.3.2 Show plumbing fixture and equipment layout.

1.7 Electrical Design

1.7.1 Design Narrative

1.7.1.1 Provide electrical characteristics (phase, voltage, and number of wires) or circuits. Show characteristics of any subsequent transformation on the load side of the service entrance and a statement of why specific voltage was selected. State also, alternative systems or equipment considered and reasons a given system was selected.

1.7.1.2 State type of service entrance equipment (circuit breakers and/or fusible switches) and reason for selection.

1.7.1.3 Show an estimate of total connected kilowatt (kW) load and demand factors, diversity, and resulting total demand kW load. Break down the loads to show lighting load, convenience receptacle load, air-conditioning loads, heating loads, pump loads, power roof ventilator loads, power receptacle loads for special equipment, load allocated for spare capacity, and special loads such as air compressors, generators, etc. State the total estimated power factor, the resulting kilovoltampere load, and size of transformers selected. Estimate separately the above for the service entrance transformers and subsequent transformers (such as dry-type transformers within the building).

1.7.1.4 Provide a statement describing the proposed standards of design for voltage drop used regarding service entrance, panel feeders, and branch circuits.

1.7.1.5 Discuss proposed wiring methods to be used indicating type of conductors, insulation, rigid metal conduit, EMT, NMS cable, etc.

1.7.1.6 Provide a brief description of the interior lighting systems indicating types, lighting intensities, and discuss energy conservation measures such 1~8 task lighting and selection of most efficient type of lighting fixtures. Provide a tabulation indicating the following:

- Room name and number.
- Lighting intensity for each room (state design basis such as AEI Design Criteria, IES, Definitive Drawings, etc.).
- Type of fixtures.

1.7.1.7 Provide a brief description of the exterior lighting system for street lighting, security lighting, parking lot lighting, sidewalk lighting, area lighting, etc. Include lighting intensity, types, and discuss energy conservation measures which were examined for selection of exterior lighting fixtures.

1.7.1.8 Provide a description of type of exit and means of egress, emergency lighting fixture systems with intensities, if none, so state. Coordinate with Fire Protection/Life Safety narrative.

1.7.1.9 Describe the features of the fire detection and fire alarm system and means for transmission of signal.

1.7.1.10 Discuss provisions for a telephone system relative to use of existing or new telephone cable. Provide discussion of special control, e.g., generator paralleling, switchgear remote control, telemetering, central supervisory control, etc.
1.7.1.11 Discuss the following: lightning protection, motor control centers, standby electric power, special purpose receptacles and outlets D.C., high frequency or other special systems, intercommunication system, controls for supervisory control systems, static grounding or any other special grounding requirements, specialize electronics equipment installation requirements, etc.

1.7.1.12 Provide a sample of all schedules, tables, calculations, etc., which will be used on the project drawings and in design analysis, i.e.:

1.7.1.12.1 Lighting calculations
1.7.1.12.2 Lighting fixture schedules
1.7.1.12.3 Panel schedules
1.7.1.12.4 Symbol schedule (legend)
1.7.1.12.5 Panel sizing calculations
1.7.1.12.6 Voltage drop calculations
1.7.1.12.7 Outline of final design analysis
1.7.1.12.8 Outline of catalog cuts pertaining to all proposed equipment or systems used in the project
1.7.1.12.9 Lighting fixtures
1.7.1.12.10 Transformer schedule

1.7.2 Computations. Provide calculations to back up sizing of major pieces of electrical equipment. The degree of completion shall be comparable to that of the narrative and drawings.

1.7.3 Drawings

1.7.3.1 Exterior electrical to be shown on utility site plan

1.7.3.1.1 Existing and new electrical lines, both overhead and underground, properly identified.

1.7.3.1.2 Show removals and relocations, if any.

1.7.3.1.3 Indicate electrical characteristics, voltage, phase, conductor size, etc.

1.7.3.1.4 Show new construction and location of transformation.

1.7.3.1.5 Indicate the service to the facility and whether overhead or underground.

1.7.3.2 Interior Electrical

1.7.3.2.1 Floor plans shall show the proposed location of all major items of electrical equipment, including vaults, transformers, equipment rooms, switchgear, motor control centers, distribution panels, telephone terminal cabinets, and power and lighting panelboards. Include space required for maintenance and future expansion.

1.7.3.2.2 Partial Lighting Layouts. Show a partial layout of typical lighting in the building indicating proposed fixtures and spacing. Locate exterior lighting on plans when applicable. Lighting intensities shall be based upon the requirements of I.E.S. Lighting Handbook, and criteria as applicable.
1.7.3.2.3 Single-line diagrams shall be provided for interior distribution systems. Diagrams of high and low voltage interior electrical distribution and communication systems shall show all of the important features such as the following:

1.7.3.2.3.1 Auto transfer switches
1.7.3.2.3.2 Emergency generators
1.7.3.2.3.3 Emergency systems
1.7.3.2.3.4 Major subpanels

1.7.3.2.4 Riser Diagrams. Show the proposed riser diagram. Sizes of all conduits, wires, cables, panels, etc. need not be included if shown elsewhere.

1.8 Corrosion Design

Satisfactory design and construction of CP, protective coatings, and water treatment are functional requirements for virtually all projects. Project design and construction without these items is not acceptable. CP shall be provided on all new facilities and repair or replacement of existing facilities. This includes all buried or submerged ferrous piping (gas/heat distribution/fuel/water), buried tanks, and related facilities regardless of soil resistivity.
EXHIBIT 2
AUTHORIZATION OF CHANGE IN SERVICE

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<th>AGREEMENT/ SERVICES NAME:</th>
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<tr>
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DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:

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CONTRACTOR:

__________________________
Signature

__________________________
Date

Print Full Name / Title (if not in individual capacity)

CITY:

__________________________
Signature

__________________________
Date

Print Name

Title

City Department Use Only Below This Line (PM, etc.).

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EXHIBIT 3
DETAILED FEE SCHEDULE

The following rates apply for the services provided by the Project Management team delivering the project management services outlined in Exhibit 1.

PROJECT MANAGEMENT TEAM

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<tr>
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<th>POSITION TITLE</th>
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<tr>
<td>Terry Page</td>
<td>Project Executive*</td>
<td>$0.00</td>
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<tr>
<td>Chappell Jordan</td>
<td>Lead PM</td>
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<tr>
<td>David Syphard</td>
<td>P3 Expert</td>
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<tr>
<td>Aaron Sarfati</td>
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*Project Executive at no cost to the Project

MANAGERIAL SUPPORT

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<tr>
<td>Kevin Hitchcock</td>
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<td>Paul Davis</td>
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<tr>
<td>Paul Acevedo</td>
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<tr>
<td>Rick Bachmeyer</td>
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<td>Agustin Villafana</td>
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<td>Katrina McDaniel</td>
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<td>Deblina Banerjee</td>
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<tr>
<td>Mike Wilson</td>
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**Quality Oversight at no cost to the Project

TECHNICAL SUPPORT

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<td>Licensed Mech Engineer</td>
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<td>Licensed Civil/Struct Eng</td>
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Rates are escalated 5% at the start of each year.

In the event a person named above is unavailable for the project, Jacobs shall present any proposed replacement to the City of San Marcos for approval. In no case shall the rate for such replacement exceed the rate, escalated as appropriate, of the person being replaced.
The following rates apply for the design services provided by the Jacobs design team, including Design/Build Bridging documents and other architectural and engineering services as may be described in Exhibit 1.

**DESIGN TEAM**

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<td>$75.00</td>
</tr>
<tr>
<td>Landscape, Sr</td>
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</tr>
<tr>
<td>Manager of Projects</td>
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<tr>
<td>Structural, Sr</td>
<td>$200.00</td>
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</table>

Rates are escalated 5% at the start of each year.
### Staffing Plan Strategy

1. All staff is part time (PT) for the duration shown — unless noted otherwise.
2. All PT staff will be based at a Jacobs office. Itinerant space will be provided at the City offices, as needed.
3. Percentages in column 15 in the rates bar note to each position.

#### Pay Personnel

### Key Personnel

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Position</th>
<th>Billing Rate/Hour</th>
<th>Salary Increase ea. FY</th>
<th>Hours</th>
<th>Base Salary (Hourly)</th>
<th>Base Salary (Annual) PT</th>
<th>Projected Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terry Page</td>
<td>Project Executive</td>
<td>1.00 1.00 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10</td>
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<td>0.50 1.00 0.50 0.20 0.20 0.20 0.20 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10 0.10</td>
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<td>P3 Expert</td>
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<td>$53,925</td>
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<td>Project Controls</td>
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### LEADERSHIP

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<th>Base Salary (Annual) PT</th>
<th>Projected Cost $</th>
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</thead>
<tbody>
<tr>
<td>Kevin Hitchcock</td>
<td>Project Manager</td>
<td>0.50 0.50 0.50 0.50 0.50 0.50 0.50 0.50</td>
<td>1,560</td>
<td>$236,462</td>
<td>$47,292</td>
<td>$65,483</td>
<td>$130,776</td>
</tr>
<tr>
<td>Paul Davis</td>
<td>Project Manager</td>
<td>0.50 0.50 0.50 0.50 0.50 0.50 0.50 0.50</td>
<td>1,560</td>
<td>$236,462</td>
<td>$47,292</td>
<td>$65,483</td>
<td>$130,776</td>
</tr>
<tr>
<td>Paul Acevedo</td>
<td>Field Observer</td>
<td>0.25 0.25 0.25 0.25 0.25 0.25 0.25 0.25</td>
<td>680</td>
<td>$59,882</td>
<td>$11,976</td>
<td>$17,962</td>
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<td>Rick Bachmeyer</td>
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### MANAGERIAL SUPPORT

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<th>Position</th>
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<th>Salary Increase ea. FY</th>
<th>Hours</th>
<th>Base Salary (Hourly)</th>
<th>Base Salary (Annual) PT</th>
<th>Projected Cost $</th>
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</thead>
<tbody>
<tr>
<td>Licensed Architect</td>
<td>ARCH - Review</td>
<td>0.20 0.20 0.20</td>
<td>96</td>
<td>$13,420</td>
<td>$2,684</td>
<td>$3,350</td>
<td>$6,700</td>
</tr>
<tr>
<td>Licensed Mech Engineer</td>
<td>MECH - Review</td>
<td>0.20 0.20 0.20</td>
<td>96</td>
<td>$13,420</td>
<td>$2,684</td>
<td>$3,350</td>
<td>$6,700</td>
</tr>
<tr>
<td>Licensed Elect. Engineer</td>
<td>ELECT - Review</td>
<td>0.20 0.20 0.20</td>
<td>96</td>
<td>$13,420</td>
<td>$2,684</td>
<td>$3,350</td>
<td>$6,700</td>
</tr>
<tr>
<td>Licensed Civil/Struct Eng</td>
<td>CIVIL/STRUCTURE - Review</td>
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### TECHNICAL SUPPORT

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<tbody>
<tr>
<td>Fire Training Facility</td>
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<td>$70,000</td>
<td>$70,000</td>
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<td>$30,000</td>
<td>$30,000</td>
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### Total Project Labor

- **2.84%**: $332,579

### Subtotal

- **$840,114**

### Miscellaneous

- **$36,130**

### Contingency

- **$40,005**

### Total Costs

- **$1,215,114**

### Total Fee

- **$26,380,089**
### PACKAGE 2 - INNOVATION
#### Feasibility & Options Phase

#### YEAR 1

<table>
<thead>
<tr>
<th>Position</th>
<th>Key Personnel</th>
<th>Base Salary (Annual) FY 1</th>
<th>Base Salary (Hourly) FY 1</th>
<th>Fee Basis FY 1</th>
<th>Multiplier</th>
<th>Position Duration</th>
<th>Salary Increase ea. FY</th>
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<tr>
<td>LEADERSHIP</td>
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<tr>
<td>Project Executive</td>
<td>Terry Page</td>
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<td>$62.50</td>
<td>137.50</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Project Manager</td>
<td>Paul Davis</td>
<td>$137,248</td>
<td>$65.98</td>
<td>145.17</td>
<td></td>
<td></td>
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<td>$37.14</td>
<td>81.71</td>
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<tr>
<td>Scheduler</td>
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<tr>
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</table>

**Total Project Labor >>**

**Expenses >>** $250

**Contingency >>** $5,124

**TOTAL**

**$97,475**

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### PACKAGE 2 - INNOVATION
#### Conceptual Design Phase

#### YEAR 1

<table>
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<th>Position</th>
<th>Key Personnel</th>
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<th>Base Salary (Hourly) FY 1</th>
<th>Fee Basis FY 1</th>
<th>Multiplier</th>
<th>Position Duration</th>
<th>Salary Increase ea. FY</th>
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</thead>
<tbody>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Executive</td>
<td>Terry Page</td>
<td>$130,000</td>
<td>$62.50</td>
<td>137.50</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Project Manager</td>
<td>Paul Davis</td>
<td>$137,248</td>
<td>$65.98</td>
<td>145.17</td>
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<td></td>
<td>$0</td>
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<tr>
<td>Field Observer</td>
<td>Paul Acevedo</td>
<td>$77,249</td>
<td>$37.14</td>
<td>81.71</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Scheduler</td>
<td>Agustin Villafana</td>
<td>$108,903</td>
<td>$52.36</td>
<td>115.19</td>
<td></td>
<td></td>
<td>$0</td>
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<tr>
<td>Safety</td>
<td>Katrina McDaniel</td>
<td>$114,292</td>
<td>$54.95</td>
<td>120.89</td>
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**Total Project Labor >>**

**Expenses >>** $250

**Contingency >>** $13,781

**TOTAL**

**$107,599**

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<table>
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<th>Position</th>
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<th>Hours</th>
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<th>Base Salary (Annual)</th>
<th>Base Salary (Monthly)</th>
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<tr>
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<td>158,194</td>
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<td>37,14</td>
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<tr>
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<td>52,36</td>
<td>$11,845</td>
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<td>0.3%</td>
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<tr>
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<td>$13,860</td>
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<td>0.4%</td>
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<tr>
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<td>$130,000</td>
<td>62,50</td>
<td>$13,860</td>
<td>$1,155</td>
<td>0.4%</td>
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<tr>
<td>Licensed Civil/Struct Eng</td>
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<td>$130,000</td>
<td>62,50</td>
<td>$13,860</td>
<td>$1,155</td>
<td>0.4%</td>
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</table>

**Total Project Labor =>** $9,016,876

**Expenses =>** $20,000

**Contingency =>** $64,529

**TOTAL Fee =>** $1,355,100
## Assumptions

1. All staff is part-time (PT) for the duration shown unless noted otherwise.
2. All PT staff will be based at a Jacobs office. Itinerant space will be provided at the City offices, as needed.
3. Position duration is shown in the color bars next to each position.

### Key Personnel

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary Base</th>
<th>Billing Rate/Hour</th>
<th>Hours</th>
<th>Project Fee</th>
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<tr>
<td><strong>Terry Page</strong></td>
<td>$108,164</td>
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<td><strong>Paul Davis</strong></td>
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<td>$2,674</td>
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<td>137.50</td>
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<td><strong>Licensed Civil/Struct Eng</strong></td>
<td>$130,000</td>
<td>$62.50</td>
<td>137.50</td>
<td>$2,674</td>
</tr>
</tbody>
</table>

### Expenses

- **Total Project Labor**: $187,958
- **Contingency**: $7,193
- **Total**: $195,151

### Contingency Statement

- *Project Executive at no cost to the Project* $229,162
- *Man Labor at no cost to the Project* $17,294

### Total Project Labor

- **Salary**: $7,500
- **Total**: $172,313
### CITY OF SAN MARCOS

#### 2017 BOND PROGRAM

---

### PUBLIC LIBRARY POLICE DEPARTMENT BUILDING 
- **Package:** Refer to Staffing Plan 1
- **Project Budget:** $26,300,000
- **NTE Fee:** $840,000
- **Fee % of Project Budget:** 3.194%

### CITY HALL
- **Public Services/Maintenance Facility**
  - **Package:** Refer to Staffing Plan 2
  - **Phase 1 (50% of total fee):** $54,000
  - **Phase 2 (48% of fee based on schedule):** $139,000
  - **Phase 3 (48% of fee based on schedule):** $650,000
- **Project Budget:** $4,300,000
- **NTE Fee:** $187,000
- **Fee % of Project Budget:** 4.349%

### PRICING STRATEGY

#### Pricing by Individual Package

<table>
<thead>
<tr>
<th>Project</th>
<th>Package</th>
<th>Project Budget</th>
<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Library</td>
<td>PACKAGE 1</td>
<td>$26,300,000</td>
<td>$840,000</td>
<td>3.194%</td>
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<tr>
<td>Fire Station 2</td>
<td>PACKAGE 2</td>
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<td>$70,000</td>
<td>3.500%</td>
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<td>Based on 3.5% Fee</td>
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<td>Public Library - D/B Bridging Docs</td>
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<td>Public Services/Maintenance Facility</td>
<td>PACKAGE 2A</td>
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<td>City Hall</td>
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<td>PACKAGE 3</td>
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#### Pricing entire 2017 Program

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<th>Project Budget</th>
<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
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<tr>
<td>TOTAL PACKAGE 2A</td>
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<td>TOTAL PACKAGE 2</td>
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<td>TOTAL ADD. ALTERNATE PACKAGE 2B</td>
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<td>TOTALS</td>
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### FEE PROPOSAL

**ATTACHMENT C**

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# Expenses Estimate

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<th>Description</th>
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<th>Provided by Client</th>
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<td><strong>COMPUTERS, NETWORK, SOFTWARE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>mos</td>
<td>0 mos Connectivity; minimum T1.</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>0</td>
<td>ea</td>
<td>No need for Standard Field Automation/Computer Estimate - Exhibit E-1&quot;, since the computers are already in place. No cost for replacement of equipment has been added.</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>1</td>
<td>ea</td>
<td>Office set up</td>
<td>$20,000</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>OFFICE PRODUCTIVITY</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>1</td>
<td>ea</td>
<td>1 DLP/LCD Projector and Case</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>1</td>
<td>ea</td>
<td>1 Smart White Board and Stand</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>0</td>
<td>as needed</td>
<td>Reproduction</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>0</td>
<td>mos</td>
<td>Postage &amp; Courier</td>
<td>$1,000</td>
<td>$1,000</td>
<td>xx</td>
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<tr>
<td>0</td>
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<td>High Capacity Fax, 250 sheet paper capacity; 50 page auto document feeder</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
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<td>USB flash drive - 5 GB</td>
<td>$0</td>
<td>$0</td>
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<td></td>
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<td><strong>MISCELLANEOUS</strong></td>
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<td>1</td>
<td>ea</td>
<td>PT Staff Travel to San Marcos</td>
<td>$47,450</td>
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<td>mos</td>
<td>Miscellaneous Expenses</td>
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<td>Sprint Start - Provided at no cost</td>
<td>$0</td>
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<td>0</td>
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<td>Office Supplies</td>
<td>$0</td>
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<td>0</td>
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<td>Parking for staff and visitors, including ADA compliant space(s)</td>
<td>$0</td>
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<tr>
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<td>Background screening/badging (all staff: renewable every year)</td>
<td>$2,000</td>
<td>$2,000</td>
<td>xx</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>OFFICE</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>CIP office</td>
<td>CIP Office</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>1</td>
<td>mos</td>
<td>Office (non-systems) Furniture</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
</tr>
<tr>
<td>1</td>
<td>mos</td>
<td>Office Lease 3,000 SF (includes all utilities, janitorial and parking)</td>
<td>$0</td>
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<td>Conference Room/ Facility (or access to), with seating for 12</td>
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<td>Plan Tables &amp; flat plan racks for blueprints (10 linear feet)</td>
<td>$0</td>
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<tr>
<td></td>
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<td><strong>TELEPHONE</strong></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>Per Jacobs policy, cell phones and cell phone service are included in salaries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>mos</td>
<td>Telephone Service</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
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<td></td>
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<td><strong>PHOTOGRAPHY</strong></td>
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<td></td>
</tr>
<tr>
<td>0</td>
<td>mos</td>
<td>Digital Camera w/ Case</td>
<td>$200</td>
<td>$200</td>
<td>xx</td>
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<tr>
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<td>ea</td>
<td>Digital Camera Memory</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
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<tr>
<td>0</td>
<td>ea</td>
<td>Digital Camera SLR w/ case</td>
<td>$0</td>
<td>$0</td>
<td>xx</td>
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**TOTAL PM PROVIDED:** $73,630
### Project Schedule

#### Exhibit 4

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>PACKAGE</th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 6</th>
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<tr>
<td></td>
<td></td>
<td>2017</td>
<td>2018</td>
<td>2019</td>
<td>2020</td>
<td>2021</td>
<td>2022</td>
</tr>
<tr>
<td>NTP - Program Start-Up &amp; End</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Library</td>
<td>PACKAGE 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Department Building</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Station 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Training Facility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Services/Maintenance Facility</td>
<td>PACKAGE 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Hall</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Station 6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

#### Legend

- **Design Phase**
- **Procurement Phase**
- **Construction Phase**
- **Close-out Phase**

#### 2017 Bond Program

- **Program Start**
- **Program End**

#### Timeline

- **2017-2022**

---

**CITY OF SAN MARCOS**

**6/12/2018**

**2017 BOND PROGRAM**

---

**JACOBS**
<table>
<thead>
<tr>
<th>PROPONENT NAME</th>
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<tbody>
<tr>
<td>Project Control of Texas, Inc.</td>
</tr>
<tr>
<td>Austin, Texas</td>
</tr>
<tr>
<td>Broaddus &amp; Associates</td>
</tr>
<tr>
<td>Austin, Texas</td>
</tr>
<tr>
<td>AG</td>
</tr>
<tr>
<td>San Antonio, Texas</td>
</tr>
<tr>
<td>ECM International, Inc.</td>
</tr>
<tr>
<td>San Marcos, Texas</td>
</tr>
<tr>
<td>Jacobs Project Management Co.</td>
</tr>
<tr>
<td>San Antonio, Texas</td>
</tr>
<tr>
<td>Owners Building Resource, LLC</td>
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<tr>
<td>Bremond, Texas</td>
</tr>
<tr>
<td>Sunland Group, Inc.</td>
</tr>
<tr>
<td>Austin, Texas</td>
</tr>
<tr>
<td>Vanir Construction Management, Inc.</td>
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<td>Austin, Texas</td>
</tr>
<tr>
<td>CasaBella Architects</td>
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<td>Austin, Texas</td>
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WITNESSED BY: [Signatures]
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<tr>
<th>PROJECT</th>
<th>PACKAGE</th>
<th>Project Budget</th>
<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
<th>Project Budget</th>
<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Library</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Department Building</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Station 2</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Training Facility</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
<td></td>
<td></td>
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<tr>
<td>Public Library - D/B Bridging Docs</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Services/Maintenance Facility</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
<td>3.194%</td>
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<tr>
<td>City Hall</td>
<td>PACKAGE 2A</td>
<td>Phase 1 (50% of total fee)</td>
<td>$54,000</td>
<td>$54,000</td>
<td>Phase 2 (48% of fee based on schedule)</td>
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<td>$139,000</td>
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<tr>
<td>TOTAL PACKAGE 2A</td>
<td>$855,000</td>
<td>$855,000</td>
<td>3.650%</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Fire Station 6</td>
<td>PACKAGE 3</td>
<td>Refer to Staffing Plan 3</td>
<td>$4,300,000</td>
<td>$187,000</td>
<td>4.349%</td>
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<tr>
<td>TOTALS</td>
<td>$78,600,000</td>
<td>$3,154,000</td>
<td>4.013%</td>
<td>$78,600,000</td>
<td>$3,085,000.00</td>
<td>3.925%</td>
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Contract Negotiations / Fee Proposal
for City of San Marcos 2017 Bond Program

RFQ #218-279
Project Management Services for
City of San Marcos Facilities

June 12, 2018
June 12, 2018

Ms. Veronica Bradshaw
Purchasing Specialist Senior
Office of the Purchasing Manager
Municipal Building, 1st Floor
630 East Hopkins Street
San Marcos, TX 78666

Re: Negotiations for Program Management Services for City of San Marcos Facilities -RFQ #218-279

Dear Ms. Bradshaw,

Per your request, we are pleased to submit our fee proposal, which is consistent with RFQ #218-279 and the Agreement Between the City of San Marcos and Professional Firm modified per the revisions included in our proposal and attached herein (Refer to Attachment A – Proposed revisions to Agreement).

Scope of Services (Refer to Exhibit 1 – Scope of Services and Deliverables)

As defined in Exhibit 1, our scope of services will apply to the proposed projects in RFQ #218-279 as described below. To facilitate the negotiations and provide the utmost flexibility to the City, we have grouped the projects in three packages:

**PACKAGE 1 - IMMEDIATE**

- **Public Library** - $14.5M; Design – 8 months, Construction – 12 to 15 months - Remodel of the existing 27,000 square feet existing Library located at 625 East Hopkins Street, San Marcos Texas; and New construction of a proposed 29,000 square feet expansion of the existing library located at 625 East Hopkins Street, San Marcos, Texas
- **Police Department Building** - $5.5M; Design – 6 to 8 months, Construction – 9 months – Renovation of the existing 44,000 SF building and addition of approximately 8,600 square feet to the Police Department located at 2300 IH 35 South, San Marcos, Texas
- **Fire Station 2** - $4.3M; 11,000SF, Timeline in 2019. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located within the La Cima Subdivision which is currently under construction west of IH35
- **Fire Training Facility** - $2M; Timeline 2018-2019. Master planning of 16 acres at airport property for future fire training facility and fire station. Design and construction of fire training facility.

**PACKAGE 2 - INNOVATION**

- **Public Services/Community Services Maintenance Facility** - Timeline: Design starting in late 2018, Construction starting in 2019 - This new facility with approximately 85,000 square feet of office and warehouse space along with other outdoor storage
operations will be located on 18.5 acres off Clovis R. Barker Road. Public Private Partnership or other innovative delivery methods will be explored to finance this facility.

- **City Hall** – Timeline: Design starting in 2019, Construction starting in 2021 – This new facility will house General Fund municipal operations in the approximate square footage of 75,000 to 85,000 square feet and be located at 630 East Hopkins Street. Public Private Partnership or other innovative delivery methods will be explored to finance this facility. As an option the possibility of redevelopment of the current City Hall Municipal Complex will be considered.

**PACKAGE 3 – MID-TERM**

- **Fire Station 6** - $4.3M, 11,000 SF, Timeline in 2023. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located in the Trace Subdivision located east of IH35.

**Schedule** *(Refer to Exhibit 4 – Project Schedule)*

The program schedule is a vital component of our fee quotation, with a 66-month duration, start date of June 19, 2018 and a completion date of December 30, 2023 *(Program completion)*. The project schedule/phasing shown in Exhibit 4 is consistent with RFQ #218-279 and allows us to accomplish the tasks/deliverables included in the scope of services with the proposed staffing. The proposed packages may be subject to adjustment by mutual agreement.

**Staffing** *(Refer to Attachment B – Staffing Plans 1, 2 and 3)*

Our services will be provided by part time staff as follows:

- Leadership staff consisting of a Project Executive, provided at no cost to the City. Lead Project Manager, Controls Manager and P3 Subject Matter Expert.
- Technical support staff consisting of professional plan/design reviewers. A quality manager, provided at no cost to the City.
- Managerial support personnel consisting of assistant PMs/field observers, cost estimator, scheduler, and safety oversight.
- Architectural and Engineering design team members to deliver bridging documents in support of design-build projects.

This proposal assumes that our PT staff when performing duties on-site will be co-located at the City offices. The City shall provide them with the necessary office space, access to conference rooms including projectors and screens, office furniture, office equipment and supplies, parking spaces, photocopiers and reproduction of documents, and communication equipment, as required to perform their duties.
Compensation (Refer to Attachment C – Fee Proposal and Attachment D – Reimbursable Expenses)

Basic services compensation for all packages outlined in this proposal will be provided on the basis of a Not-to-Exceed fee of two million seven hundred eighty thousand dollars ($2,780,000), which is based on the 66-month schedule, with a Date Certain of December 30, 2023 for the entire 2017 bond. This fee amount has been determined based on the level of complexity, effort, tasks and staffing required by the scope of services and the project schedule, and corresponds to 3.537% of the construction value of the entire assignment ($78,600,000).

- Customary expenses for the basic services as outlined in Attachment C total $73,630. These reimbursable expenses have been included in the NTE fee.

Bridging Documents compensation for the Public Library project in support of a design-build delivery method on the basis of a Not-to-Exceed fee of three hundred five thousand dollars ($305,000). This figure includes $3,300 for custom expenses.

Total Not-to-Exceed Fee is three million eighty five thousand dollars ($3,085,000) for the basic PM services and the Bridging Documents combined scopes of work.

As an option, you may contract for individual packages as follows:

**PACKAGE 1 – IMMEDIATE**

Basic services compensation for package 1 will be provided on the basis of a Not-to-Exceed fee of Eight hundred forty thousand dollars ($910,000), which is based on a 27-month schedule, starting upon receipt of NTP and with a Date Certain of September 30, 2020. This fee amount has been determined based on the level of complexity, effort, tasks and staffing required by the scope of services and the project schedules and corresponds to approximately 3.5% of the construction value of package 1 assignment ($26,300,000).

- Customary expenses for the basic services as outlined in Attachment C total $36,130. These reimbursable expenses have been included in the NTE fee.

Bridging Documents compensation for the Public Library project in support of a design-build delivery method on the basis of a Not-to-Exceed fee of three hundred five thousand dollars ($305,000). This figure includes $3,300 for custom expenses.

Total Package 1 Not-To-Exceed Fee is one million two hundred fifteen thousand ($1,215,000) for the basic PM services and the Bridging Documents combined scopes of work.

**PACKAGE 2 - INNOVATION**

Basic services compensation for package 2 is offered in three sequential phase.

1. Phase 1 will evaluate alternative financing options for the development of the Public Services facility and City Hall. Phase 1 is offered on the basis of a Not-to-Exceed fee of one hundred and eight thousand dollars ($108,000). This is based on an
2. Phase 2 will build upon the decisions in Phase 1 to develop conceptual, high-level plans for what the development of the Public Services facility and City Hall complex may look like, in order to support the subsequent implementation phase. Phase 2 is offered on the basis of a Not-to-Exceed fee of two hundred and eighty nine thousand dollars ($289,000). This is based on an approximate 4-month schedule, starting October 17, 2018 and with a Date Certain of January 31, 2019.

3. Phase 3 offers our traditional Project Management services to manage the development and implementation of the Public Services facility and City Hall complex, based upon the decisions made in the previous phases. Phase 3 is offered on the basis of a Not-to-Exceed fee of one million three hundred fifty five thousand dollars ($1,355,000) and assumes activities will coincide with the Package 1 projects as detailed in the Exhibit 4 - Project Schedule. This is based on an approximate 4-month schedule, starting February 1, 2019 and with a Date Certain of October 30, 2022.

The total Package 2 will be provided on the basis of a Not-to-Exceed fee of One million seven hundred fifty-two thousand dollars ($1,752,000), which is based on a 51-month schedule, starting on August 1, 2018 and with a Date Certain of October 30, 2022. This fee amount has been determined based on the level of complexity, effort, tasks and staffing required by the scope of services and the project schedule, and corresponds to 3.65% of the construction value of package 2 assignment ($48,000,000).

- Customary expenses for the basic services as outlined in Attachment C total $30,000. These reimbursable expenses have been included in the NTE fee.

**PACKAGE 3 – MID-TERM**

Basic services compensation for package 3 will be provided on the basis of a Not-to-Exceed fee of One hundred eighty-seven thousand dollars ($187,000), which is based on a 17 month schedule, starting on August 1, 2022 and with a Date Certain of December 30, 2023. This fee amount has been determined based on the level of complexity, effort, tasks and staffing required by the scope of services and the project schedule, and corresponds to 4.35% of the construction value of package 3 assignment ($4,300,000).

- Customary expenses for the basic services as outlined in Attachment C total $7,500. These reimbursable expenses have been included in the NTE fee.
**Payment** *(Refer to Exhibit 3 Detailed Fee Schedule – Hourly Rates)*

We will submit invoices on a monthly basis for fees due us for our services performed under the agreement. When delays occur beyond our control, payment will cover costs for committed staffing. In this instance, the City and Jacobs will have the ability to negotiate staff reduction, as needed, in order to keep overall NTE fees.

**Commencement of Work**

Work will commence upon execution of the agreement and/or issuance of Notice-to-Proceed, whichever occurs first.

The proposed fee, staffing, and schedule are based on our general understanding of the services required for the project. Should the scope of work, staffing, or schedule change, we will provide additional services as agreed to in writing by both parties.

We look forward to working with you and City of San Marcos staff, and to delivering together high performance city facilities. Should you have any questions regarding this proposal or the services, please feel free to contact me or Terry Page, our Program Executive.

Sincerely,

Jacobs Project Management Co

Kristabel Lopez, AIA  
Principal  
Kristabel.lopez@jacobs.com

Terry Page  
Project Executive  
Terry.page@jacobs.com

cc. Jim McLean
City of San Marcos Agreement and Standard Terms and Conditions

We have reviewed the Terms and Conditions, Form of Agreement and other information contained in this RFQ. Per the RFQ, any exceptions taken are indicated below for your consideration:

**AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND PROFESSIONAL SERVICES FIRM**

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

**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 generally accepted 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'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, and such re-performance of services shall be the extent of Professional Firm's obligations with respect to any deficient services.

**Article 3. The Owner's Responsibilities**

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. Professional Firm shall be entitled to reasonably rely on such information.

**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 related to personal injury or property damages arising to the extent caused by the negligent or intentionally wrongful acts or omission of Professional Firm, its employees, agents and/or assigns.

**CITY OF SAN MARCOS - STANDARD TERMS AND CONDITIONS**

17. Limitations. See Agreement Article 7.


28. Terms and Conditions Controlling. In the event there is conflict between the Agreement and these Terms and Conditions, the Agreement will control.
### Assumptions
1. All staff is part time (PT) for the duration shown unless noted otherwise.
2. All PT staff will be based at a Jacobs office. Itinerant space will be provided at the City offices, as needed.
3. Position duration is shown in the color bars next to each position.

#### Multiplier

<table>
<thead>
<tr>
<th>Multiplier</th>
<th>Hours per month</th>
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<tr>
<td>2.20</td>
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### Key Personnel

#### Project Executive
- **Terry Page**
  - Project Executive - $0
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $364,429

#### Project Manager
- **Chappell Jordan**
  - Project Manager - $195,258
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $109,791

#### P3 Expert
- **David Syphard**
  - P3 Expert - $269,625
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $129,630

#### Project Controls
- **Aaron Sarfati**
  - Project Controls - $169,171
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $76,052

#### Field Observer
- **Paul Acevedo**
  - Field Observer - $59,882
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $37,132

#### Cost Estimator
- **Rick Bachmeyer**
  - Cost Estimator - $20,874
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $72,951

#### Scheduler
- **Agustin Villafana**
  - Scheduler - $14,890
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $37,132

#### Project Controls
- **Katrina McDaniel**
  - Project Controls - $20,471
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $54,950

#### Project Controls
- **Mike Wilson**
  - Project Controls - $0
  - Years: 2019-2023
  - Hours: 1.00
  - Salary: $0

### Total Project Labor
- **$763,979**

### Expenses
- **$36,130**

### Contingency
- **$40,005**

### Total NTE Fee
- **$840,114**

### NTE Fee Breakdown

| Fire Training Facility | $17,600 |
| Design/Build Bridging Documents - Public Library | $30,310 |
| **Total NTE Fee** | **$36,380,081** |
### PACKAGE 2 - INNOVATION
Feasibility & Options Phase

#### STAFFING PLAN 2

**Assumptions**

- All staff is part time (PT) for the duration shown, unless noted otherwise.
- All PT staff will be based at a Jacobs office. Itinerant space will be provided at the City offices, as needed.
- Position duration is shown in the color bars next to each position.

#### CITY OF SAN MARCOS
6/12/2018

<table>
<thead>
<tr>
<th>Position</th>
<th>Key Personnel</th>
<th>Base Salary (Annual)</th>
<th>Base Salary (Hourly)</th>
<th>Projected Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YEAR 1</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>YEAR 2</strong></td>
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<td><strong>YEAR 3</strong></td>
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<tr>
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<tr>
<td><strong>YEAR 5</strong></td>
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<tr>
<td><strong>YEAR 6</strong></td>
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</table>

### PACKAGE 2 - INNOVATION
Conceptual Design Phase

#### STAFFING PLAN 2

**Assumptions**

- All staff is part time (PT) for the duration shown, unless noted otherwise.
- All PT staff will be based at a Jacobs office. Itinerant space will be provided at the City offices, as needed.
- Position duration is shown in the color bars next to each position.

#### CITY OF SAN MARCOS
6/12/2018

<table>
<thead>
<tr>
<th>Position</th>
<th>Key Personnel</th>
<th>Base Salary (Annual)</th>
<th>Base Salary (Hourly)</th>
<th>Projected Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YEAR 1</strong></td>
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<tr>
<td><strong>YEAR 2</strong></td>
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<tr>
<td><strong>YEAR 3</strong></td>
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<td><strong>YEAR 5</strong></td>
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<tr>
<td><strong>YEAR 6</strong></td>
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## Key Personnel

<table>
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<tr>
<th>Position</th>
<th>Billing Rate/Hour</th>
<th>Hours</th>
<th>Projected Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terry Page, Project Executive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chappell Jordan, Lead PM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aaron Sarfati, Project Controls</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paul Davis, Project Manager</td>
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<td></td>
<td></td>
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<tr>
<td>Paul Acevedo, Field Observer</td>
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<td></td>
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<tr>
<td>Rick Bachmeyer, Cost Estimator</td>
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<tr>
<td>Agustin Villafana, Scheduler</td>
<td></td>
<td></td>
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<tr>
<td>Katrina McDaniel, Safety</td>
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</tr>
<tr>
<td>Mike Wilson, Quality</td>
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<td></td>
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</tr>
<tr>
<td>Licensed Architect [ARCH - Review]</td>
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<tr>
<td>Licensed Mech Engineer [MECH - Review]</td>
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<td>Licensed Elect. Engineer [ELECT - Review]</td>
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<tr>
<td>Licensed Civil/Struct Eng [CIVIL/STRUCTURE - Review]</td>
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</tbody>
</table>

**Base Salary:**
- **Base Salary (Annual):**
  - **FY 1:** 83,660
  - **FY 2:** 86,000
  - **FY 3:** 88,320
  - **FY 4:** 90,640
  - **FY 5:** 92,960
  - **FY 6:** 95,280

- **Base Salary (Hourly):**
  - **FY 1:** 10.46
  - **FY 2:** 10.69
  - **FY 3:** 10.92
  - **FY 4:** 11.15
  - **FY 5:** 11.38
  - **FY 6:** 11.61

**Salary Increase ea. FY (5%):**
- **FY 1:** 5%
- **FY 2:** 5%
- **FY 3:** 5%
- **FY 4:** 5%
- **FY 5:** 5%
- **FY 6:** 5%

**Base Salary (Annual):**
- **FY 1:** 83,660
- **FY 2:** 86,000
- **FY 3:** 88,320
- **FY 4:** 90,640
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- **FY 6:** 11.61

**Salary Increase ea. FY (5%):**
- **FY 1:** 5%
- **FY 2:** 5%
- **FY 3:** 5%
- **FY 4:** 5%
- **FY 5:** 5%
- **FY 6:** 5%

**Total Project Labor >>**
- **Total:** $1,355,100

**Expenses >>**
- **Total:** $20,000

**Contingency >>**
- **Total:** $64,529

**TOTAL NTE Fee >>**
- **Total:** $1,439,629
**Staffing Plan Strategy**

- All staff is part time (PT) for the duration shown, unless noted otherwise.
- 40 hours per week is standard for PT staff, with hours categorized as needed.
- Multiple locations are shown in the color bars to denote required travel.

---

### Key Personnel

<table>
<thead>
<tr>
<th>Position</th>
<th>Base Salary (Annual)</th>
<th>Base Salary (Hourly)</th>
<th>Billing Rate/Hour</th>
<th>Hours</th>
<th>Projected Cost 2017 (PT) ($/Hr)</th>
<th>Salary Increase ea. FY (5%)</th>
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<td>66.05</td>
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<td>$5,180</td>
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<td>$3,915</td>
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<td>67.51</td>
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<td>67.51</td>
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<td>$3,915</td>
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</tbody>
</table>

**Total Project Labor** = $1,488,166

**Expenses** = $7,500

**Contingency** = $7,193

**TOTAL NTE Fees** = $1,492,859

---

### Assumptions

1. All staff is part time (PT) for the duration shown, unless noted otherwise.
2. 40 hours per week is standard for PT staff, with hours categorized as needed.
3. Multiple locations are shown in the color bars to denote required travel.

---

**2017 BOND PROGRAM**

**PACKAGE 3 - MID-TERM**

**Fire Station 6**
# 2017 BOND PROGRAM

## PRICING STRATEGY

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>PACKAGE</th>
<th>Project Budget</th>
<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
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</thead>
<tbody>
<tr>
<td>Public Library</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
</tr>
<tr>
<td>Police Department Building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Station 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Training Facility</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Library - D/B Bridging Docs</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL PACKAGE 1</td>
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<td></td>
<td>$1,215,000</td>
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<tr>
<td>Public Services/Maintenance Facility</td>
<td>PACKAGE 2A</td>
<td>Phase 1 (50% of total fee)</td>
<td>$54,000</td>
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<tr>
<td></td>
<td></td>
<td>Phase 2 (48% of fee based on schedule)</td>
<td>$139,000</td>
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<tr>
<td></td>
<td></td>
<td>Phase 3 (48% of fee based on schedule)</td>
<td>$650,000</td>
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<tr>
<td></td>
<td></td>
<td>Phase 4 (50% of total fee)</td>
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<td>TOTAL PACKAGE 2A</td>
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<td>TOTALS</td>
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### PRICING ENTIRE 2017 PROGRAM

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<th>PROJECT</th>
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<th>NTE Fee</th>
<th>Fee % of Project Budget</th>
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<tbody>
<tr>
<td>Public Library</td>
<td>PACKAGE 1</td>
<td>Refer to Staffing Plan 1</td>
<td>$26,300,000</td>
<td>$640,000</td>
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<tr>
<td>Public Library - D/B Bridging Docs</td>
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<td>Public Services/Maintenance Facility</td>
<td>PACKAGE 2A</td>
<td>Phase 1 (50% of total fee)</td>
<td>$54,000</td>
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<td>Phase 2 (48% of fee based on schedule)</td>
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<td>Phase 4 (50% of total fee)</td>
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<td>PACKAGE 2</td>
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<tr>
<td>Fire Station 6</td>
<td>Package 3</td>
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## Expenses Summary

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<th>Part No./Unit</th>
<th>Description</th>
<th>Unit Cost</th>
<th>Sub Total</th>
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<th>Provided by Client</th>
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<td>$0</td>
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**TOTAL PM PROVIDED:** $73,630
EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES

Project Management Scope of Services

The Project Manager will advise on ways to minimize the tax impact of the bond issuances by working closely with City staff, the City’s financial team, and other applicable parties in packaging projects for issuance to minimize issuance costs and tax implications.

The Project Manager will work with City staff to ensure expedited project delivery options whereby projects can be grouped together to streamline processes, minimize costs and tax impacts, to increase productivity, and to complete projects quickly.

The Project Manager will assist City staff and its financial team in exploring other avenues to offset or possibly limit debt issuances for capital expenditures including:

- Public Private Partnership opportunities
- Leasing or subleasing of property to facilitate revenue opportunities
- Cost Benefit Analysis related to Design, Build, Finance, Maintain, and Operate (DBFOM) Leasing opportunities

The City expects public involvement in the design of the Library. The Project Manager shall work with selected architecture firm(s) to conduct focus groups to assist in the planning and programming. The Project Manager will work with the City to initiate and receive public involvement in the planning and programming of the Library facility.

Other services may include all general leadership and management functions required including, but not limited to: recommendations for project delivery, procurement validating programming results, tracking budgets, providing cash-flow projections to City staff as required, preparing cost estimates and Bond Master Plan and Schedule, validating construction cost/cost of work, monitoring schedules; overseeing quality of all aspects of the project; communication with the project team; coordinating all issues, documentation, minutes, action items, and approvals to move the projects through all the various phases; providing direct interface with end-users and other stakeholders as required; briefing officials, Council/Boards, and more particularly described as follows:

The Project Manager may be required to assist in drafting and/or modifying existing Request for Qualifications/Proposals for design professionals; assist in overseeing the process and assist the City in the selection of the most qualified design professionals; and assist in follow up with and de-brief, if necessary, non-selected firms.

The Project Manager may be required to assist in creating and/or modifying existing standardized professional service and construction contracts for review and final drafting by legal staff; assist in incorporating all necessary insurance levels, bonds, and so forth in the appropriate agreement/contract; and oversee that all submittals are received and approved prior to starting work on these items.

The Project Manager may be required to assist in negotiating terms with consultants, design professionals, contractors, and so forth that are favorable to the City thereby providing not only the best value and meeting the goals of the project but also a fee that is within the project’s budget. If terms are unacceptable to the City, the City will re-bid, renegotiate, or select another firm that will meet the City’s terms. Coordination with the City Attorney will be required for this effort.

The Project Manager shall recommend to staff any forms, procedures, or standards that should be implemented to aid in project delivery. Particular attention should be given to items that expedite project delivery and/or reduce project expenditures.
The Project Manager may be required to conduct site visits and inspections to review work in place and report in a standard format to the City with reference to facilities standards/specifications, schedules, and budgets; monitor construction progress and advise the City of any observations of non-conforming scope or workmanship quality concerns; and administrate construction contract and general conditions and serve as City’s representative.

The City has the option to either perform all or parts of construction inspection services at their discretion with the Project Manager adjusting their resources accordingly. The Project Manager shall not duplicate or waste resources where it is not needed.

Financial transparency related to the performance and execution of our bond election program is a huge priority for the City of San Marcos. The City of San Marcos is interested in contracting with a firm that has significant experience and innovative ideas in this area.

**Design Team Scope of Services**

**Bridging Documents for the Public Library:**

Design services to develop bridging documents (35% Design) for the San Marcos Public Library. The scope includes development of 35% design drawings and an edited table of contents for specifications for all Architectural and Engineering design disciplines required. The final product will provide sufficient information for the City of San Marcos to release a Design Build Request for Proposals to complete the design and build the San Marcos Public Library. See Exhibit 1-A for a sample of the deliverables expected for a 35% design set. It is anticipated that this effort will take approximately 3-4 months to complete.

**Bridging Documents Design Services provided by Design Team:**

- Civil
- Architectural
- Structural
- Mechanical
- Plumbing
- Electrical
- Communications
- Fire Protection
- Landscape
- Interior Design

**Meetings Included by Design Team:**

- Three-day charrette to identify/validate requirements (6 Jacobs Attendees)
- Meeting to review 50% Bridging Documents (3 Jacobs Attendees)
- Meeting to review Final Bridging Documents (3 Jacobs Attendees)
- Two attendees at Pre-Bid meeting for the Design Build project

**Assumptions & Exclusions for Design Team:**

- Design team will answer up to 15 RFIs
- Assume existing utilities are sufficient for expansion
- Design team’s services are complete once Design/Build bids are received; PM team will continue management of this effort
- Assumes one continuous design effort; No design to budget rework due to market conditions
- Surveying and geotechnical are not included
Projects:

**PACKAGE 1 - IMMEDIATE**

- **Public Library** - $14.5M; Design – 8 months, Construction – 12 to 15 months - Remodel of the existing 27,000 square feet existing Library located at 625 East Hopkins Street, San Marcos Texas; and New construction of a proposed 29,000 square feet expansion of the existing library located at 625 East Hopkins Street, San Marcos, Texas

- **Police Department Building** - $5.5M; Design – 6 to 8 months, Construction – 9 months – Renovation of the existing 44,000 SF building and addition of approximately 8,600 square feet to the Police Department located at 2300 IH 35 South, San Marcos, Texas

- **Fire Station 2** - $4.3M; 11,000SF, Timeline in 2019. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located within the La Cima Subdivision which is currently under construction west of IH35

- **Fire Training Facility** - $2M; Timeline 2018-2019. Master planning of 16 acres at airport property for future fire training facility and fire station. Design and construction of fire training facility.

**PACKAGE 2 - INNOVATION**

- **Public Services/Community Services Maintenance Facility**; Timeline: Design starting in late 2018, Construction starting in 2019 - This new facility with approximately 85,000 square feet of office and warehouse space along with other outdoor storage operations will be located on 18.5 acres off Clovis R. Barker Road. Public Private Partnership or other innovative delivery methods will be explored to finance this facility.

- **City Hall** – Timeline: Design starting in 2019, Construction starting in 2021 – This new facility will house General Fund municipal operations in the approximate square footage of 75,000 to 85,000 square feet and be located at 630 East Hopkins Street. Public Private Partnership or other innovative delivery methods will be explored to finance this facility. As an option the possibility of redevelopment of the current City Hall Municipal Complex will be considered.

**PACKAGE 3 – MID-TERM**

- **Fire Station 6** - $4.3M, 11,000 SF, Timeline in 2023. This fire station will be similar to the fire station currently being constructed on Wonder World Drive and will be located in the Trace Subdivision located east of IH35.
1.1 General
The bridging documents design submittal (35 percent) consists of design narratives, drawings, outline specifications, and a cost estimate. This document shall define, by discipline, all the specific requirements of the design narratives and the drawings.

1.2 Objective
The bridging documents design submittals shall be of sufficient detail to show the user how the functional and technical needs will be met, to indicate the designer’s approach to solution of technical aspects to all reviewers, to show compliance to the criteria or justification for noncompliance, and to provide a valid estimate of construction cost. All deviations from applicable criterion such as building code, fire protection, life safety, and OSHA, shall be summarized and enumerated in the design narratives. Identify deviation, citing source and paragraph, what criteria requires and nature of deviation, followed by authority granting waiver and date. If waiver has not been granted, indicate NONE.

1.3 Civil Design.

1.3.1 Design Narrative
Establish basic criteria for each aspect of the overall civil design. Provide justification for the selection of criteria and proposed features over alternate options or possible solutions.

1.3.1.1 Water Distribution
1.3.1.1.1 Develop basic and controlling water demands and show required residual pressures. Include fire, domestic, and industrial average and/or peak demands as applicable. Show adequacy of distribution system to supply controlling demands and include information basic to this determination such as known flow tests and/or computations. State whether additional fire hydrants are needed and indicate the recommended location of each hydrant. If the water requirements for the project are considerable, state whether a determination has been made regarding the capability of the existing system to meet the additional demand or if future analysis is needed.

1.3.1.1.2 For service lines, distribution main extensions, and new distribution systems, state the proposed friction coefficient, approximate controlling elevations, special material requirements, and any special features of the design such as pressure reducing or regulating values. For irrigation systems, indicate types of sprinkler heads, effective coverage, proposed spacing, and sectionalization.

1.3.1.2 Water Supply
Water supply (including sources, treatment, storage, pumping, and supply lines) for new systems or additions.

1.3.1.2.1 Give basic information such as population, capacity factor, per capita allowances, industrial, and irrigation requirements, and fire demands.

1.3.1.2.2 Provide information on type, condition, and adequacy of existing units such as well, pumps, reservoirs, etc., and current water consumption. If these items are already described in detail in an existing report, give summary statement and appropriate reference.
1.3.1.2.3 In describing proposed works, including functional design concepts basic to selection of type of units, materials, economy of operation, controls, etc. Provide statement of tentative sizes or capacities of major components, any critical elevations or dimensions, and essential related items as estimated from preliminary computations.

1.3.1.2.4 Identify the requirement for a new or additional source of water and the use of such water at an early stage. Normally, the District will provide data on additional water supply after the requirements have been identified. Where the scope of work specifically includes the determination of new or additional water supply, the following should be included: For new sources, include data on existing supplies and alternatives for new sources such as wells and surface supplies. Provide data for all proposed water wells and test drilling programs with full explanation of geological and other factors affecting choice of location, type, diameter, depth, and important related characteristics.

1.3.1.3 Water Treatment.

Where water treatment is included in the job, the designer shall provide a copy of the water analysis and describe the elements of the design, including the capacities and number of units, monitoring equipment, and controls. The alternatives that were considered and the reason for selecting the design over the alternatives shall be discussed demonstrating how the design will correct the objectionable characteristics of the water.

1.3.1.4 Sewage

1.3.1.4.1 Sewage Collection. Discuss peak and average flow determinations for building connections, individual sewer lines, and force mains based upon population data, measurements, or computations from the number of fixture units. Indicate controlling elevations and compliance with slope and size criteria. Confirm adequacy of existing sewers to carry additional flow.

1.3.1.4.2 Provide basic information, such as population, capacity factor, per capita flows, quantity, and nature of waste, etc., as applicable and develop required size and capacity for sewage lift stations.

1.3.1.4.3 Sewage Treatment. Where waste treatment is included in the job, explain the degree of treatment required to meet the applicable discharge standards. A complete description of the nature of the waste shall be included. Describe the elements of the design, including the capacities and number of units, monitoring equipment, and controls. The alternatives that were considered and the reason for selecting the design over the alternatives shall be discussed demonstrating how the design will achieve the treatment goals. Pilot plant testing programs which are to be conducted will be described, and in the case of land treatment, a soil testing program will be developed and described.

1.3.1.5 Storm Drainage and Grading

Discuss the proposed drainage design. The discussion shall include the rainfall intensity and return period, concentration times, infiltration rates, the size of the contributing area, method of computation, and the reasons behind the selection of each of the above. Describe the grading plan and the controlling slopes which will be used in the design.

1.3.1.6 Roads. Street. Open Storage Areas. Hardstands. and Walks.

Discuss the geometric features of the paved areas such as widths of traffic lanes, shoulders, parking spaces, and walks. Data relating to the design such as type, volumes and composition
of traffic; vertical and horizontal controls; and the class and category of road or street shall be included. The design section for all exterior pavements will be provided by the District in the geotechnical report. This section will be used in preparation of bidding documents and all other items related to pavements will be developed by the designer using applicable criteria and instructions. This report shall be referenced and a copy appended to the Basis for Design as an appendix.

1.3.1.7 Fencing
Describe the type and height of fences and gates. The description shall include features such as outriggers, barbed wire, or tape and gate controllers.

1.3.1.8 Dust and Erosion Control
Include a statement of the proposed type and method of accomplishing dust and erosion control, reasons for selection, extent of area treated, etc. If no treatment is proposed, justify omission.

1.3.1.9 Railroads
Include the type of service, volume, and traffic; the condition and weight of rails; type and thickness of ballast; ruling grade; type of treatment and size of ties; subgrade compaction requirements; types of track accessories, turnouts, and switches; and the name of the operating agency.

1.3.1.10 National Pollution Discharge Elimination System (NPDES) Permit.
In projects where wastewater is not discharged into an existing collection and disposal system, the NPDES permit will be referenced and appended to the design narrative. Excepted from this requirement are small storm drainage facilities where no separate permit is issued.

1.3.1.11 Environmental Impact
Review the environmental impact analysis (environmental impact assessment or environmental impact statement) to determine whether any design feature changes the conclusions or recommendations of the analysis. Should changes to the analysis be required as a result of the design, a complete description of the required changes shall be included in the Basis for Design. If no changes are required to the analysis, the designer shall indicate this conclusion in the Basis for Design.

1.3.1.12 Landscaping
Include a statement of need and justification for proposed landscaping and description of existing and proposed plantings. State any unusual climatic or soil conditions or other local factors which affect the design or selection of plant species. State that no landscaping is required if this is the case.

1.3.1.13 Corrosion Mitigation. Refer to Paragraph 1.8, Corrosion Design.

1.3.1.14 Future Expansion
Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.3.2 Computations.
Computation appropriate to level of 35 percent design.
1.3.3 Drawings

The site plans shall show existing and proposed features such as buildings, paved areas, utilities with actual or tentative sizes, hydrants, valves, fences, and landscaping. The new facility shall be superimposed on existing topography. Reference the source of the survey data and the location where filed. The drawings shall have sufficient horizontal and vertical control to clearly indicate the proposed siting of the facility in relation to existing features. A small scale location map shall be provided showing the location of the project on the base and the general relation between the new facility and major existing structures and/or streets to facilitate identification of the proposed site.

1.4 Architectural Design.

1.4.1 Design Narrative.

1.4.1.1 State what general type of architectural treatment exists both on the installation and in the immediate vicinity of the subject project. Give a description of particular framing and wall systems selected, others considered, and reasons for selection.

1.4.1.2 Provide a statement as to type of construction per criteria, e.g., fire-resistive, noncombustible, noncombustible protected, etc.

1.4.1.3 Building Wall and Roof Construction. Provide statement of required type of construction based on occupancy, area, and height, i.e., noncombustible, etc., per fire protection analysis.

1.4.1.4 The "U" or overall heat transmission factor as required by AEI.

1.4.1.5 Building Orientation. State how location on the site relative to local climate effects the placement of entries, fenestration, and roof overhangs due to prevailing wind, sun, and noise. Discuss architectural features resulting therefrom and relative costs thereof, i.e., tinted or thermal glass if required as opposed to glass ordinarily used.

1.4.1.6 Provide a tabulation of all equipment in the project to show the following: (If none, so state for each subparagraph below).

1.4.1.6.1 Contractor Furnished-Contractor Installed (CF-CI).

1.4.1.6.2 Owner Furnished-Contractor Installed (OF-CI).

1.4.1.6.3 Owner Furnished-Owner Installed (OF-OI) or not in contract (NIC).

1.4.1.7 Provide a description of materials for all major building components and of all interior and exterior finishes. The description shall include type of exterior wall construction, window types, panel materials, etc.

1.4.1.8 Color Boards. Submit in a standard 8-1/2 inch by 11 inch three-ring binder. Fold outs may be employed to 25-1/2 inch by 33 inch as long as they refold within the standard binder. Provide two color schemes for projects which involve building construction or building modification.

1.4.1.8.1 Actual material samples shall be displayed showing color, texture, pattern, finish, thickness, etc., for all appearance-related items where choice exists. These samples shall be large enough to indicate true patterns. However, care should be taken to present materials in proportion to that which will actually be installed in a given situation. Samples shall be organized by color schemes with a separate sample for each
scheme. The schemes shall be coordinated by room names and numbers shown on the architectural floor plans. Colors shall be labeled with generic color names.

1.4.1.8.2 Project title and base shall occur in the lower right-hand corner of each module.

1.4.1.9 Provide a systematic criteria/code analysis of building construction and fire protection/life safety requirements by citing applicable criteria and paragraph reference indicating what is "required" by the referenced citation and "actual" design condition for the following features. This shall include Fire Protection Life Safety Plan and Narrative. Where there is a conflict among the different codes, the most restrictive shall govern.

1.4.1.9.1 Building construction requirements:

1.4.1.9.1.1 Ground floor area, total area, height, and number of stories.

1.4.1.9.1.2 Occupancy use classification as defined in IBC, for purposes of determining area and occupancy separations.

1.4.1.9.1.3 Building height limit per IBC.

1.4.1.9.1.4 Fire area limit per IBC.

1.4.1.9.1.5 Fire resistive requirements of type of construction required to meet area/height/story limits. List from IBC. Also specific type of construction requirements for military projects under AEI chapter 9.

1.4.1.9.1.6 Mix occupancy/occupancy separation per IBC, and NFPA 101.

1.4.1.9.1.7 Area separation IBC.

1.4.1.9.2 Spacing between structures per IBC.

1.4.1.9.3 Life safety requirements, NFPA 101.

1.4.1.9.3.1 Occupancy load for exiting.

1.4.1.9.3.2 Means of egress requirements for the occupancy-occupant load, capacity of means of egress, exit units, number, arrangement, travel distance, illumination, emergency lighting, exit marking, and panic hardware requirements.

1.4.1.9.4 Additional Fire Protection and Life Safety Requirements.

1.4.1.9.4.1 Protection of vertical openings (IBC and NFPA). The codes are specific in regards to fire rating requirements but the exceptions to the requirements are not specific. The A-E is advised to obtain an acceptable interpretation from authority having jurisdiction before proceeding with design of unprotected floor openings.

1.4.1.9.4.2 Protection from hazards per NFPA 101.

1.4.1.9.4.3 Corridor separation per IBC and NFPA. The A-E shall coordinate with local authority having jurisdiction to applicable criteria.

1.4.1.9.4.4 Smoke barrier if required by occupancy.

1.4.1.9.4.5 Fire rated door.

1.4.1.9.4.6 Fire rated glass.
1.4.1.9.4.7 Fire alarm system.

1.4.1.9.5 Extinguishing and/or fire sprinkler system.

1.4.1.9.5.1 Show extinguisher location.

1.4.1.9.5.2 Fire sprinkler system requirements per NFPA.

1.4.1.9.6 Operation involving use or storage of flammable and explosive liquids, gases, or dusts. (Describe type of electrical equipment, lighting fixtures, ventilation, and other related fire protection features.)

1.4.1.9.7 ADA and TAS requirements.

1.4.1.10 Future Expansion

Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.4.2 Computations. Gross floor area computations

The floor area for each room shall be presented in tabular form in the computations. These areas will not be shown on the drawings. Break down the area into two categories, those calculated on the basis of full area and those calculated on the basis of one-half area, then show the grand total. Also show the programmed area for each room.

1.4.2.1 Calculate full areas (including all openings in floor slabs) measured to the outer surface of the inclosing walls for the following:

1.4.2.1.1 Floors, including basements.

1.4.2.1.2 Mezzanines and balconies.

1.4.2.1.3 Penthouses.

1.4.2.1.4 Enclosed passages and walks.

1.4.2.1.5 Finished usable spaces with sloping ceilings with an average height of 7 feet and minimum of 5 feet at perimeter walls.

1.4.2.1.6 Appended covered shipping and receiving platforms measured from the face of the building wall to edge of the platform.

1.4.2.2 One-half of the actual area of the following shall be calculated:

1.4.2.2.1 Covered open porches.

1.4.2.2.2 Appended, uncovered, shipping and receiving platforms at truck or railroad car floor height, measured from the face of the building wall to the edge of the platform.

1.4.3 Drawings.

1.4.3.1 Floor Plan

Show overall dimensions, functional arrangement, type of occupancy of all areas, major pieces of equipment, and interior/ exterior colors and finishes in tabular form.

1.4.3.2 Elevations
Provide all principal elevations showing any exterior electrical/mechanical equipment affecting the appearance of the structure. Also include story heights, fenestration, control joints, and site adaptation to the finished grades.

1.4.3.3 Building Section

Provide at least one principal section showing floor and roof framing, suspended ceilings, floor to floor heights, concealed or open ducts, relation of fenestration to supporting columns or walls, etc. If necessary to show special features, other primary transverse or longitudinal sections may be shown.

1.4.3.4 Provide exterior wall section for each type of wall system. These wall sections are to be cut from the floor plan not the elevation.

1.5 Structural Design.

1.5.1 Design Narrative.

Outline and define the structural methods and materials of design and construction and enumerate all criteria and assumptions on the following items:

1.5.1.1 Provide a statement referencing the geotechnical report which will be attached as an appendix to the design narrative. The geotechnical report will normally be provided by the Owner. Describe the type of foundation proposed, estimated depth of bearing, allowable bearing values, compaction requirements, and any other measures mentioned in the geotechnical report or recommended by the designer.

1.5.1.2 Describe the lateral force resisting system by defining the location and number of shear walls, materials to be used for a diaphragm, seismic joint locations, foundation ties, and any other components of the lateral force resisting system.

1.5.1.3 List all design live loads identifying them with use and area; show wind velocity and load; ground and roof snow load; and state the seismic zone, K, C, I, K, and S values. Indicate loading combinations for which structure will be designed. List documents used in determining loads with all applicable factors used in determining loads.

1.5.1.4 State the strength (working stresses or yield stresses) for all structural materials on the project.

1.5.1.5 Future Expansion

Where buildings are to be designed for future expansion, discuss provisions to be taken to insure the projected construction will proceed in a trouble free fashion. State that no provisions have been made for future expansion if this is the case.

1.5.2 Computations

Provide those design calculations required by the economic comparison to size the framing members.

1.5.3 Drawings

1.5.3.1 Foundation and Floor Plan

Show type of foundation proposed, depths of footings, relation of walls and floor slab to foundation system, overall dimensions, column spacing, joint pattern in slab-on-grade, tie beams, grade beams, etc.

1.5.3.2 Floor Framing Plan
Show spacing of framing members, overall depth of floor structure, column spacing, principal dimensions, and shape of the building.

### 1.5.3.3 Roof Framing Plan
Show locations of framing members, overall shape and dimensions, diaphragm, etc.

### 1.6 Mechanical Design

#### 1.6.1 Design Narrative

1.6.1.1 Provide a statement of indoor and outdoor design temperatures for heating and cooling and proposed "U" factors for walls, ceilings, floors, etc.; personnel load; equipment heat release (if any); outside air or ventilation requirements; and any other special conditions.

1.6.1.2 State type of heating plant and justification for selection, operating pressure and temperature, and approximate capacity. Provide discussion of temperature control system. Indicate type of conducting system, e.g.; forced warm air with direct fired furnace or hot water coil, forced hot water or steam with direct radiation, or single zone variable volume air system with baseboard heating. Type of heat distribution outside of buildings; steam or high temperature hot water and whether above ground or underground. State requirement for outside air and basis for determination of quantity, i.e.; number of air changes per hour, of CFM per person, or other.

1.6.1.3 Fuel. State type, source, firm, or interruptible gas and metering arrangements. Indicate type of standby fuel for interruptible gas. Designs must meet Environmental Protection Agency emission standards or local emission standards when standards are enforced by local air pollution control agency, whichever is more stringent. when No. 5 fuel oil, No. 6 fuel oil, or coal is burned as fuel and when other hazardous emissions are produced.

1.6.1.4 Determine plumbing fixtures by listing quantity and type referred to in the Federal Specifications. Indicate male and female building population. Describe domestic water heating and storage equipment including capacity, materials, piping types, and insulation requirements.

1.6.1.5 Fire Protection
Coordinate with the architect to ensure all aspects of the fire protection plan are addressed.

1.6.1.5.1 For sprinkler systems, provide evidence that the system is in compliance with criteria referenced in Criteria Index, Volume 4.

#### 1.6.2 Computations

1.6.2.1 Show plumbing calculations as necessary to determine number of fixtures, cold and hot water capacity requirements, and equipment or capacities of miscellaneous and special systems.

#### 1.6.3 Drawings

1.6.3.1 Prepare a floor plan showing heating, ventilating, and air-conditioning equipment layout; chillers or refrigeration compressors; boilers, pumps, condensers, or cooling towers; air handling units; fans; typical air distribution duct layout (may be single line); hoods; and other items of major equipment required for the facility. Sprinkler system layout shall be
diagrammatic in contract drawings. Specifications shall require shop drawings of the sprinkler system be submitted by the installation contractor before construction.

1.6.3.2 Show plumbing fixture and equipment layout.

1.7 Electrical Design

1.7.1 Design Narrative

1.7.1.1 Provide electrical characteristics (phase, voltage, and number of wires) or circuits. Show characteristics of any subsequent transformation on the load side of the service entrance and a statement of why specific voltage was selected. State also, alternative systems or equipment considered and reasons a given system was selected.

1.7.1.2 State type of service entrance equipment (circuit breakers and/or fusible switches) and reason for selection.

1.7.1.3 Show an estimate of total connected kilowatt (kW) load and demand factors, diversity, and resulting total demand kW load. Break down the loads to show lighting load, convenience receptacle load, air-conditioning loads, heating loads, pump loads, power roof ventilator loads, power receptacle loads for special equipment, load allocated for spare capacity, and special loads such as air compressors, generators, etc. State the total estimated power factor, the resulting kilovoltampere load, and size of transformers selected. Estimate separately the above for the service entrance transformers and subsequent transformers (such as dry-type transformers within the building).

1.7.1.4 Provide a statement describing the proposed standards of design for voltage drop used regarding service entrance, panel feeders, and branch circuits.

1.7.1.5 Discuss proposed wiring methods to be used indicating type of conductors, insulation, rigid metal conduit, EMT, NMS cable, etc.

1.7.1.6 Provide a brief description of the interior lighting systems indicating types, lighting intensities, and discuss energy conservation measures such 1~8 task lighting and selection of most efficient type of lighting fixtures. Provide a tabulation indicating the following:

1.7.1.6.1 Room name and number.

1.7.1.6.2 Lighting intensity for each room (state design basis such as AEI Design Criteria, IES, Definitive Drawings, etc.).

1.7.1.6.3 Type of fixtures.

1.7.1.7 Provide a brief description of the exterior lighting system for street lighting, security lighting, parking lot lighting, sidewalk lighting, area lighting, etc. Include lighting intensity, types, and discuss energy conservation measures which were examined for selection of exterior lighting fixtures.

1.7.1.8 Provide a description of type of exit and means of egress, emergency lighting fixture systems with intensities, if none, so state. Coordinate with Fire Protection/Life Safety narrative.

1.7.1.9 Describe the features of the fire detection and fire alarm system and means for transmission of signal.

1.7.1.10 Discuss provisions for a telephone system relative to use of existing or new telephone cable. Provide discussion of special control, e.g., generator paralleling, switchgear remote control, telemetering, central supervisory control, etc.
1.7.1.11 Discuss the following: lightning protection, motor control centers, standby electric power, special purpose receptacles and outlets D.C., high frequency or other special systems, intercommunication system, controls for supervisory control systems, static grounding or any other special grounding requirements, specialize electronics equipment installation requirements, etc.

1.7.1.12 Provide a sample of all schedules, tables, calculations, etc., which will be used on the project drawings and in design analysis, i.e.:

1.7.1.12.1 Lighting calculations
1.7.1.12.2 Lighting fixture schedules
1.7.1.12.3 Panel schedules
1.7.1.12.4 Symbol schedule (legend)
1.7.1.12.5 Panel sizing calculations
1.7.1.12.6 Voltage drop calculations
1.7.1.12.7 Outline of final design analysis
1.7.1.12.8 Outline of catalog cuts pertaining to all proposed equipment or systems used in the project
1.7.1.12.9 Lighting fixtures
1.7.1.12.10 Transformer schedule

1.7.2 Computations. Provide calculations to back up sizing of major pieces of electrical equipment. The degree of completion shall be comparable to that of the narrative and drawings.

1.7.3 Drawings

1.7.3.1 Exterior electrical to be shown on utility site plan

1.7.3.1.1 Existing and new electrical lines, both overhead and underground, properly identified.

1.7.3.1.2 Show removals and relocations, if any.

1.7.3.1.3 Indicate electrical characteristics, voltage, phase, conductor size, etc.

1.7.3.1.4 Show new construction and location of transformation.

1.7.3.1.5 Indicate the service to the facility and whether overhead or underground.

1.7.3.2 Interior Electrical

1.7.3.2.1 Floor plans shall show the proposed location of all major items of electrical equipment, including vaults, transformers, equipment rooms, switchgear, motor control centers, distribution panels, telephone terminal cabinets, and power and lighting panelboards. Include space required for maintenance and future expansion.

1.7.3.2.2 Partial Lighting Layouts. Show a partial layout of typical lighting in the building indicating proposed fixtures and spacing. Locate exterior lighting on plans when applicable. Lighting intensities shall be based upon the requirements of I.E.S. Lighting Handbook, and criteria as applicable.
1.7.3.2.3 Single-line diagrams shall be provided for interior distribution systems. Diagrams of high and low voltage interior electrical distribution and communication systems shall show all of the important features such as the following:

1.7.3.2.3.1 Auto transfer switches
1.7.3.2.3.2 Emergency generators
1.7.3.2.3.3 Emergency systems
1.7.3.2.3.4 Major subpanels

1.7.3.2.4 Riser Diagrams. Show the proposed riser diagram. Sizes of all conduits, wires, cables, panels, etc. need not be included if shown elsewhere.

1.8 Corrosion Design

Satisfactory design and construction of CP, protective coatings, and water treatment are functional requirements for virtually all projects. Project design and construction without these items is not acceptable. CP shall be provided on all new facilities and repair or replacement of existing facilities. This includes all buried or submerged ferrous piping (gas/heat distribution/fuel/water), buried tanks, and related facilities regardless of soil resistivity.
EXHIBIT 2
AUTHORIZATION OF CHANGE IN SERVICE

<table>
<thead>
<tr>
<th>AGREEMENT/ SERVICES NAME:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY REPRESENTATIVE:</td>
<td></td>
</tr>
<tr>
<td>CONTRACTOR:</td>
<td></td>
</tr>
<tr>
<td>CONTRACT EFFECTIVE DATE:</td>
<td></td>
</tr>
<tr>
<td>THIS AUTHORIZATION DATE:</td>
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DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:

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<th>Original Contract Amount:</th>
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<td>This Increase/Decrease in Contract Amount:</td>
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<tr>
<td>Revised Contract Amount:</td>
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CONTRACTOR:

______________________________
Signature

______________________________
Date

Print Full Name / Title (if not in individual capacity)

CITY:

______________________________
Signature

______________________________
Date

Print Name

Title

City Department Use Only Below This Line (PM, etc.).

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EXHIBIT 3

DETAILED FEE SCHEDULE

The following rates apply for the services provided by the Project Management team delivering the project management services outlined in Exhibit 1.

PROJECT MANAGEMENT TEAM

<table>
<thead>
<tr>
<th>PROPOSED STAFF</th>
<th>POSITION TITLE</th>
<th>BILLING RATE/ HOUR</th>
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<tbody>
<tr>
<td><strong>LEADERSHIP</strong></td>
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</tr>
<tr>
<td>Terry Page</td>
<td>Project Executive*</td>
<td>$0.00</td>
</tr>
<tr>
<td>Chappell Jordan</td>
<td>Lead PM</td>
<td>$241.55</td>
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<tr>
<td>David Syphard</td>
<td>P3 Expert</td>
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<tr>
<td>Aaron Sarfati</td>
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<td>$167.32</td>
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<tr>
<td>*Project Executive at no cost to the Project</td>
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<table>
<thead>
<tr>
<th><strong>MANAGERIAL SUPPORT</strong></th>
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<tbody>
<tr>
<td>Kevin Hitchcock</td>
</tr>
<tr>
<td>Paul Davis</td>
</tr>
<tr>
<td>Paul Acevedo</td>
</tr>
<tr>
<td>Rick Bachmeyer</td>
</tr>
<tr>
<td>Agustin Villafana</td>
</tr>
<tr>
<td>Katrina McDaniel</td>
</tr>
<tr>
<td>Deblina Banerjee</td>
</tr>
<tr>
<td>Mike Wilson</td>
</tr>
<tr>
<td>**Quality Oversight at no cost to the Project</td>
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<th><strong>TECHNICAL SUPPORT</strong></th>
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<tbody>
<tr>
<td>Licensed Architect</td>
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<tr>
<td>Licensed Mech Engineer</td>
</tr>
<tr>
<td>Licensed Elect. Engineer</td>
</tr>
<tr>
<td>Licensed Civil/Struct Eng</td>
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</table>

Rates are escalated 5% at the start of each year.

In the event a person named above is unavailable for the project, Jacobs shall present any proposed replacement to the City of San Marcos for approval. In no case shall the rate for such replacement exceed the rate, escalated as appropriate, of the person being replaced.
The following rates apply for the design services provided by the Jacobs design team, including Design/Build Bridging documents and other architectural and engineering services as may be described in Exhibit 1.

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<thead>
<tr>
<th>POSITION TITLE</th>
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<tr>
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Rates are escalated 5% at the start of each year.
## PROJECT SCHEDULE

### EXHIBIT 4

#### JACOBS

**CITY OF SAN MARCOS**  
**2017 BOND PROGRAM**  
6/12/2018

### Legend

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<td>Construction Phase</td>
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<td>Close-out Phase</td>
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### PROJECT SCHEDULE

**EXHIBIT 4**

#### PROJECT SCHEDULE

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<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
<th>YEAR 6</th>
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<tr>
<td>NTP - Program Start-Up &amp; End</td>
<td>PACKAGE 1</td>
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<td>2019</td>
<td>2020</td>
<td>2021</td>
<td>2022</td>
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<td>Fire Training Facility</td>
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<tr>
<td>Public Services/Maintenance Facility</td>
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**2017 BOND PROGRAM**

**Program Start-Up & End**

**Program End**
AGENDA CAPTION:
Consider approval of Resolution 2018-113R, approving a contract between the City and the Texas Department of State Health Services, Vital Statistics Unit, for the provision of on-line vital statistic computer services for the City; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

Meeting date:  June 19, 2018

Department:  City Clerk

Amount & Source of Funding
Funds Required:  $1.83 per record printed
Account Number:  10000000.21010
Funds Available:  N/A
Account Name:  Births-Vitals Stats (State)

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 current Remote Birth Access contract between Department of State Health Services - Vital Statistics Unit and the City of San Marcos expires on August 31, 2018. This contract is for the provision of vital statistic services for a term beginning on September 1, 2018 and ending on August 31, 2023. The total amount of the contract is determined by the number of birth certificates printed.

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.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A CONTRACT BETWEEN THE CITY AND THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, VITAL STATISTICS UNIT, FOR THE PROVISION OF ON-LINE VITAL STATISTICS COMPUTER SERVICES TO THE CITY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City wishes to participate in the on-line vital statistics computer services program offered by the Texas Department of State Health Services, Vital Statistics Unit.

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

PART 1. The attached Contract with the Department of State Health Services, Vital Statistics Unit (Contract No. HHSREV100001023) for the provision of on-line vital statistics computer services is approved.

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

PART 3. This resolution is in full force and effect immediately from and after its adoption.

ADOPTED this the 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Contract Number: HHSREV100001023

DEPARTMENT OF STATE HEALTH SERVICES

Contract number HHSREV100001023 (the “Contract”), is entered into by Department of State Health Services (“DSHS”) Vital Statistics Section and City of San Marcos (“Contractor”). DSHS and Contractor are collectively referred to herein as the “Parties.”

I. **Purpose of the Contract.** DSHS agrees to provide access to the DSHS Vital Event Electronic Registration System for the purpose of issuing individual birth certificates.

II. **Term of the Contract.** This Contract will begin on September 1, 2018 and end on August 31, 2023.

III. **Authority.** The Parties enter into this Contract under the authority of Texas Health and Safety Code Chapter 191 and Texas Government Code Chapter 791.

IV. **Statement of Work.**

   A. DSHS agrees to provide on-line computer services in support of Contractor from 7:00 a.m. to 6:00 p.m. (CST) Monday through Friday, except holidays. In the event of an emergency or computer application error, DSHS may temporarily suspend services without advance notice.

   B. Contractor may search DSHS databases, locate data, and issue Certifications of Birth to authorized individuals requesting such data. The certifications will be in a format formally approved by DSHS. Contractor will take reasonable efforts to ensure use of the DSHS Vital Event Electronic Registration System is not abused by its staff. Abuse of the access to confidential information in the DSHS Vital Event Electronic Registration System may be cause for termination of this Contract in accordance with Section IX.K.

   C. Contractor will acquire the necessary data processing equipment, communications, hardware or software, and purchase “bank note” paper, as specified by DSHS. DSHS will assist in connection of the equipment, furnish software program and provide technical assistance, if necessary.

   D. Contractor will complete the DSHS Vital Event Electronic Registration System registration forms as specified by DSHS. Contractor will remain in compliance with any requirements specified by DSHS for accessing the DSHS Vital Event Electronic Registration System. Contractor will not be required to pay an additional fee pursuant to this Subsection.
E. Contractor acknowledges that records may not be located in the searching process instituted by Contractor, or records which are located may have errors due to:

1. Normal key-entry errors in spellings;
2. Accidental failure on the part of the DSHS to update a file for an amendment or paternity determination; and
3. The event year does not exist on the system.

F. Contractor will notify DSHS in writing, at least monthly of errors or suspected errors that exist on the database information.

G. Contractor is to maintain an inventory control and account for each document produced on "bank note" paper, including voided documents.

H. Contractor will issue Certificates of Birth utilizing remote access to the DSHS system in conformance with Health and Safety Code Chapters 191, 192 and 195, as well as 25 Tex. Admin. Code Chapter 181.

I. The Parties are required to comply with all applicable state and federal laws relating to the privacy and confidentiality of this data and records, which includes Texas Government Code Section 552.115.

J. The Parties will use confidential records and information obtained under this Contract only for purposes as described in this Contract and as otherwise allowed by law.

V. Fees.
Contractor agrees to pay DSHS ONE DOLLAR AND EIGHTY-THREE CENTS ($1.83) for each Certification of Vital Record printed as a result of searches of the database. Contractor agrees to charge the same base search fee for a birth certificate as DSHS. Additional fees may only be charged as authorized by Texas Health and Safety Code Chapter 191 and 25 Tex. Admin. Code Chapter 181.

VI. Billing.
A. DSHS will send an itemized billing to Contractor on a monthly basis for each Certification of Birth printed. This billing will be sent through the U.S. Postal Service to the Contractor at:

   Name: City of San Marcos
   Address: 630 E. Hopkins
            San Marcos, TX 78666

B. Contractor will direct any billing inquiries either by phone to 512-776-7206 or email to ysubusinessservices@dshs.texas.gov.
VII. Payment Method.
A. Contractor will remit payment to DSHS within thirty days after a billing is received by them. Payment by the Contractor will be considered made on the date postmarked.

B. Contractor will send payments to DSHS at:

Texas Department of State Health Services  
Cash Receipts Branch MC 2096  
P.O. Box 149347  
Austin, TX 78714-9347

C. Contractor will make payment to DSHS out of its current revenues.

VIII. Representatives. The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

<table>
<thead>
<tr>
<th>City of San Marcos</th>
<th>DSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Jamie Lee Case</td>
<td>Texas Department of State Health Services</td>
</tr>
<tr>
<td>630 E. Hopkins</td>
<td>Contract Management Section</td>
</tr>
<tr>
<td>San Marcos, TX 78666</td>
<td>Attn: Carolyn DeBoer</td>
</tr>
<tr>
<td>Phone: (512) 393-8089</td>
<td>Mail Code 1990</td>
</tr>
<tr>
<td>Email: <a href="mailto:jcase@sanmarcostx.gov">jcase@sanmarcostx.gov</a></td>
<td>P.O. Box 149347</td>
</tr>
<tr>
<td></td>
<td>Austin, TX 78714-9347</td>
</tr>
<tr>
<td></td>
<td>Phone: (512) 776-2265</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:Carolyn.deboer@dshs.texas.gov">Carolyn.deboer@dshs.texas.gov</a></td>
</tr>
</tbody>
</table>

IX. General Terms and Conditions.
A. Governing Law. Regarding all issues related to this Contract's formation, performance, interpretation, and any issues that may arise in any dispute between the parties, the Contract will be governed by and construed in accordance with the laws of the State of Texas.

B. Amendment. This Contract may be modified by written amendment signed by the Parties.

C. Confidentiality. The Parties are required to comply with all applicable state and federal laws relating to the privacy and confidentiality of records that contain Personal Identifying Information (PII) or Personally Sensitive Information (PSI) or other information or records made confidential by law, including Tex. Bus. & Comm. Code Section 521.002. The attached Data Use Agreement (Attachment A) applies to this Contract.
D. **Exchange of Personal Identifying Information.** This Contract concerns personal identifying information. Except as prohibited by other law, Contractor and DSHS may exchange PII without consent, in accordance with Chapter 191 of the Health and Safety Code.

E. **Records Retention.** DSHS will retain records in accordance with DSHS State of Texas Records Retention Schedule at [http://www.dshs.texas.gov/records/schedules.shtml](http://www.dshs.texas.gov/records/schedules.shtml), Department Rules and other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information.

F. **Severability.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue.

G. **Notice.** Any notice required or permitted to be given under this Contract will be in writing and sent to the respective Party’s Representative in Section VIII. Notice will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified in writing by the Party to the other Party, or, if sent by certified mail, on the date of receipt.

H. **Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party’s rights under the Contract.

I. **Assignment.** Neither DSHS nor Contractor will transfer, assign, or sell its interest, in whole or in part, in this Contract without prior written consent by both Parties.

J. **Suspension of Services Under This Contract.** In the event of an emergency or information technology system failure, DSHS may temporarily suspend services without advance notice. Use of services for purposes inconsistent with applicable law may also result in a suspension of services.

K. **Termination.**
   1. **Convenience.** This Contract may be terminated by mutual agreement of the Parties. Either Party may terminate this Contract without cause by giving 30 days written notice of its intent to terminate to the non-terminating Party.

   2. **Cause.** This Contract may be terminated for cause by either Party for breach or failure to perform an essential requirement of the Contract. Use of services for purposes inconsistent with applicable law may be cause for Contract termination.

   3. **Notice of Termination.** Written notice may be sent by any method that provides verification of receipt, which will be calculated from the date of receipt by the non-terminating Party’s Representative provided in Section VIII.
4. **Equitable Settlement.** At the end of the Term of this Contract or termination as provided for in this Section, the Parties will equitably settle their respective accrued interests or obligations incurred prior to termination.

By signing below, the Parties agree that this Contract constitutes the entire legal and binding agreement between them. The Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the authority to execute this Contract on behalf of their respective Party.

**DEPARTMENT OF STATE HEALTH SERVICES**

Manda Hall, M.D.
Associate Commissioner
Department of State Health Services

**CITY OF SAN MARCOS**

Bert Lumbreras
City Manager
City of San Marcos

Date 4/20/18

Date

**THE FOLLOWING ATTACHMENTS ARE ATTACHED AND INCORPORATED AS PART OF THE CONTRACT HHSREV100001023:**

**ATTACHMENT A- DATA USE AGREEMENT**
ATTACHMENT A – DATA USE AGREEMENT

DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE
AND
CITY OF SAN MARCOS (“CONTRACTOR”)

This Data Use Agreement (“DUA”) is incorporated into System Agency Contract No. HHSREV100001023 (the “Base Contract”) between the Texas Department of State Health Services (“System Agency”) and City of San Marcos (“Contractor”).

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

ATTACHMENT 1. The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. 45 CFR 164.504(e)(1)-(3). This DUA also describes System Agency’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of System Agency, its programs or clients as described in the Base Contract.

As of the Effective Date of the Contract, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, et seq.) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“Authorized Purpose” means the specific purpose or purposes described in the Scope of Work of the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by System Agency in writing in advance.

“Authorized User” means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

(2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of System Agency that consists of or includes any or all of the following:

(1) Client Information;

(2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;

(3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;

(4) Federal Tax Information;

(5) Personally Identifiable Information;

(6) Social Security Administration Data, including, without limitation, Medicaid information;

(7) All privileged work product;

(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

"Legally Authorized Representative" of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; Estates Code Ch. 752 and Texas Prob. Code § 3.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) Contractor will exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. 45 CFR 164.502(b)(1); 45 CFR 164.514(d)

(B) Contractor will not, without System Agency’s prior written consent, disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User’s Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to Contractor’s management, to carry out the Authorized Purpose or as Required by Law.

System Agency, at its election, may assist Contractor in training and education on specific or unique System Agency processes, systems or requirements. Contractor will produce evidence of completed training to System Agency upon request. 45 C.F.R. 164.308(a)(5)(ii); Texas Health & Safety Code §181.101

(C) Contractor will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor will maintain evidence of sanctions and produce it to System Agency upon request. 45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)
(D) Contractor will not, without prior written approval of System Agency, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying System Agency so that System Agency may have the opportunity to object to the disclosure or access and seek appropriate relief. If System Agency objects to such disclosure or access, Contractor will refrain from disclosing or providing access to the Confidential Information until System Agency has exhausted all alternatives for relief. 45 CFR 164.504(e)(2)(ii)(A)

(E) Contractor will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from System Agency or as expressly permitted by the Base Contract. 45 CFR 164.502(d)(2)(i) and (ii) Contractor will not engage in prohibited marketing or sale of Confidential Information. 45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002

(F) Contractor will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of Contractor without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and 45 CFR 164.502(e)(1)(1)(ii); 164.504(e)(1)(i) and (2)

(G) Contractor is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. 45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.

(H) If Contractor maintains PHI in a Designated Record Set, Contractor will make PHI available to System Agency in a Designated Record Set or, as directed by System Agency, provide PHI to the Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. Contractor will make other Confidential Information in Contractor’s possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. 45 CFR 164.524 and 164.504(e)(2)(ii)(E)

(I) Contractor will make PHI as required by HIPAA available to System Agency for amendment and incorporate any amendments to this information that System Agency directs or agrees to pursuant to the HIPAA. 45 CFR 164.504(e)(2)(ii)(E) and (F)

(J) Contractor will document and make available to System Agency the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. 45 CFR 164.504(e)(2)(ii)(G) and 164.528

(K) If Contractor receives a request for access, amendment or accounting of PHI by any Individual subject to this DUA, it will promptly forward the request to System Agency; however, if it would violate HIPAA to forward the request, Contractor will promptly notify of the request and of Contractor’s response. Unless Contractor is prohibited by law from forwarding a request, System Agency will respond to all such requests, unless System Agency has given prior written consent for Contractor to respond to and account for all such requests. 45 CFR 164.504(e)(2)

(L) Contractor will provide, and will cause its Subcontractors and agents to provide, to System Agency periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to
data transfers and the handling and disposal of Confidential Information. 45 CFR 164.308; 164.530(c); 1 TAC 202

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, Contractor may use or disclose PHI for the proper management and administration of Contractor or to carry out Contractor’s legal responsibilities if: 45 CFR 164.504(e)(ii)(I)(A)

(1) Disclosure is Required by Law, provided that Contractor complies with Section 3.01(D);
(2) Contractor obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:
   (a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;
   (b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and
   (c) Notify Contractor in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. 45 CFR 164.504(e)(4)(ii)(B)

(N) Except as otherwise limited by this DUA, Contractor will, if requested by System Agency, use PHI to provide data aggregation services to System Agency, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. 45 CFR 164.504(e)(2)(1)(B)

(O) Contractor will, on the termination or expiration of this DUA or the Base Contract, at its expense, return to System Agency or Destroy, at System Agency’s election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from System Agency or created or maintained by Contractor or any of Contractor’s agents or Subcontractors on System Agency’s behalf if that data contains Confidential Information. Contractor will certify in writing to System Agency that all the Confidential Information that has been created, received, maintained, used by or disclosed to Contractor, has been Destroyed or returned to System Agency, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or System Agency record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor will immediately notify System Agency of the reasons such return or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return of the Confidential Information not feasible as long as Contractor maintains such Confidential Information. 45 CFR 164.504(e)(2)(ii)(J)

(P) Contractor will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. 45 CFR 164.306; 164.530(c)

(Q) If Contractor accesses, transmits, stores, or maintains Confidential Information, Contractor will complete and return to System Agency at infosecurity@hhsc.state.tx.us the System Agency information security and privacy initial inquiry (SPI) at Attachment 2. The SPI identifies basic privacy and security controls with which Contractor must comply to protect System Agency Confidential Information. Contractor will comply with periodic security controls compliance assessment and monitoring by System Agency as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor’s security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor will update its security controls assessment whenever there are significant changes in security controls for System Agency
Confidential Information and will provide the updated document to System Agency. System Agency also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. 45 CFR 164.306

(R) Contractor will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession. 45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c) (privacy safeguards)

(S) Contractor will designate and identify, subject to System Agency approval, a Person or Persons, as Privacy Official 45 CFR 164.530(a)(1) and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor will provide name and current address, phone number and e-mail address for such designated officials to System Agency upon execution of this DUA and prior to any change. 45 CFR 164.308(a)(2)

(T) Contractor represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. 45 CFR 164.502; 164.514(d)

(U) Contractor and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to System Agency, as directed, upon request.

(V) Contractor will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. 45 CFR 164.308; 164.316; 164.514(d); 164.530(l)(l)

(W) Contractor will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by Contractor on behalf of System Agency for System Agency’s review and approval within 30 days of execution of this DUA and upon request by System Agency the following business day or other agreed upon time frame. 45 CFR 164.308; 164.514(d)

(X) Contractor will make available to System Agency any information System Agency requires to fulfill System Agency’s obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. Contractor will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. 45 CFR 164.504(e)(2)(l)(l)

(Y) Contractor will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. System Agency Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise
protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security or Encryption must be produced to System Agency no later than 48 hours after System Agency's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of System Agency Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. 45 CFR 164.312; 164.530(d)

(Z) Contractor will comply with the following laws and standards if applicable to the type of Confidential Information and Contractor's Authorized Purpose:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific System Agency program area that Contractor supports on behalf of System Agency.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Breach or Event Notification to System Agency. 45 CFR 164.400-414

(A) Contractor will cooperate fully with System Agency in investigating, mitigating to the extent practicable and issuing notifications directed by System Agency, for any Event or Breach of Confidential Information to the extent and in the manner determined by System Agency.

(B) Contractor's obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to System Agency’s satisfaction (the "incident response period"). 45 CFR 164.404

(C) Breach Notice:

1. Initial Notice.
a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by System Agency in writing, initially report to System Agency's Privacy and Security Officers via email at: privacy@SystemAgencyC.state.tx.us and to the System Agency division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in System AgencyC-CMS Contracts for information exchange.

b. Report all information reasonably available to Contractor about the Event or Breach of the privacy or security of Confidential Information. 45 CFR 164.410

c. Name, and provide contact information to System Agency for, Contractor's single point of contact who will communicate with System Agency both on and off business hours during the incident response period.

2. 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by Contractor of an Event or Breach of Confidential Information, provide formal notification to the State, including all reasonably available information about the Event or Breach, and Contractor's investigation, including without limitation and to the extent available: For (a) - (m) below: 45 CFR 164.400-414

a. The date the Event or Breach occurred;
b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
c. A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);
d. A brief description of Contractor's investigation and the status of the investigation;
e. A description of the types and amount of Confidential Information involved;
f. Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by Contractor at that time;
g. Contractor's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for System Agency approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
h. Contractor's recommendation for System Agency's approval as to the steps Individuals or Contractor on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;
i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;
k. Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

l. A reasonable schedule for Contractor to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by System Agency, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

m. Any reasonably available, pertinent information, documents or reports related to an Event or Breach that System Agency requests following Discovery.

Section 4.02 Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 164.530

(A) Contractor will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by System Agency for incident response purposes and for purposes of System Agency’s compliance with report and notification requirements, to the satisfaction of System Agency.

(B) Contractor will complete or participate in a risk assessment as directed by System Agency following an Event or Breach, and provide the final assessment, corrective actions and mitigations to System Agency for review and approval.

(C) Contractor will fully cooperate with System Agency to respond to inquiries and proceedings by state and federal authorities, Persons and Individuals about the Event or Breach.

(D) Contractor will fully cooperate with System Agency’s efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by System Agency in a Corrective Action Plan if directed by System Agency under the Base Contract.

Section 4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) System Agency may direct Contractor to provide Breach notification to Individuals, regulators or third-parties, as specified by System Agency following a Breach.

(B) Contractor must obtain System Agency’s prior written approval of the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in Contractor’s name and on Contractor’s letterhead, unless otherwise directed by System Agency, and will contain contact information, including the name and title of Contractor’s representative, an email address and a toll-free telephone number, for the Individual to obtain additional information.

(C) Contractor will provide System Agency with copies of distributed and approved communications.

(D) Contractor will have the burden of demonstrating to the satisfaction of System Agency that any notification required by System Agency was timely made. If there are delays outside of Contractor's control, Contractor will provide written documentation of the reasons for the delay.
(E) If System Agency delegates notice requirements to Contractor, System Agency shall, in the
time and manner reasonably requested by Contractor, cooperate and assist with Contractor’s
information requests in order to make such notifications and reports.

ARTICLE 5. SCOPE OF WORK

Scope of Work means the services and deliverables to be performed or provided by Contractor, or on
behalf of Contractor by its Subcontractors or agents for System Agency that are described in detail in the
Base Contract. The Scope of Work, including any future amendments thereto, is incorporated by reference in
this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

Section 6.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and will remain the
property of System Agency. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 6.02 System Agency Commitment and Obligations

System Agency will not request that Contractor create, maintain, transmit, use or disclose PHI in any
manner that would not be permissible under applicable law if done by System Agency.

Section 6.03 System Agency Right to Inspection

At any time upon reasonable notice to Contractor, or if System Agency determines that Contractor
has violated this DUA, System Agency, directly or through its agent, will have the right to inspect the
facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of
this subsection, System Agency’s agent(s) include, without limitation, the System Agency Office of the
Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or
other designee.

Section 6.04 Term; Termination of DUA; Survival

This DUA will take effect with the Base Contract, and will terminate upon termination of the Base
Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated
automatically concurrent with such extension or amendment.

(A) System Agency may immediately terminate this DUA and Base Contract upon a material
violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve Contractor of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the
Confidential Information until such time as determined by System Agency.

(D) If System Agency determines that Contractor has violated a material term of this DUA;
System Agency may in its sole discretion:

1. Exercise any of its rights including but not limited to reports, access and inspection under
this DUA or the Base Contract; or

2. Require Contractor to submit to a corrective action plan, including a plan for monitoring
and plan for reporting, as System Agency may determine necessary to maintain compliance with
this DUA; or
3. Provide Contractor with a reasonable period to cure the violation as determined by System Agency; or

4. Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, System Agency will provide written notice to Contractor describing the violation and the action it intends to take.

(F) If neither termination nor cure is feasible, System Agency shall report the violation to the Secretary.

(F) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to System Agency, as required by this DUA.

Section 6.05 Governing Law, Venue and Litigation

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

Section 6.06 Injunctive Relief

(A) Contractor acknowledges and agrees that System Agency may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate System Agency for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that System Agency will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 6.07 Indemnification

To the extent permitted by law, Contractor will indemnify, defend and hold harmless System Agency and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of System Agency) or other members of its Workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure and continues to apply even in the event insurance coverage required, if any, in the DUA or Base Contract is denied, or coverage rights are reserved by any insurance carrier. Upon demand, Contractor will reimburse System Agency for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party to the extent caused by and which results from the Contractor’s failure to meet any of its obligations under this DUA. To the extent permitted
by law, Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive
the expiration or termination of this DUA.

Section 6.08 Insurance

(A) Contractor represents and warrants that it maintains either self-insurance or commercial
insurance with policy limits sufficient to cover any liability arising from any acts or omissions by
Contractor or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce
under this DUA. Contractor warrants that System Agency will be a loss payee and beneficiary for any such
claims.

(B) Contractor will provide System Agency with written proof that required insurance
coverage is in effect, at the request of System Agency.

Section 6.09 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, including but not limited to
requirements to insure or indemnify System Agency, if any legal action or other proceeding is brought for the
enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default,
misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will
bear their own legal expenses and the other cost incurred in that action or proceeding.

Section 6.10 Entirety of the Contract

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the
Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of
obligations arising under these documents will be valid unless in writing and executed by the party against
whom such change, waiver, or discharge is sought to be enforced.

Section 6.11 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any
other law applicable to Confidential Information, this DUA will automatically be amended so that the
obligations imposed on System Agency or Contractor remain in compliance with such requirements. Any
ambiguity in this DUA will be resolved in favor of a meaning that permits System Agency and Contractor to
comply with HIPAA or any other law applicable to Confidential Information.
ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM  
System Agency CONTRACT NUMBER HHSREV100001023

The DUA between System Agency and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with _________________________ (SUBContractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBContractor acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to System Agency Confidential Information. Contractor and SUBContractor agree that System Agency is a third-party beneficiary to applicable provisions of the subcontract.

System Agency has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and SUBContractor assure System Agency that any Breach or Event as defined by the DUA that SUBContractor Discovers will be reported to System Agency by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBContractor that constitutes a material breach or violation of the DUA or the SUBContractor's obligations Contractor will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBContractor, if feasible;
3. Notify System Agency immediately upon reasonably discovery of the pattern of activity or practice of SUBContractor that constitutes a material breach or violation of the DUA and keep System Agency reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate SUBCONTRACTOR's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

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<th>CONTRACTOR</th>
<th>SUBCONTRACTOR</th>
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System Agency Data Use Agreement V.8.3 HIPAA Omnibus Compliant April 1, 2015
Attachment 1
Page 1 of 1
AGENDA CAPTION:
Consider approval of Resolution 2018-114R, approving the terms and conditions of a Joint Election Agreement between the City of San Marcos and Hays County for the holding of a joint election on November 6, 2018; authorizing the City Manager to execute the agreement on behalf of the City; authorizing the City Manager and City Clerk to negotiate minor revisions to this agreement; and declaring an effective date

Meeting date: June 19, 2018

Department: City Clerk

Amount & Source of Funding
Funds Required: $12,000-$20,000 (Will depend on if we have a runoff. Actual Cost TBD)
Account Number: 10001101.52425
Funds Available: $30,000
Account Name: Election Expenses

Fiscal Note:
Prior Council Action: Approval of Contract with Hays County Election Office.

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

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☒ Not Applicable
Background Information:
The City of San Marcos has previously entered into Joint Election Agreements and Election Services Agreements with Hays County. Jennifer Anderson, Hays County Election Administrator, will conduct and supervise the City’s General Election to be held on November 6, 2018, and if necessary a runoff election.

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 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A JOINT ELECTION AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND HAYS COUNTY FOR THE HOLDING OF A JOINT ELECTION ON NOVEMBER 6, 2018; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER AND CITY CLERK TO NEGOTIATE MINOR REVISIONS TO THIS AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City Council of the City of San Marcos, Texas, finds and determines that it is in the best interest of the City to cooperate with Hays County (the "County") in holding a joint election on November 6, 2018.

2. Hays County is willing to participate in holding a joint election on that date.

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

PART 1. The attached Joint Election Agreement between the City of San Marcos and Hays County for holding a joint election on November 6, 2018 is approved.

PART 2. The City Manager, Bert Lumbreras, is authorized to execute The Joint Election Agreement in substantially the same form as is attached to this Resolution on behalf of the City.

PART 3. The City Manager and the City Clerk are authorized to negotiate minor revisions to the attached agreement.

PART 4. This Resolution shall be in full force and effect from and after its passage.

ADOPTED this the 19th day of June, 2018

Attest:

John Thomaides
Mayor

Jamie Lee Case
City Clerk
This Joint Election Agreement ("Agreement") is made this the 19th day June, 2018, between the City of San Marcos, Texas, (the "City") 630 East Hopkins, San Marcos, Texas 78666 and Hays County (the “County”), 111 E. San Antonio Street, Suite 300, San Marcos, Texas 78666, pursuant to Chapter 271 of the Texas Election Code.

Pursuant to Chapter 31 of the Texas Election Code, Chapter 791 of the Texas Government Code and Section 271.002 and 271.003 of the Texas Election Code, the Joint Election Agreement set forth below is entered into by and between the City and the County agree as follows:

Section 1. Scope of Joint Election Agreement. The City enters this Joint Election Agreement ("Agreement") for the conduct of the elections to be held between August 2018 through July 2019.

Section 2. Appoint Election Officer. The City appoints the Hays County Elections Administrator to serve as the Election Officer (the “Officer”) in order to perform and supervise the duties and responsibilities of the Election Officer for any election from August 2018 through July 2019.

Section 3. Early Voting Polling Locations. To facilitate the administration of elections, and as a convenience to the voters, during the early voting period established by statute, the City agrees to designate the Hays County Election Administrator's Office, 712 South Stagecoach Trail Ste 1045, San Marcos, Texas 78666 as the main early voting polling place for the City. Furthermore, the City agrees to designate temporary branch early polling places in accordance with Section 85.062, Election Code, V.T.C.A. as called out in the latest Election Orders.

Section 4. Voting by Mail Ballot. The City and County agree that early voting by mail ballot shall be conducted in accordance with the applicable provisions of the Texas Election Code and that 712 South Stagecoach Trail Ste 1045 San Marcos, Texas 78666 is the early voting clerk's mailing address to which ballot applications and ballots voted by mail shall be sent for the City.

Section 5. Election Day Polling Locations. Election Day voting shall be held in common precincts where appropriate at the dates, times, and locations recommended by the Election Officer and authorized and ordered by the governing body of the City.

Section 6. Election Day. On Election day, all forms used in the conduct of the election, including but not limited to the poll list, signature roster, ballot registers, expense accounts, and all oaths and certificates will be used jointly by the two agencies. All forms will be returned to the Hays County Election Administrator who shall keep them in her custody for the period of time prescribed by the Texas Election Code. The County agrees to furnish the City with copies of any election documents upon the City's request at no charge.
Section 7. Use of Common Ballot. It is agreed by the parties to this Agreement that a common ballot will be used for joint elections. The Mobile Ballot Boxes ("MBBS") containing the voted ballots for an election will be delivered by the Precinct Judges to the Hays County Election Administrator's office at 712 South Stagecoach Trail Ste 1045, San Marcos, Texas and the MBBS will remain in the Hays County Election Administrator's custody, except that the County agrees to provide the City with the necessary documentation, if requested, for canvass of an election or in the event the voted ballots are required for a recount or any court proceedings in which the City may be a party. The County agrees to maintain custody of the MBBS containing the voted ballots for the period of time prescribed by the Texas Election Code. All MBBS that are not placed in active voting equipment will remain locked in the Officers’ office. MBBS will not be replaced without being logged and checked out by the Officer at any time during an election. An audit shall be conducted to ensure that all MBBS are present and accounted for. A spreadsheet shall be completed at the end of Early Voting and Election Day returns that will identify the number of signatures on the Combination Log and the Number of Cancelled booths, for a representation of voter totals. All replaced equipment will remain secured until after tabulation to ensure that all checks and balances have been satisfied.

Section 8. Reporting of Returns. The Officer shall prepare the unofficial and official tabulation of precinct results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day precinct results shall be made available to the City via email as soon as they are prepared and may be released under law, but no earlier than 7:00 p.m. on Election Day. The Officer or their designee will use their best efforts to post all reports for public review on the Hays County Elections website at www.co.hays.tx.us/elections as soon as reasonably possible.

Section 9. Cost Sharing. The City agrees to the cost sharing provisions below. This includes Hays County, the school districts of the county, the cities of the county, and the water districts and all other entities contracting for election services. The costs incurred with Early Voting locations and Early Voting Clerks will be shared only by entities utilizing the polling location for their individual election contest.

November Uniform Election Date

I. All Local Political Subdivisions holding an election, including Hays County, will share the following expenses equally: the newspaper notice for the Logic and Accuracy Test of ballots, consumable election supplies, and ballot programming.

II. The user fees for the voting equipment, election worker payroll, and mileage payments to poll workers will follow these cost sharing arrangements:
   a. The county will bear 50% of these election costs at each voting location. The remaining 50% will be shared between the other entities associated with the polling place.
   b. If there is no city election, the other entities associated with the polling place will split the remaining 50% equally.
   c. If there is no city, no ISD and no other jurisdiction on the ballot, the county pays 100% of the cost.
   d. If there is no county election on the ballot, then 100% of the costs will be shared
equally between all jurisdictions.

III. It is acknowledged that cost sharing expenses will fluctuate depending upon the number of required polling locations, poll workers and number of entities sharing a polling place, as General Elections, held on even numbered years, typically require more resources than Constitutional Amendment elections, held on odd-numbered years.

May Uniform Elections

I. All Local Political Subdivisions holding an election, including Hays County (when applicable), will share the following expenses equally: the newspaper notice for the Logic and Accuracy Test of ballots, consumable election supplies, and ballot programming.

II. The user fees for the voting equipment, election worker payroll, and mileage payments to poll workers will follow these cost sharing arrangements:
   a. For polling locations conducting elections of the County: the county will bear 50% of these election costs at each voting location. The remaining 50% will be shared between the other entities associated with the polling place.
   b. If there is no city election, the other entities associated with the polling place will split the remaining 50% equally.
   c. If there is no city, no ISD and no other jurisdiction on the ballot, the county pays 100% of the cost.
   d. If there is no county election on the ballot, then 100% of the costs will be shared equally between all jurisdictions holding an election.

Section 10. Amendments. This Agreement may not be amended or modified except in writing and executed by both the City and the County. Neither party may assign this Agreement without the written consent of the other party. However, the Officer may assign deputies to perform any of the contracted services and may contract with third persons for election services and supplies.

Section 11. Effective Date. This Agreement contains the entire agreement between the parties and supersedes all prior understandings and agreements between the parties regarding such matters. The term of this Agreement will commence on August 1, 2018 and end on July 31, 2019.

Section 12. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable. In case any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 13. Any notice provided for under this Agreement will be forwarded to the following addresses:
Section 14. Nothing contained in this Agreement will authorize or permit a change in the office with whom or the place at which any document or record relating to the Election(s) is to be filed, or place at which any function of the canvass of the election returns is to be performed, or the officer to serve as custodian of voted ballots or other election records.

Section 15. This Agreement shall take effect immediately upon execution by both parties hereof and shall inure to the benefit and be binding upon the administrators, successors and assigns of the Parties hereto.

WITNESS OUR HANDS this 19th day of June, 2018

Hays County Elections Administrator
Jennifer Anderson
Elections Administrator

City of San Marcos
Bert Lumbreras
City Manager

Attest: Jamie Lee Case, City Clerk
AGENDA CAPTION:
Consider approval of Resolution 2018-115R, approving an Election Services Agreement with the Hays County Election Administrator, for her provision of Election Services for the City’s General Election to be held on November 6, 2018 and, if necessary, a Runoff Election to be held in accordance with State Law; Authorizing the City Manager to execute this agreement on behalf of the City; and declaring an effective date.
Meeting date: June 19, 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]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☒ Not Applicable
Background Information:
Section 31.092 (a) of the Texas Election Code allows for Local Political Subdivisions to contract with the Election Officer of the County that oversees Elections in which the Local Political Subdivision resides. The City of San Marcos has contracted with the Hays County Elections Administrator since 2005 when the City began having their Elections in November.

If approved the Hays County Elections Administrator will serve as the Election Officer and Early Voting Clerk to conduct the Election on behalf of the City. The City Clerk will still have an active role in the Election process.

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

Alternatives:
Click or tap here to enter text.

Recommendation:
RESOLUTION 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AN ELECTION SERVICES AGREEMENT WITH THE HAYS COUNTY ELECTIONS ADMINISTRATOR, FOR HER PROVISION OF ELECTION SERVICES FOR THE CITY’S GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018 AND, IF NECESSARY, A RUNOFF ELECTION TO BE HELD IN ACCORDANCE WITH STATE LAW; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THIS AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City and the Hays County Elections Administrator (the “Officer”) are authorized to execute an Election Services Agreement pursuant to the provisions of the Texas Election Code, Chapter 31, Subchapter D, for the conduct and supervision of the City’s General Election to be held on November 6, 2018 and, if necessary, a runoff election to be held in accordance with State Law (the “Election(s)”).

2. The City and the Officer have determined that it is in the City’s best interest to contract for the provision of election services necessary to conduct the City’s Election(s).

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

PART 1. The attached Election Services Agreement the Hays County Election Administrator and the City to conduct the City’s election(s) is approved.

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

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

ADOPTED this the 19th day of June, 2018

John Thomaides
Mayor

Attest:
Jamie Lee Case
City Clerk
CONTRACT FOR ELECTION SERVICES

This Contract for Election Services (this “Contract”) is made and entered into by and between the Elections Administrator of Hays County, Texas (“Contracting Officer”) and the City of San Marcos set forth on the signature page of this Contract (the “City”) pursuant to the authority under Section 31.092(a) of the Texas Election Code agree as follows:

I. GENERAL PROVISIONS.

A. The purpose of this Contract is to maintain consistency and accessibility in voting practices, polling places, and election procedures to best assist the voters of the City. For purposes of this Contract the term “Election” will include any resulting recount or election contest. It will also apply to any election to resolve a tie.

B. The Contracting Officer is hereby appointed to serve as the City’s Election Day Officer and Early Voting Clerk to conduct the Election for the City. As Election Officer and Early Voting Clerk, the Contracting Officer will coordinate, supervise and conduct all aspects of the administering voting in connection with the election in compliance with all applicable law except as otherwise provided in the Contract.

C. The City agrees to commit the funds necessary to pay for election-related expenses for the City’s election.

D. The Contracting Officer has the right to enter into agreements with other entities at any time and may require that authorities of City’s holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Texas Election Code. The City agrees to enter into a joint election agreement required by Hays County.

II. RESPONSIBILITIES OF CONTRACTING OFFICER. The Contracting officer shall be responsible for performing the following services and furnishing the following material and equipment in connection with the election:

A. Nomination of Presiding Judges and Alternate Judges. The Contracting Officer shall recommend appointment of Election Day presiding and alternate judges, central accumulation station judges, and the Early Voting Ballot Board (EVBB) presiding judge, all of which shall meet the eligibility requirements in Subchapter C of Chapter 32 of the Texas Election Code.

B. Notification to City. The Contracting Officer shall provide the City with the most up-to-date list of presiding and alternate judges three weeks before the statutory deadline to order the election.

C. Notification to Presiding and Alternate Judges; Appointment of Clerks.
1. The Contracting Officer shall notify each presiding and alternate judge of his or her appointment. The notification will also include the assigned polling station, the date of the election training(s), the date and time of the election, the rate of compensation, the number of clerks the judge may appoint, the eligibility requirements for election workers, and the name of the presiding or alternate judge as appropriate.

2. The election judge will make the clerk appointments in consultation with the Contracting Officer. If a presiding judge or the alternate judge does not speak both English and Spanish, and the election precinct is one subject to Section 272.002 and 272.009 of the Texas Election Code, the Contracting Officer shall ensure that a bilingual election clerk is appointed. The Contracting Officer shall notify the clerks of the same information that the judges receive under this section.

D. Election Training. The Contracting Officer shall be responsible for conducting election training for the presiding judges, alternate judges, clerks, and early voting deputies in the operation and troubleshooting of the direct record electronic (DRE) voting system and the conduct of elections, including qualifying voters, issuing ballot style codes, maintaining order at the polling location, and conducting provisional voting.

E. Logic and Accuracy Testing. In advance of Early Voting (including the sending of any mail ballots), the Contracting Officer, the tabulation supervisor, and the other members the Contracting Officer designates for the testing board shall conduct all logic and accuracy testing in accordance with the procedures set forth by the Texas election Code and under guidelines provided by the Secretary of State’s office. The Contracting Officer shall also be responsible for the publication of the required notice of such testing.

F. Election Supplies. The Contracting Officer shall procure, prepare, and distribute to the presiding judges for use at the polling locations on Election Day (and to the Early Voting clerks during Early Voting) the following election supplies: election and early voting kits (including the appropriate envelopes, lists, forms, name tags, posters, and signage described in Chapters 51, 61, and 62, and subchapter B of chapter 66 of the Texas Election Code) seals, sample ballots, thermal paper rolls for use in the Judges Booth Controllers (JBC’s), batteries for use in the JBC’s, eSlates, labels for the electronic poll books, and all consumable type office supplies necessary to hold an election.

G. Registered Voters List. The Contracting Officer shall provide lists of registered voters required by law for use on Election Day and for the Early Voting period.

H. Notice of Previous Polling Place. The Contracting Officer shall post notices of a change in a polling place at the entrance to the previous polling location. Section
43.062 of the Texas Election Code provides that the notice shall state the location has changed and give the location of the new polling place.

I. **Election Equipment.** The Contracting Officer shall prepare and distribute the direct Record Electronic (DRE) Voting System components from Hart Intercivic, Inc. (“Hart”) for the election. This voting System includes the equipment referred to as “eSlates” and Judge’s Booth Controllers” (JBCs). Each polling location will have at least one voting machine that is accessible to disabled voters and provides a practical and effective means for voters with disabilities to cast a secret ballot.

J. **Ballots.** The Contracting Officer or designee shall be responsible for the preparation, printing, programming and distribution of English and Spanish ballots and sample ballots, including the mail ballots, based on the information provided by the City, including the names of the candidates, names of the offices sought, order of names on the ballot, propositions on the ballot, and the Spanish translation of the offices and any propositions. The ballot will be prepared in these formats: DRE, paper, auditory.

K. **Mobile Ballot Boxes.** The Mobile Ballot Boxes (“MBBS”) containing the voted ballots for an election will be delivered by the Precinct Judges to the Hays County Election Administrator's office at 712 South Stagecoach Trail Ste 1045, San Marcos, Texas and the MBBS will remain in the Hays County Election Administrator's custody, except that the County agrees to provide the City with the necessary documentation, if requested, for canvass of an election or in the event the voted ballots are required for a recount or any court proceedings in which the City may be a party. The County agrees to maintain custody of the MBBS containing the voted ballots for the period of time prescribed by the Texas Election Code. All MBBS that are not placed in active voting equipment will remain locked in the Officers’ office. MBBS will not be replaced without being logged out and checked out by the Officer at any time during an election. An audit shall be conducted to ensure that all MBBS are present and accounted for. A spreadsheet shall be completed at the end of Early Voting and Election Day returns that will identify the number of signatures on the Combination Log and the Number of Cancelled booths, for a representation of voter totals. All replaced equipment will remain secured until after tabulation to ensure that all checks and balances have been satisfied.

L. **Applications for Mail Ballots.** The City and Contracting Officer agree that early voting by mail ballot shall be conducted in accordance with the applicable provisions of the Texas Election Code and that 712 South Stagecoach Trail Ste 1012 San Marcos, Texas 78666 is the early voting clerk's mailing address to which ballot applications and ballots voted by mail shall be sent for the City.

M. **Early Voting.** In accordance with Sections 31.096 and 32.097(b) of the Texas Election Code, the Contracting Officer shall serve as the Early Voting Clerk for the election.
1. The Contracting Officer shall supervise and conduct the early voting by mail and by personal appearance and shall secure personnel to serve as Early Voting Deputies.

2. The Contracting Officer shall receive mail ballot applications on behalf of the City. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or deputies at the Records Building located at the Hays County Government Center at 712 S. Stagecoach Trail, San Marcos, Texas 78666. Applications for mail ballots sent to the City shall be promptly faxed to the Contracting Officer at (512) 878-6699, or emailed to elections@co.hays.tx.us for timely processing and then the original sent application forwarded to the Contracting Officer for proper retention.

3. Early voting ballots shall be secured and maintained at the Hays County Election Administrator's Office at 712 South Stagecoach Trail Ste 1012. In accordance with Chapter 87 of the Texas election Code. The Early Voting Ballot Board shall meet at the same location unless posted differently.

4. Early Voting by personal appearance for the election shall be conducted during the hours and time period and at the locations as determined by the Contracting Officer in consultation with the City and in accordance with the Texas Election Code.

N. Election Day Activities.

1. The contracting Officer and staff shall be available from 6:00 am until the completion of the vote counting on Election Day to render technical support and assistance to voters and election workers.

2. The Contracting Officer and staff shall prepare and conduct Election Night intake of election equipment, supplies, and records.

3. The Contacting Officer and designee shall serve as central counting station manager and tabulation supervisor, counting the votes in conjunction with the Early Voting Ballot Board and the Central Counting Station judges.

4. Election Day polling locations are determined by the Contracting Officer in consultation with the City and in accordance with the Texas Election Code. The Contracting Officer shall arrange for the use of all polling places and shall arrange for the setting up of the polling location including tables, chairs and voting booths.

O. Election Night Reports. The contracting Officer shall prepare the unofficial and official tabulation of precinct results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day
precinct results shall be made available to the City via email as soon as they are prepared and may be released under law, but no earlier than 7:00 pm on Election Day. The Officer or their designee will use their best efforts to post all reports for public review on the Hays County Elections website at [www.co.hays.tx.us/elections](http://www.co.hays.tx.us/elections) as soon as reasonably possible.

P. **Provisional Votes/ Determination of Mail Ballots Timely Received under Section 86.007(d) of the Texas Election Code.** The Contracting Officer, serving as the voter registrar, shall retain the provisional voting affidavits and shall provide the factual information on each of the voters’ status. The Contracting Officer shall reconvene the EVBB after the election within the time set forth in Section 65.051 of the Texas election Code for the purpose of determining the disposition of the provisional votes. At the same time, the EVBB will review mail ballots timely received under Section 86.007(d) of the Texas election Code to determine whether such will be counted and to resolve any issues with such ballots.

Q. **Canvass Material Preparation.** Within 24 hours after determination of the provisional votes and resolution of any mail ballots, the Contracting Officer shall work with the EVBB and tabulation supervisor to tally the accepted provisional votes and resolved mail ballots, amend the unofficial tabulations, and submit new official tabulations to the City. These reports will serve as the canvass materials for the City.

R. **Custodian of Election Records.** The election records will be submitted to the City except for those records that must be maintained by the Contracting Officer as Voter Registrar in accordance with Section 66.051 of the Texas Election Code. The Contracting Officer is hereby appointed the custodian of voted ballots (which in the case of the ballots cast on the DRE voting system consist of the DVD backup) and shall preserve them in accordance with Chapter 66 of the Texas Election Code and other applicable law. The Contracting Officer shall also maintain custody of the records pertaining to the operation of the JBCs and eSlates.

S. **Recount.** The City shall advise the Contracting Officer if a recount is required by law or requested and the Contracting Officer and the City shall discuss how such recount is to be conducted. The City shall reimburse the Contracting Officer for the cost of such count which in not included in the original estimate/invoice.

T. **Schedule for Performance of Services.** The Contracting Officer shall perform all election services in accordance and compliance with the time requirements set out in the Texas Election Code.

U. **Contracting with Third Parties.** In accordance with Section 31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third parties for election services and supplies. The cost of such third-party services and supplies will be paid by the Contracting Officer and reimbursed by the City.
V. **Department of Justice Preclearance for General Elections.** If required by law, any changes to the general conduct of voting in Hays County will be pre-cleared through the United States Department of Justice by the Contracting Officer with copies of the submission and response e-mailed to the City.

III. **RESPONSIBILITIES OF THE CITY.** The City shall perform the following responsibilities:

A. **Election Orders, Election Notices, and Canvass.** The City shall be responsible for the preparing, adopting, publishing, and posting all required election orders, resolutions, notices and other documents, including bilingual materials, evidencing action by the governing authority of the City necessary to the conduct of the election. The City shall be responsible for conducting the official canvass of the election.

B. **Map/Annexations.** The City shall provide the Contracting Officer with an updated map and street index (including address Numbers) of its jurisdiction in and electronic or printed format and shall advise the contracting officer in writing of any new developments, annexations or de-annexations.

C. **Department of Justice Preclearance for Special Elections.** If required by law, the City shall be individually responsible for obtaining appropriate preclearance from the United States Department of Justice for any special elections.

D. **Ballot Information.** The City shall prepare the text for the City’s official ballot in English and Spanish and provide the Contracting Officer as soon as possible at the end of the period for ordering the election or filing for candidacy. The ballot information shall include a list of proposition showing the order and the exact manner in which the candidates’ name shall appear on the ballot. The City shall promptly review for correctness the ballot when requested by the Contracting Officer to do so prior to the finalization and shall approve by e-mail or by signature in person.

E. **Precinct Reports to the Texas Secretary of State.** Based on information provided by the Contracting Officer, the City shall prepare and file all required precinct reports with the Texas Secretary of State.

F. **Annual Voting Report.** The City shall be responsible for filing its annual voting system report to the Texas Secretary of State as required under Chapter 123 et seq. of the Texas Election Code.

IV. **SPECIAL PROVISIONS RELATED TO ELECTION WORKERS**

A. **Number of Election Workers at Election Day Polling Locations.** It is agreed by the Contracting Officer and the City that there will be at least three election workers at each Election Day polling location: the presiding judge, the alternate
judge, and at least one election clerk appointed by the presiding judge. The number of necessary clerks is derived from the number of elections at the poll and the number of registered voters at the poll.

B. **Compensation for Election Workers.** The Contracting Officer shall compensate all election workers in accordance with the Contracting Officer’s established compensation policies, in accordance with the Texas Election Code and using the rates set by the Hays County Commissioners Court for county elections. The Contracting Officer shall pay the workers and be reimbursed by the entities sharing the polling locations.

V. **PAYMENT**

A. **Charges and Distribution of Costs.** In consideration of the joint election services provided by the Contracting Officer, the City will be charged a share of the election costs and an administrative fee. The costs distribution is set forth in the Joint Election Agreement. The cost estimate is set forth in the Cost Estimate.

B. **Administrative Fee.** The Contracting Officer shall charge a fee equal to 10% of the City’s share of the cost of the election or a minimum of $75.00.

C. **Equipment Rental Fee.** Per Section 123.032(d) of the Texas Election Code, the Hays County Commissioners Court has set the equipment rental fee at $150 each per JBC and eSlate. If the County acquires additional equipment during the term of the Contract, the charge for the use of the equipment may be reset by the Hays County Commissioners Court.

D. **Payment.** The Contracting Officer’s invoice shall be due and payable to the address set forth in the invoice within 30 days from the date of receipt by the City.

VI. **TERM AND TERMINATION**

A. **Initial Term.** The initial term of the contract shall commence upon the last party’s execution hereof and shall continue thereafter in full force and effect for one year, subject to the termination rights set forth herein.

B. **Termination.** If either party wishes to terminate this contract for convenience or for cause, the party must provide not less than ninety (90) days’ written notice to the other party and allow for discussion of the desired outcome and options to reach the desired outcome. In the event of termination, it is understood and agreed that only the amounts due to the contracting Officer for services provided and expenses incurred will be due and payable.

VII. **MISCELLANEOUS PROVISIONS**
A. Nontransferable Functions. In accordance with Section 31.096 of the Texas Election Code, nothing in this Contract shall authorize or permit a change in:

1. The authority with whom or the place at which any document or record relating to the election is to be filed;

2. The officers who conduct the official canvass of the election returns;

3. The authority to serve as custodian of voted ballots or other election records; or

4. Any other nontransferable function specified under Section 31.096 or other provisions of law.

B. Cancellation of Election. If the City cancels its election pursuant to Section 2.053 of the Texas Election Code, the Contracting Officer shall be entitled to receive an administrative fee of $75. The Contracting Officer shall submit an invoice for the administrative fee as soon as reasonably possible after the cancellation, and the City shall make payment therefore in a manner similar to that set forth in V. Payment above.

C. Contract Copies to Treasure and Auditor. In accordance with Section 31.099 of the Texas Election Code, the Contracting Officer agrees to file copies of the Contract with the County Treasurer and the County Auditor of Hays County, Texas.

D. Election to Resolve a Tie. In the event that an election is necessary to resolve a tie vote, the terms of the Contract shall extend to the second election, except:

1. The City and the Contracting Officer will agree upon the date of the election and the early voting schedule subject to provisions of the election Code and with regard to other election conducted by the Contracting Officer.

2. The City will be responsible for any Department of Justice preclearance submission under Section 5 of the Federal Voting Rights Act.

3. An attempt will be made to use the election workers that worked in the first election; those poll workers will not have additional training provided by the Contracting Officer.

4. The cost of the election will be borne by the City; the Contracting Officer will work with the City on cost management.

E. Amendment/Modification. Except as otherwise provided, this contract may not be amended, modified, or changed in any respect except in writing, duly executed by the parties hereto. Both the Contracting Officer and the City may propose necessary amendments or modifications to this Contract in writing in order to
conduct the election smoothly and efficiently, except that any such proposals must be approved by the Contracting Officer and the governing body of the City or its authorized agent, respectively.

F. **Severability.** If any provision of the Contract is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Contract and parties to this Contract shall perform their obligations under this Contract in accordance with the intent of the parties to this Contract as expressed in the terms and provisions.

G. **Representatives.** For the purposes of implementing this Contract and coordinating activities, the Contracting Officer and the City designate the following individuals for submission of information, documents and notice:

For the Contracting Officer:

Jennifer Anderson  
Elections Administrator, Hays County  
712 S. Stagecoach Trail, Suite 1045  
San Marcos, Texas 78666  
Tel: (512) 393-7310  
Fax: (512) 878-6699  
Email: janderson@co.hays.tx.us

For the City:

Jamie Lee Case  
City Clerk, City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Tel: (512) 393-8090  
Fax: 855-246-9100  
Email: jcase@sanmarcostx.gov

***

Witness by my hand this the __________ day of _________________, 20__.  

**Contracting Officer:**

_______________________________________  
Jennifer Anderson, Elections Administrator  
Hays County, Texas
Witness by my hand this the __________ day of _________________, 20__.

Local Political Subdivision:

Name of Entity: City of San Marcos
Printed Name: Bert Lumbreras
Official Capacity: City Manager

Signature:_______________________________
AGENDA CAPTION:
Consider the Public Hearing Dates proposed by Staff regarding the 2018 Property Tax Rate and Fiscal Year 2018-2019 Budget, and provide direction to the City Manager.

Meeting date: June 19, 2018

Department: Finance Department

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:
Attached is the Fiscal Year 2018-2019 Budget and Tax Rate Calendar. To meet required timelines, staff recommends holding the first public hearing on the tax rate August 21st and the second public hearing on September 4th. The recommendation for the public hearing on the budget and any proposed utility rate increases is for September 4th with adoption of the budget on September 18th.

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.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>February 22</td>
<td>Budget Policy Workshop</td>
</tr>
<tr>
<td>March 20</td>
<td>Public hearing and adoption of Budget Policy</td>
</tr>
<tr>
<td>March 22</td>
<td>Departmental Budget Kickoff</td>
</tr>
<tr>
<td>April 15</td>
<td>Estimate of taxable value due</td>
</tr>
<tr>
<td>April 16</td>
<td>Completed Departmental Budgets Due to Finance</td>
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<tr>
<td>April 16-May 11</td>
<td>Department Budget Review Meetings with Executive Team</td>
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<tr>
<td>May</td>
<td>Budget Reviewed by City Manager</td>
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<td>May 29</td>
<td>Budget update workshop</td>
</tr>
<tr>
<td>June 13</td>
<td>1st Budget workshop</td>
</tr>
<tr>
<td>June 14</td>
<td>2nd Budget workshop</td>
</tr>
<tr>
<td>June 19</td>
<td>Set Public Hearing Dates for the budget and tax rate</td>
</tr>
<tr>
<td>July 25</td>
<td>Tax Rolls Certified</td>
</tr>
<tr>
<td>August 2</td>
<td>Workshop on Proposed Budget</td>
</tr>
<tr>
<td>July 29</td>
<td>Publish notice for the Budget Public Hearing</td>
</tr>
<tr>
<td>August 5</td>
<td>Publish notice of effective tax rate to include the dates of two public hearings and explanation of how the increase will be used no sooner than 30 days before the hearing and later than 10 days. This notice must remain on the City website and be included on the City’s television channel until the tax rate is adopted.</td>
</tr>
<tr>
<td>August 7</td>
<td>Record vote to set the proposed maximum tax rate above effective rate; Potential agenda items to discuss any outstanding budget items from workshops.</td>
</tr>
<tr>
<td>August 21</td>
<td>First public hearing on the tax rate; 1st reading of tax rate ordinances.</td>
</tr>
<tr>
<td>September 4</td>
<td>Second public hearing on the tax rate; First budget public hearing; 1st reading of utility rates, and budget ordinances; Second reading of the tax rate ordinance.</td>
</tr>
<tr>
<td>September 18</td>
<td>2nd Reading of Utility Rates ordinance; record vote to adopt budget on second reading; ratification of the tax rate reflected in the budget; Tax Rate adoption on second reading (requires an affirmative vote of five if tax rate is increasing).</td>
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</table>
AGENDA CAPTION:
Consider approval of a pay increase in the amount of $4,306.65 to City Clerk, Jamie Lee Case effective May 1, 2018.

Meeting date:  June 19, 2018

Department:  Human Resources

Amount & Source of Funding
Funds Required:  $4,306.65
Account Number:  Click or tap here to enter text.
Funds Available:  Click or tap here to enter text.
Account Name:  Salaries

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 Clerk shall receive an annual performance evaluation with merit pay consideration.

The performance evaluation was completed at the May 29th City Council Meeting. Motion to approve a pay increase effective May 1, 2018.

**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:
Consider approval of a pay increase in the amount of $7,665.84 to City Attorney, Michael Cosentino effective May 1, 2018.

Meeting date: June 19, 2018

Department: Human Resources

Amount & Source of Funding
Funds Required: $7,665.84
Account Number: 10001108.50005
Funds Available: $7700.00
Account Name: Salaries

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 Attorney's employment agreement provides for an annual performance evaluation with merit pay consideration. The performance evaluation was completed at the June 5th City Council Meeting. Motion to approve a pay increase effective May 1, 2018.

**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:
Consider approval of a pay increase in the amount of $5,100.00 to City Manager Bert Lumberras effective May 1, 2018.

Meeting date: June 19, 2018

Department: Human Resources

Amount & Source of Funding
Funds Required: $5,100.00
Account Number: 10001100.50005
Funds Available: $5100.00
Account Name: Salaries

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 Manager's employment agreement provides for an annual performance evaluation with merit pay consideration. The performance evaluation was completed at the June 5th City Council Meeting. Motion to approve a pay increase effective May 1, 2018.

**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:
Consider approval of Ordinance 2018-18, on the first of two readings, amending the City’s 2017-2018 Fiscal Year budget to allocate a total of $314,000 of sales tax revenues in the general fund to the following programs in the following individual amounts: Homebuyer Incentive Program ($60,000); IT Security Review Project ($25,000), Facility Security Project ($100,000), CIS Software License Upgrade ($129,000) and adding full time equivalent positions in the Finance, Engineering, and Planning Departments to be paid with HUD Disaster Recovery funds; amending the staffing table for the Fire Department due to reclassification of positions performing the Fire Marshal function; and providing an effective date.

Meeting date: June 19, 2018

Department: Finance-Heather Hurlbert, Finance Director

Amount & Source of Funding
Funds Required: $314,000
Account Number: 1000000-40025
Funds Available: $654,000
Account Name: Sales Tax Revenue

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

City Council Strategic Initiative: [Please select from the dropdown menu below]
Stormwater
Workforce Housing
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.
File #: Ord. 2018-18, Version: 1

☐ 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:**

**Allocation of Sales Tax Revenue**

At the May 29th Budget Workshop, City Council gave direction to bring back a budget amendment to increase the Homebuyer Incentive by $60,000. During that meeting, City staff also wanted to seek direction on 5 additional items for the City Council to consider. All 5 items were to be considered one-time funding and address essential projects. The funding for these items will be allocated from Best Buy Call Center sales tax revenue that was not budgeted for during the FY 2018-19 Budget. The 5 items were discussed in detail at the June 13th budget workshop and three of them were proposed to be brought back for a budget amendment. The other 2 would be reconsidered at a later date. The three on tonight’s agenda are:

The items are:

1. IT Security Review- $25,000- external audit of our IT infrastructure security.
2. Facility Security $100,000- provide additional security at numerous City facilities such as additional cameras.
3. Police Software License Upgrade-$129,000- implement remote report writing for police officers. This will allow police officers to spend more time in their districts as opposed to having to go back to the Police Department to fill out police reports.

**Addition of Personnel for CDBG-DR Projects**

As the City continues to implement the Community Development Block Grant- Disaster Recovery (CDBG-DR) project, staff has discussed with City Council that additional City positions will be necessary to accomplish these projects. City staff is recommending the following positions be brought on at this time to help with the implementation process. These positions will be completely funded by the CDBG-DR funds. The positions will be posted as grant funded to make applicants aware that the positions are not guaranteed after the CDBG-DR projects are completed.

The following positions are being recommended:

- Housing Coordinator
- Compliance Specialist
- Accountant
- Senior Engineer
- Project Engineer
- Inspector

**Personnel Changes for Fire Marshal**

At the May 1, 2018 City Council meeting, an amendment to the San Marcos Professional Firefighter’s Meet and Confer agreement was approved. This amendment moved the Fire Marshal function directly under the supervision of the Fire Chief as is customary in most city Fire Departments. Prior to this amendment, the Fire Marshal reported to the Neighborhood Services Director and had two dedicated positions to perform the various fire marshal duties. In February 2018, the two fire marshal positions resigned from the City of San Marcos.
Marcos. The City has recently hired an experienced Fire Marshal to fill one of these vacant positions. The new Fire Marshal has performed a full review of what resources are needed to address this function properly within the City of San Marcos. Staff has reviewed this analysis and recommends that 4 dedicated positions be allocated to the Fire Marshal function. Two of the positions will come from the existing Fire staffing tables but will be reallocated to the Fire Marshal function and 2 position exist within the Marshal’s Office. No additional positions are needed to address these staffing assignments; however, a budget amendment is needed to reclassify two positions from Firefighter to Fire Captain, to reclassify the Assistant Fire Marshal position to a Fire Marshal position and a civilian Fire Inspection position to a civilian Administrative Assistant position. The cost to make these necessary changes is $23,000 and will be absorbed into the operating budget of the fire department. Direction was given at the May 1, 2018 City Council meeting to bring back a budget amendment to reclassify these positions.

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

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

**Recommendation:**
Click or tap here to enter text.
ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE CITY’S 2017-2018 FISCAL YEAR BUDGET TO ALLOCATE $314,000 OF SALES TAX REVENUES IN THE GENERAL FUND TO THE FOLLOWING PROGRAMS IN THE FOLLOWING INDIVIDUAL AMOUNTS: HOMEBUYER INCENTIVE PROGRAM ($60,000); IT SECURITY REVIEW PROJECT ($25,000), FACILITY SECURITY PROJECT ($100,000), CIS SOFTWARE LICENSE UPGRADE ($129,000); ADDING FULL TIME EQUIVALENT POSITIONS IN THE FINANCE, ENGINEERING, AND PLANNING DEPARTMENTS TO BE PAID WITH HUD DISASTER RECOVERY FUNDS; AMENDING THE STAFFING TABLE FOR THE FIRE DEPARTMENT DUE TO RECLASSIFICATION OF POSITIONS PERFORMING THE FIRE MARSHAL FUNCTION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

In accordance with Section 8.16 of the City Charter, the City Council declares that a public necessity exists that requires an amendment to the City’s 2017-2018 Fiscal Year Budget.

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

SECTION 1. The City Budget Ordinance for the 2017-2018 Fiscal Year is amended as set forth in the attached Exhibit A.

SECTION 2. These revisions will be incorporated into the 2017-2018 Fiscal Year City Budget.

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

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

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

PASSED AND APPROVED on first reading on June 19, 2018.

PASSED, APPROVED AND ADOPTED on second reading on August 7, 2018.

John Thomaides
Mayor
Approved: 

Michael J. Cosentino
City Attorney

Attest: 

Jamie Lee Case
City Clerk
The City Council gave direction at the May 29th Budget Workshop for a budget amendment to be brought back for a $60,000 increase to the Homebuyer Incentive Program due to the success and high use of the program. The City Council held a budget workshop on June 13th and direction was given on 3 additional one-time adjustments to the FY 2018-2019 Budget which includes the following: 1. IT Security Review in the amount of $25,000 which will review any potential IT internal security issues the City may have. 2. $100,000 for facility Security Improvements including video and alarm improvements. 3. Police Software in the amount of $129,000 which allow for mobile report writing in the field.

### Description

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<td>Director of Neighborhood Services</td>
<td>Actual</td>
<td>Adopted</td>
</tr>
<tr>
<td>Emergany Operations Coordinator</td>
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<td>0</td>
</tr>
<tr>
<td>Emergency Management-Homeland</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Assistant Fire Marshal</td>
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<td>1</td>
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<tr>
<td>Fire Inspector</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>4</td>
<td>4</td>
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</table>
AGENDA CAPTION:
Consider approval of Resolution 2018-116R, adopting the Community Development Block Grant (CDBG) Action Plan that provides for the allocation of $649,948.00 CDBG funds for Program Year 2018; authorizing the City Manager or his designee to act as the official representative of the City in matters related to the CDBG program and action plan; and declaring an effective date.

Meeting date: June 19, 2018

Department: Development Services

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]
N/A
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
☐ Economic Development - Choose an item.
☐ Environment & Resource Protection - Choose an item.
☐ Land Use - Choose an item.
☐ Neighborhoods & Housing - Choose an item.
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
The City Council allocates the City’s annual award of CDBG funding. For your review, please find attached to this agenda item the funding matrix comprising of Program Year 2018 Funding Recommendation.

On May 1, 2018, the City was notified of their award of $649,948 for Program Year 2018. This represents a 15% increase from PY 2017. These funds will be used to support programs and projects that address an identified priority need and that primarily benefit low-to-moderate-income persons in San Marcos.

The City Manager requested staff to conduct a Pre-Award Risk Assessment on the three potential subrecipients (CASA, BR3T, & Southside), and to provide a recommendation for funding to Council.

The results of the Risk Assessment are as follows:

- CASA 92% - Low Risk
- Southside Community Center 88% - Low Risk
- BR3T 38% - High Risk*

*BR3T’s score is impacted by the current Executive Director leaving the organization and the unknown performance capacity of the Program Year 2017 Contract.

Due to the determination of High Risk for BR3T at this time, staff recommends not to allocate funding for this cycle of CDBG funding. Staff recommends allocating the remaining funds ($169,708) for City Acquisition to benefit single-family low-to-moderate income housing. Recommendation below:

- CASA $ 25,000
- City Summer Fun Scholarships $ 10,500
- City - Homebuyer Assistance $ 80,000
- City - Anita Reyes Park $ 125,000
- City - Tree Planting $ 9,750
- **City - Acquisition, LMI Single Family Housing** $ 169,708
- Blanco River Regional Recovery Team (BR3T) $ 220,000
- Southside Community Center $ 100,000
- Administration (20%) $ 129,990

Total Request $ 649,948
Total Allocation $ 649,948
Recommendation:
Consider approval of Resolution 2018-116R, adopting the Community Development Block Grant (CDBG) Action Plan that provides for the allocation of $649,948.00 CDBG funds for Program Year 2018

- CASA $ 25,000
- City Summer Fun Scholarships $ 10,500
- City - Homebuyer Assistance $ 80,000
- City - Anita Reyes Park $ 125,000
- City - Tree Planting $ 9,750
- City - Acquisition, LMI Single Family Housing $ 169,708
- Southside Community Center $ 100,000
- Administration (20%) $ 129,990

Total Allocation $ 649,948
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS ADOPTING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ACTION PLAN THAT PROVIDES FOR THE ALLOCATION OF CDBG FUNDS FOR PROGRAM YEAR 2018 IN THE AMOUNT OF $649,948.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ACT AS THE OFFICIAL REPRESENTATIVE OF THE CITY IN MATTERS RELATED TO THE CDBG PROGRAM AND ACTION PLAN; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The allocation of Community Development Block Grant (CDBG) funds for Program Year 2018, totaling $649,948.00, as set forth in Exhibit A, attached hereto and made a part hereof for all purposes, is hereby approved.

PART 2. The City Manager or his designee is hereby authorized to act as the official representative of the City in matters related to the CDBG Program and Action Plan.

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

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
## CDBG Program Year 2018 Funding Matrix

<table>
<thead>
<tr>
<th>PY 2018 Projects</th>
<th>Applications</th>
<th>Staff Recommendation</th>
<th>Council Approved 6/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASA*</td>
<td>$ 45,000</td>
<td>$ 25,000</td>
<td>-</td>
</tr>
<tr>
<td>City - Summer Fun Scholarships*</td>
<td>$ 10,500</td>
<td>$ 10,500</td>
<td>-</td>
</tr>
<tr>
<td>City - Homebuyer</td>
<td>$ 80,000</td>
<td>$ 80,000</td>
<td>-</td>
</tr>
<tr>
<td>City - Anita Reyes Park</td>
<td>$ 125,000</td>
<td>$ 125,000</td>
<td>-</td>
</tr>
<tr>
<td>City - Tree Planting</td>
<td>$ 9,750</td>
<td>$ 9,750</td>
<td>-</td>
</tr>
<tr>
<td>BR3T - LMI Home Rehabilitation</td>
<td>$ 220,000</td>
<td>-</td>
<td>$</td>
</tr>
<tr>
<td>Southside - LMI Home Rehabilitation</td>
<td>$ 100,000</td>
<td>$ 100,000</td>
<td>-</td>
</tr>
<tr>
<td>City - Acquisition, LMI Housing</td>
<td>-</td>
<td>$ 169,708</td>
<td>-</td>
</tr>
<tr>
<td>Administration (20%)</td>
<td>$ 129,990</td>
<td>$ 129,990</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Requested</strong></td>
<td><strong>$ 720,240</strong></td>
<td><strong>$ 649,948</strong></td>
<td>na</td>
</tr>
<tr>
<td><strong>Total Approved</strong></td>
<td>na</td>
<td>na</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Allocation</strong></td>
<td><strong>$ 649,948</strong></td>
<td><strong>$ 649,948</strong></td>
<td><strong>649,948</strong></td>
</tr>
<tr>
<td><strong>Difference</strong></td>
<td><strong>$ (70,292)</strong></td>
<td><strong>$ -</strong></td>
<td><strong>649,948</strong></td>
</tr>
</tbody>
</table>

*Public Service Total (Max 15%)*  
$ 55,500 $ 35,500 $ - 

Total Requested $ 720,240 $ 649,948 "

Total Approved na na $ - 

Total Allocation $ 649,948 $ 649,948 $ 649,948 

Difference $ (70,292) $ - $ 649,948
### CDBG Program Year 2018
#### Risk Analysis: Blanco River Regional Recovery Team (BR3T)

<table>
<thead>
<tr>
<th>Name of Vendor or Contractor</th>
<th>BR3T</th>
<th>Date</th>
<th>06/08/18</th>
</tr>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td></td>
<td><strong>Category</strong></td>
<td></td>
</tr>
<tr>
<td>Past performance of the Vendor for similar size and scope projects</td>
<td>Capacity</td>
<td>5</td>
<td>BR3T has an open CDBG Grant/Contract with the City. It is unknown at this time if BR3T has successfully demonstrated capacity.</td>
</tr>
<tr>
<td>Past performance of the Vendor for the City for similar size and scope projects</td>
<td>Capacity</td>
<td>5</td>
<td>BR3T has an open CDBG Grant/Contract with the City. It is unknown at this time if BR3T has successfully demonstrated capacity.</td>
</tr>
<tr>
<td>Familiarity and experience with Federal Programs</td>
<td>Regulatory</td>
<td>3</td>
<td>Current BR3T staff has demonstrated familiarity and experience with Federal Programs – Although, the Executive Director is leaving BR3T at the end of June 2018, and elevates this risk.</td>
</tr>
<tr>
<td>Financial Management</td>
<td>Financial</td>
<td>3</td>
<td>Current BR3T staff has demonstrated familiarity and experience with Financial Management – Although, the Executive Director is leaving BR3T at the end of June 2018, and elevates this risk.</td>
</tr>
<tr>
<td>Communication</td>
<td>Communication</td>
<td>3</td>
<td>Current BR3T staff has successfully demonstrated Communication – Although, the Executive Director is leaving BR3T at the end of June 2018, and elevates this risk.</td>
</tr>
</tbody>
</table>

**Other**

| Highest Possible Score | 50 |
| Percent of Highest Possible | 19 |
| Risk | **38** | **High Risk** |

**Preparer:** Aaron Harris, Community Initiatives Program Administrator
AGENDA CAPTION:
Consider approval of Resolution 2018-117R, adopting the “Parking Program Framework Plan” as a guide for the development of a comprehensive and strategic approach to managing parking in and around Downtown San Marcos, identifying key program objectives, draft program vision and mission statements, a set of guiding principles, as well as a set of primary action items to guide program evolution and development; authorizing the City Manager to carry out parking management planning and operational activities on behalf of the City; and declaring an effective date.

Meeting date: June 19, 2018

Department: CMO - Kevin Burke, Economic Development & Downtown Administrator

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

Fiscal Note:

City Council Strategic Initiative:
City Facilities
Choose an item.
Choose an item.

Comprehensive Plan Element(s):
☑ Economic Development - Diverse Local Economic Environment
☐ Environment & Resource Protection - Choose an item.
☑ Land Use - High Density Mixed Use Dev. & Infrastructure in the Activity Nodes & Intesity Zones (supporting walkability and integrated transit corridors)
☐ Neighborhoods & Housing - Choose an item.
☑ Parks, Public Spaces & Facilities - Well maintained public facilities that meet needs of our community
Transportation - Multimodal transportaion network to improve accessibility and mobility, minimize congestion and reduce pollution

☐ Not Applicable

Master Plan:
Downtown Master Plan

Background Information:
In June of 2016, the City of San Marcos engaged Kimley-Horn and Associates (Kimley-Horn) to provide on-call consulting services related to the development of a Parking Program Implementation Plan along with specific technical memoranda on key topics such as mobile license plate recognition technology, transportation demand management (TDM), management and organizational structure, etc.

On May 15, 2018, Council held a Work Session with Kimley-Horn to review the consultants recommended parking organization and staffing plan, as well as a Draft Parking Program Framework Plan. The purpose of this agenda item is to adopt the Parking Program Framework Plan as a working document and a guide for the development of a comprehensive and strategic approach to managing parking in and around Downtown San Marcos

This "Parking Program Framework Plan" provides a high-level program overview for the development of a comprehensive and strategic approach to managing parking in the downtown area of San Marcos, TX. It also identifies key program objectives, recommended program vision and mission statements, a set of program "guiding principles" as well as a set of primary action items to guide program evolution and development.

This Parking Program Framework Plan is intended to be a guide for decision makers on topics such as governance, customer service, planning, technology, enforcement, as well as parking facility and systems management. Specific objectives include providing strategies and tools to:

- Identify governance and management structures that will work best for San Marcos that will also contribute to the successful implementation of other recommendations
- Improve public perceptions of parking within the study area
- Position parking as a contributor to continued redevelopment and economic expansion of Downtown
- Provide recommendations on establishing positive and proactive customer relations
- Explore the range of parking management strategies that can be used by the City’s management staff to encourage on-street parking turnover and promote increased community vitality without unduly penalizing infrequent violators
- Identify management strategies and technologies that can improve the customer experience, while also controlling operating costs and enhancing system financial performance.
- Position parking management within the larger “mobility management” context in a way that promotes a balanced system of parking and multi-modal transportation alternatives.
Council Committee, Board/Commission Action:
None.

Alternatives:
N/A

Recommendation:
Staff recommends approval.
RESOLUTION NO. 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE “PARKING PROGRAM FRAMEWORK PLAN” AS A GUIDE FOR THE DEVELOPMENT OF A COMPREHENSIVE AND STRATEGIC APPROACH TO MANAGING PARKING IN AND AROUND DOWNTOWN SAN MARCOS, IDENTIFYING KEY PROGRAM OBJECTIVES, DRAFT PROGRAM VISION AND MISSION STATEMENTS, A SET OF GUIDING PRINCIPLES, AS WELL AS A SET OF PRIMARY ACTION ITEMS TO GUIDE PROGRAM EVOLUTION AND DEVELOPMENT; AUTHORIZING THE CITY MANAGER TO CARRY OUT PARKING MANAGEMENT PLANNING AND OPERATIONAL ACTIVITIES 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 “Parking Program Framework Plan” for the City of San Marcos is approved.

PART 2. The City Manager is authorized to carry out parking management planning and operational activities in accordance with the Plan, and shall make changes and modifications to the Parking Program Framework Plan as necessary to achieve key program objectives and organizational goals.

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

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Parking Program Framework Plan

I. Executive Summary

Introduction

In June of 2016, the City of San Marcos engaged Kimley-Horn and Associates (Kimley-Horn) to provide on-call consulting services related to the development of a Parking Program Implementation Plan along with specific technical memoranda on key topics such as mobile license plate recognition technology, transportation demand management (TDM), management and organizational structure, etc.

This "Parking Program Framework Plan" provides a high-level program overview for the development of a comprehensive and strategic approach to managing parking in the downtown area of San Marcos, TX. It also identifies key program objectives, recommended program vision and mission statements, a set of program "guiding principles" as well as a set of primary action items to guide program evolution and development.

In addition, several appendices are provided which will eventually evolve into a robust "parking management toolkit" to aid the program manager in the implementation of this framework plan. This toolkit will include a wide range of resources including an extensive set of parking management best practices, white papers on technical topics, sample manuals, checklists, policies/procedures, maintenance manuals, etc.

Primary Objectives

This Parking Program Framework Plan is intended to be a guide for decision makers on topics such as governance, customer service, planning, technology, enforcement, as well as parking facility and systems management. Specific objectives include providing strategies and tools to:

- Identify governance and management structures that will work best for San Marcos that will also contribute to the successful implementation of other recommendations
- Improve public perceptions of parking within the study area
- Position parking as a contributor to continued redevelopment and economic expansion of Downtown
- Provide recommendations on establishing positive and proactive customer relations
- Explore the range of parking management strategies that can be used by the City’s management staff to encourage on-street parking turnover and promote increased community vitality without unduly penalizing infrequent violators
- Identify management strategies and technologies that can improve the customer experience, while also controlling operating costs and enhancing system financial performance.
- Position parking management within the larger “mobility management” context in a way that promotes a balanced system of parking and multi-modal transportation alternatives.
Key Findings

The City of San Marcos is developing a comprehensive parking management program as a strategy to support on-going community and economic development initiatives. This report provides a roadmap for the development of a comprehensive and strategic approach to parking and mobility management in San Marcos. Such a program will require the following ten elements:

1. A Sense of Purpose and Direction relative to Parking and Transportation Policy – This Parking Program Framework Plan should complement and build on the downtown planning and street network improvements recently implemented by the City.

2. Program Organization and a Strong and Capable Program Leader – The recruitment and hiring of a parking manager with experience managing a municipal parking program. A separate report entitled: "Recommended Parking Organization and Staffing Plan” outlines several parking program management and organizational models and recommends a preferred alternative for the City of San Marcos. This report also discusses parking system operating methodologies. Program organization is a foundational element and a vital initial step to creating an effective and sustainable parking management program. There is also an opportunity to leverage parking management as a tool to support economic development (see Appendices).

3. A Strong Customer Service Orientation – One of the key leadership elements that needs to be infused into the program from the beginning is a strong customer service focus. This applies not only to staff training but also to facilities maintenance and investments in new technologies. Parking can play a key role in improving the perception and the experience of Downtown overall. Collaboration and partnerships with the City of San Marcos and the downtown Main Street program will be an important component of this initiative.

4. A Focus on “Mastering the Fundamentals” of Parking Management – This focus area is about gaining an in-depth understanding of the many complex and challenging aspects that are somewhat unique to parking. Appendix XX - 20 Characteristics of Effective Parking Management, provides a strong framework built around specific program categories. This resource provides the basis for a comprehensive program development approach. Between this chapter and the wealth of tools provided in the Appendices, there are numerous program elements, both short and long-term, that can transform the San Marcos parking program into one of the best small municipal programs in the country.

5. Dedicated Funding - Establish parking as a separate “enterprise fund” and dedicate all parking related revenue streams to support the enterprise fund.

6. Active Private Parking Resources - Better leverage under-utilized private parking resources in the downtown area through creative opportunities to develop shared parking resources, provide high-quality parking management services and revenue sharing arrangements with large local businesses and institutions.

7. Investment in New Technology – Leveraging new technology will be a critical element in achieving many of the stated goals of this project including:
   a. Enhanced customer friendly programs and services
   b. Improved operational efficiency
c. Enhanced system financial performance

d. Improved system management

8. Regular Maintenance - Development of a strong parking maintenance program with regularly scheduled facility condition appraisals, the creation of parking facility maintenance reserves and a prioritized facility restoration and maintenance schedule. While basic maintenance of parking areas is always important, this element will not be a major program focus for San Marcos, until such time as structured parking is developed.

9. Big-Picture Mobility - Over time, expand the parking program’s mission to adopt a broader “mobility management” perspective. Development of transportation demand management strategies, promotion of transportation alternatives, support for active transportation and the development of complementary parking policies will be important in this area.

10. Parking Planning - Development of a robust and effective parking planning function or at a minimum, the inclusion of parking management in larger community planning initiatives and ongoing discussions relative to new or proposed development projects is highly recommended. Also work closely with City Planning to address parking requirements (zoning code), shared parking and ADA parking issues.

Vision/Mission/Guiding Principles

Beginning on page 7 this report provides recommended program vision and mission statements, followed by a recommended set of program guiding principles.

Primary Action Items

Beginning on page 13 there is a list of recommended “Primary Action Items.” Each primary action item is formatted to provide an action item description, intended result, the entity or agency primarily responsible for implementation, key community partners, a recommended timeframe for implementation and supportive documents provided to assist with implementation.

Below is summary listing of these key recommendations:

Primary Action Item #1: Create & Empower Parking Management Organization

Adopt new program vision and mission statements and recommended parking program guiding principles. Hire a parking management professional and engage a parking management firm (at least for an initial 3-year term). Create a parking advisory board and begin implementing parking management best practices.

Primary Action Item #2: Establish Parking Benefit District(s)

Create "Parking Benefit Districts“ to encourage support for implementing on-street paid parking by dedicating a percent of net on-street meter revenue back to the districts in which they were generated. An ordinance should be developed to define the specific terms and conditions for the use of these funds and who controls their disbursement.

Primary Action Item #3: Invest in Parking Management Technology

Investment in new on-street and off-street parking technology. Recommended new on-street parking meters can provide the parking program with improved management and system utilization data.
However, simply having the data is not enough. It must be collected, tracked and analyzed for it to be of value from a planning perspective.

**Primary Action Item #4: Manage On-Street Parking More Efficiently**

Improve utilization and turnover of the City's valuable on-street parking spaces for the benefit of the business that depend on them for customer parking. Reduce employee and student abuse of these spaces through the implementation of paid on-street parking.

**Primary Action Item #5: Seek Opportunities to Expand Parking Supply**

Development of mid to long-term surface parking resources. Identify potential sites, or other opportunities, for mid to long-term surface parking lots capable of meeting the needs of downtown employees and longer-term parkers. New surface parking supply will support implementation of on-street paid parking.

**Primary Action Item #6: Connect Parking Management & Economic Development**

Leverage parking as a community and economic development strategy and begin developing a comprehensive parking planning function.

**Primary Action Item #7: Program Branding & Marketing**

Develop a new parking program brand and marketing program including significant on-going community outreach strategies.

**Primary Action Item #8: Develop Staff Parking Management Expertise**

Invest in training and staff development with a goal of mastering the fundamentals of parking system management and operations. Develop a set of parking management data benchmarks (a list of recommended key performance indicators will be provided) and provide city administration with regular updates on program development/management goals and accomplishments.

**Primary Action Item #9: Continuous Improvement in Parking Enforcement**

Assess the current parking enforcement program using the tools provided. Leverage the investment made in mobile license plate recognition technology by enhancing the operational efficiency of the current enforcement program, using the data to support on-going parking planning efforts and improving citation collection ratios over time.

**Primary Action Item #10: Embrace Parking as Mobility Management**

Expand the scope of the parking program over time to be more supportive of alternative modes of transportation and embrace more of a “mobility management” philosophy.

**Primary Action Item #11: Establish Mobility Management Enterprise Fund**

Establish the parking program as a separate enterprise fund and combine all parking related revenue streams into this fund. Develop a parking program financial plan.
In Summary

The development of a strategic vision and a strong, well defined action plan is a critical first step in creating a comprehensive public parking program for the downtown San Marcos area. We applaud the City's recognition of this fact and for making this important investment.

A comprehensive and well-managed parking program can be a significant partner and contributor to advancing the community’s economic development goals as well helping to improve the overall experience of accessing San Marcos’s downtown business district. We are confident with the strong team of City leaders, an engaged and supportive City Manager, City Council and development partners, that the future of Downtown San Marcos is bright indeed.

II. Parking Management Strategies / New Parking Program Implementation Plan

Introduction

There is one element common to every study and every downtown - parking is always a source of frustration and contention. It is amazing how emotional an issue parking can be. This is because it affects people so directly. Think about it – how many other areas involve issues of personal safety/security, finance, convenience, wayfinding, accessibility and customer service? Because parking creates the first and last impression of your community, one question we will address is: How can that “parking experience” best be managed? We’ll get back to that question shortly.

An interesting truism about parking is illustrated in the graphic below.

Figure 1. Parking Triangle

Choose Any Two

INEXPENSIVE

Inexpensive & Convenient Parking, But Not Enough

CONVENIENT

ENOUGH

Inexpensive & Enough Parking, But Not Convenient

Convenient & Enough Parking, But Not Inexpensive

Everyone wants three things when it comes to parking:
1. They want there to be plenty of it
2. They want it to be very convenient and
3. They want it to be inexpensive (and preferably free).

Unfortunately, you can have any two, but not all three. This ushers in the need for a policy decision. If you choose to have inexpensive and convenient parking you will likely not have enough. This option may be acceptable if you want to use the lack of spaces as part of a demand management strategy to encourage the use of transportation alternatives.

If you choose to have inexpensive and enough parking it will not be very convenient. With this choice, you may be adopting a strategy that utilizes less expensive remote parking supported with shuttle operations (at least for employees).

If you choose to have convenient and enough parking, it will not be cheap. This often-preferred approach typically means you have chosen to develop structured parking. The national average cost to construct a surface lot parking ranges from $5,000 to $8,000 per space. Above grade parking structures average between $15,000 - $25,000 per space. Below grade parking can range between 1.5 to 2 times the cost or more of above grade structures dependent upon soil conditions and other factors. Another consideration that is often overlooked is that operating, utility, maintenance and security costs are significantly higher with structured parking.

In urban environments, the choice is most often made to have “convenient and enough” parking. This strategic decision and the significant capital investment it requires, creates the need to assure that these investments are well managed and responsive to the communities they serve. Based on our work evaluating numerous parking systems of various sizes and complexity across the country, Kimley-Horn has identified a set of 20 Characteristics, that when combined into an integrated programmatic approach can provide the basis for a sound and well managed parking system. We’ve found that the twenty characteristics provide a solid foundation for communities who are working to manage parking in a way that balances convenience, availability and cost.

A parking system that has all twenty of these characteristics, as listed at right and discussed in detail below, is well on its way to being in a class apart from the majority of parking systems. The ultimate goals are a system that provides professional management, understands the role it plays in contributing to the larger objectives of the downtown or shopping district and is responsive to the community to which it serves.

Summary

The importance of parking as one of the most visible and often controversial elements of a downtown’s infrastructure is often underestimated. Parking, when well-managed, can be a key component in attracting and supporting new development and is essential to sustaining healthy and vibrant downtowns.
III. “Charting the Right Course” – Program Vision and Mission

Based on our experience with similar sized communities, the Kimley-Horn project team drafted a preliminary set of program goals and guiding principles.

The purpose of these program goals and guiding principles is to establish a strategic framework upon which to build a new parking management plan for the City of San Marcos. Included in this section are the following elements:

- A draft vision statement
- A draft mission statement

The overall parking program recommendations were developed to support this draft program vision / mission and guiding principles.

Draft Vision Statement:

“The San Marcos parking program will strive to develop a superior, customer-oriented parking system, responding to the current and future needs of parkers, including visitors, employees, employers, and property owners through active planning, management, coordination, and communications."

“The San Marcos parking program shall be considered an integral component of the community’s economic development strategies and programs.”

Draft Mission Statement:

“The San Marcos parking program is committed to enhancing the parking experience for the City’s customers and stakeholders. Parking policies, planning, and programs will effectively support the community’s strategic goals and objectives.”
IV. Recommended Guiding Principles

The goal in crafting these guiding principles for the parking program is to develop a comprehensive approach to parking management for the City of San Marcos.

The City of San Marcos that will provide an integrated, action-oriented, and accountable system of parking and access management strategies that supports, facilitates and contributes to a sustainable and vibrant community. These principles are strategic in nature, responsive to the needs of the community and aligned with the larger community’s strategic and economic development goals.

These parking program Guiding Principles will encourage the use of parking and other transportation resources to support and facilitate priority economic development goals and serve prioritized user groups. They will also serve as a foundation for near and long-term decision-making relating to parking management and development in the downtown.

Draft Guiding Principle Categories:

1. Organization/Leadership
2. Community and Economic Development
3. Leveraging Technology
4. Planning /Urban Design
5. Effective Management/Accountability
6. Customer Service Orientation
7. Communications/Branding /Community Education
8. Accountability/Financial Management
9. Integrated Mobility Management
10. Sustainability

A statement better defining each the ten draft guiding principles is provided on the following pages.

Guiding Principle #1 – Organization/Leadership

The parking management program will be “vertically-integrated” with responsibility for:

- Managing on-street parking
- Managing City owned off-street parking
- Coordination with privately owned off-street parking
- Parking enforcement/citation management and adjudication
- Parking planning and development
- Transportation demand management

Consolidating the various parking functions under a single entity will establish a consolidated system that is action-oriented, responsive, and accountable with improved coordination and operating efficiencies.
Recruiting a strong leader is a key element for success. The organization leader must have strong vision and communications skills, specialized parking and planning expertise, and be capable of educating other community leaders, stakeholders and private sector partners on the importance and relevance of a strong parking management organization. Strong general management and financial program development skills are also required.

**Guiding Principle #2 - Community and Economic Development**

The San Marcos parking management system will be guided by community and economic development goals and City Council adopted policy directives that are the result of collaborative processes between Parking program staff, other agencies and involved stakeholders.

The San Marcos parking program will use its resources to promote mixed-use and shared-use parking strategies as well as promoting alternative transportation modes through the creation of incentives, partnerships and programs to attract private investment; this will include reviewing and updating existing city parking requirements, as appropriate.

The San Marcos parking management program will assume a leadership role in developing public policies that support parking and mobility management as a key element of the downtown economic development strategy.

It is envisioned that the San Marcos parking management program will work in partnership with City economic development, the San Marcos Main street program and other entities actively engaged in community and economic development work in the downtown. The addition of City’s new parking management focus in economic development projects will encourage the leveraging of strategic parking development as a significant tool to promote targeted and prioritized development projects in downtown.

**Guiding Principle #3 - Leveraging Technology**

The San Marcos parking management system will be an adopter of technology solutions to enhance customer service and parking information options.

A key goal is to make parking less of an impediment to visiting the downtown and more of an amenity. Technology will be leveraged to streamline and simplify access to parking and will be a key parking management strategy. Another key technology related goal is to enhance the efficiency and effectiveness of parking management staff and programs.

**Guiding Principle #4 - Planning / Visioning/ Policy/ Urban Design**

The San Marcos parking management system shall have an active and comprehensive planning function.

The San Marcos parking management system will be included in all strategic development and transportation planning efforts. The parking management system will work with City planning staff to review and evaluate parking zoning requirements, the development of parking design standards that promote good urban design principles related to parking structures and mixed-use projects, and the creation of transit oriented development parking standards.

Effective parking planning will mean an improved understanding of parking supply/demand conditions on an on-going basis, and ultimately the development of parking infrastructure that will enhance and better support the community strategic goals and urban design.

The vision of an enhanced planning and policy development function will be pursued on multiple levels.
Parking management strategies and programs should support and compliment other access modes as a means to better facilitate the accessibility and user-friendliness of downtown San Marcos as a preferred regional destination. Resources shall be effectively planned and managed to promote and support multiple access modes into and around the downtown. Primary access modes include automobile, transit, bike/motorcycle and pedestrian users.

Well-defined parking facility design criteria, parking related streetscape enhancements and effective integration of signage and wayfinding elements are all areas that this principle will promote. Parking management will work toward developing a parking system that continues to be self-supporting and sets aside funds for maintenance reserves and future capital asset funding.

**Guiding Principle #5 - Effective Parking Management/Accountability**

The San Marcos parking management system will strive to be a forward thinking, “best-in-class” parking program.

The San Marcos parking management system should anticipate future patron needs in the context of community and economic development and other planning initiatives and seek to integrate supportive parking and multi-modal access strategies as appropriate.

Evaluation of other parking management best practices and new technologies should occur on an ongoing basis. Effective facility maintenance, infrastructure reinvestment and other system management fundamentals will be routinely addressed. Emphasis will be placed on enhancing parking facility appearance, maintenance, safety and security, regardless of facility ownership. The parking management system will promote standards to encourage comprehensive and pro-active facility maintenance and security plans.

Facility maintenance reserves and other maintenance best practices will be encouraged in the City-owned facilities. Publicly available parking facilities marketed through the San Marcos parking management system will agree to a community developed set of parking facility standards. Participating facilities will be routinely monitored.

Parking facilities will incorporate public art and creative level identification/theming to enhance the parking experience for their patrons and make parking facilities more navigable and inviting.

**Guiding Principle #6 – Customer Service Orientation**

Parking will promote the City of San Marcos as a desirable destination for workers, businesses, shopping, dining, and recreation by making parking a positive element of the overall community experience.

The San Marcos parking management system will strive to develop and coordinate private and publicly owned parking facilities that are clean, convenient and safe.

Parking enforcement staff will present a friendly and professional appearance and receive on-going customer service and community ambassador training.

Ongoing goals of the parking management organization will include: Responsiveness to community needs, openness to fresh ideas and active participation in community planning and events.

One major goal of the San Marcos parking management system is to create a parking program that will be easy for the visitor to understand and to access. This will be accomplished through the use of common branding and marketing, an integrated signage plan, validation programs, a web-based information clearing house, special events programs, etc.
Management of the on-street parking system will be enhanced over time through investments in new technology and more customer friendly parking enforcement policies.

The San Marcos parking management system should aim high and strive to achieve a Best-In-Class parking program. All aspects of the City parking should reflect an understanding of what the customer desires in terms of a positive and memorable experience. After a few years, it is recommended that the San Marcos Parking program work toward achieving "accreditation" through the International Parking Institute's "Accredited Parking Organization" (APO) program (more information on the IPI's APO program will be provided).

Special programs to address retail enhancement initiatives, shared-use parking, employee parking, special/large events parking, etc. will be developed. These programs will be developed in a collaborative manner and designed to support larger community goals and objectives.

**Guiding Principle #7 – Communications/Branding/Marketing and Community Education**

Parked management programs and facilities will be developed to function as a positive, marketable asset for the City of San Marcos.

Parked management strategies and programs will be cross-marketed to promote the City as a unique and visitor-friendly regional destination. Parking availability shall be well publicized to enhance the perception of parking as a positive element of the community experience. Reinvestment of parking resources back into the downtown will be promoted. The San Marcos parking management system will develop an effective branding program.

In addition to web-based information, the San Marcos parking management system will develop educational materials on topics such as: parking development trends, parking safety tips, etc. The organization will also promote discussion with parking facility owners/operators on topics such as facility condition assessments, maintenance program development, parking management best practices, etc.

City parking programs and information shall be well promoted and marketed. The San Marcos parking management system will work closely with the San Marcos Downtown Association, and the City’s Economic Development department and other community agencies/stakeholders to promote, educate and market parking programs.

**Guiding Principle #8 – Accountability / Financial Management**

The parking system will strive, over time, to be financially self-supporting and accountable to stakeholders.

Parking management will work toward developing a parking system that is self-supporting and sets aside funds for maintenance reserves and future capital asset funding.

By aligning approved parking revenue streams from on-street, off-street, enforcement, (and potentially special assessment fees and fee-in-lieu programs), it is possible to develop a parking system that self-funds all operating and maintenance expenses, facility maintenance reserves, planning studies and future capital program allocations. A consolidated parking revenue and expense statement should be developed to document all parking related income streams and expenditures to give a true accounting of parking finances.
**Guiding Principle #9 - Integrated Mobility Management**

The San Marcos parking management system will support a “Park Once” philosophy and a balance of travel modes, including bus, vehicular, bicycle and pedestrian, to meet community-wide access goals. Parking strategies and initiatives will be coordinated and aligned with the San Marcos Land Use and Transportation Plans.

The parking program will be a supporter and potentially a funding partner for a variety of transportation demand management programs and transportation alternatives that promote improved community access and a more sustainable parking and transportation program.

**Guiding Principle #10 - Sustainability**

Initiatives to promote more sustainable and efficient operations will be actively pursued.

While initial program funding may have to come from City general funds for program staffing and initial capital equipment acquisitions, implementation of on-street paid parking, if pursued, will provide the program with a new source of revenue capable of providing a sustainable funding source to get the new program up and running.

A more comprehensive discussion of the "20 Characteristics of Effective Parking Programs" can be found in Appendix XX.
V. Primary Action Items

Introduction

The following actions are necessary first steps toward developing an enhanced parking program for the City of San Marcos. These initial steps are needed to establish the new management structure and to begin to upgrade the systems and staff capabilities needed to achieve the goals of providing a more customer focused, sustainable and self-supported parking program for the community. This required investment is needed to provide the parking program with the tools needed to effectively manage the system. These initial steps will also support the primary goals of enhancing customer services and economic development by making downtown more appealing to businesses wishing to relocate or to remain downtown. All the stakeholder feedback to date agrees that an effective public parking system is an important element in the revitalization of Downtown San Marcos.

Many of the recommendations and concepts presented in the Parking Program Framework Plan may be unfamiliar to some readers and may require more detail to be completely understood. In an attempt to keep the main report document as concise as possible, we have provided a series of Appendices to provide more background on some topics, including tools to aid in program implementation such as sample agreements, sample manuals, supporting articles and whitepapers, policy recommendations, process checklists, etc. At relevant points within the strategic plan, notes are provided to refer the reader to a specific appendix item. A discussion of each of the Primary Action Items follows.
Primary Action Item #1: Create & Empower Parking Management Organization

Adopt new program vision and mission statements and recommended parking program guiding principles. Hire a parking management professional and engage a parking management firm (at least for an initial 3-year term). Create a parking advisory board and begin implementing parking management best practices.

- This report identified the lack of well-defined vision and mission statements and related program “Guiding Principles” relative to parking as a weakness and provides recommended vision and mission statements as well as a comprehensive set of guiding principles as the basis of a new program strategic framework.
- It is recommended that the City hire a new Parking Manager and that this individual work collaboratively across City departments and a newly-formed Parking Advisory Board to review and refine these documents as the basis of new parking program strategic plan.
- A public review process including the City management, San Marcos Main Street Program, and other key stakeholder groups is recommended to obtain additional input and feedback and to increase public buy-in to the new strategic direction.
- Ultimately, formal adoption by the City Council is recommended.
- To further promote program development, a document containing an extensive collection of Parking Management Best Practices and large set of appendices/parking management toolkit has been provided as part of this study. It is recommended that these documents be used as resources to identify additional program enhancements going forward.

Primary Responsibility:
- New Parking Manager and City Economic Development Administrator

Key Partners:
- Related City Departments, new Parking Advisory Board

Timeframe:
- Complete by ____

Supportive Documents/Tools Provided:
- To be completed.
Primary Action Item #2: Establish Parking Benefit District(s)

Create "Parking Benefit Districts" to encourage support for implementing on-street paid parking by dedicating a percent of net on-street meter revenue back to the districts in which they were generated. An ordinance should be developed to define the specific terms and conditions for the use of these funds and who controls their disbursement.

- Case study examples of parking benefit districts from other municipalities will be provided
- A sample parking benefit district ordinance will be provided
- Sample parking benefit district management structures will be provided
- Recommended revenue allocation strategies will be provided.

**Primary Responsibility:**
- New Parking Manager and City Economic Development Administrator

**Key Partners:**
- City Finance Department

**Timeframe:**
- On-Going. Recommend attendance to the 2018 IPI Conference & Expo in Orlando, FL

**Supportive Documents/Tools Provided:**
- To be completed.
Primary Action Item #3: Invest in Parking Management Technology

Investment in new on-street and off-street parking technology.

- Recommended new on-street parking meters can provide the parking program with improved management and system utilization data. However, simply having the data is not enough. It must be collected, tracked and analyzed for it to be of value from a planning perspective.
- Recommended parking planning activities include: on-going monitoring of parking supply/demand and land use data on a facility/lot specific basis. Documentation of lot/facility utilization on a regular periodic basis will allow the parking program to better manage existing resources as well as plan for future parking needs.
- Beyond parking data collection and analysis, the on-going assessment of potential long-term parking development sites, the creation of a parking lot and structure design guidelines and the development of a parking specific capital projects list are all parking specific planning efforts that are expected from an effective parking program.
- Link parking planning to larger community and economic development initiatives.
- Parking and transportation are important support systems that are most effective when specific programs, policies and philosophies are aligned with a larger downtown master plan. Incorporating this Parking Strategic Plan as an integral component of the recently developed San Marcos Comprehensive Plan and Transportation Plan should be pursued.
- Review Appendix XX - A white paper on the topic of “Parking as an Economic Development Strategy” for more specifics.
- Review Appendix XX - For example guidelines for using parking as an economic development strategy.

Primary Responsibility:

- New Parking Manager and City Economic Development Administrator

Key Partners:

- City Planning Department, San Marcos Main Street Program., New Parking Advisory Board

Timeframe:

- Develop a list of prioritized parking planning action items by _____.

Supportive Documents/Tools Provided:

- To be completed.
Primary Action Item #4: Manage On-Street Parking More Efficiently

Improve utilization and turnover of the City's valuable on-street parking spaces for the benefit of the business that depend on them for customer parking. Reduce employee and student abuse of these spaces through the implementation of paid on-street parking.

- Develop a strong and consistent parking program identity and brand, which includes visual identity, program mission, vision, core values, investment in new communication pieces, collateral, etc.
- Develop a strategic communication plan designed to improve overall parking program communications with its wide range of community stakeholders (See recommended strategic communications plan in this report). Community outreach cannot be a one-time investment. Stakeholders and citizens should be continually engaged and asked for their feedback on major policy and programmatic decisions to help rebuild trust and "show" that the City is taking citizen feedback into account.
- Partner with existing organizations, like San Marcos Main Street Program on marketing campaigns to help combat the perception that downtown is vacant, unsafe and/or underutilized.
- Develop consistent standards for parking program branded facility signage to help guide customers to parking options.
- Train staff and parking program spokespeople on customer-focused internal and external communications procedures.
- Develop an enhanced parking program website. Keep parking information current.
- Leverage social media to improve community feedback and information dissemination.
- Consider the development of Annual or Bi-Annual Parking Report. An example of a parking program annual report is provided in Appendix 37 and an annual report template is provided in Appendix x.
- A wide range of potential program marketing and branding strategies from around the country is included in Appendix x.

Primary Responsibility:
- New Parking Manager and City Economic Development Administrator

Key Partners:
- City Communication Department, City IT Department, San Marcos Main Street Program

Timeframe:
- See Appendix XX - Parking Program Strategic Communications Plan, for guidance on timing.

Supportive Documents/Tools Provided:
- To be completed.
Primary Action Item #5: Seek Opportunities to Expand Parking Supply

Development of mid to long-term surface parking resources. Identify potential sites, or other opportunities, for mid to long-term surface parking lots capable of meeting the needs of downtown employees and longer-term parkers. New surface parking supply will support implementation of on-street paid parking. Future parking lots should have sufficient footprint to accommodate a parking structure (124'W x 280'L). Identify preferred parking access and revenue control system for lot management. Land acquisition, partnerships, or agreements should be factored into the funding plan for the Parking Districts and considered part of the program’s core responsibilities.

- One of the primary strategies to make downtown parking more visitor friendly, improve operational efficiencies and enhance parking revenues is to upgrade the parking system’s technologies.
- Developing a parking management technology master plan to provide a web-based parking management platform that is capable of providing the latest customer services and revenue/access control functionality is highly recommended. Appendix XX provides a parking technology overview and a peer cities review for more detailed information related to current technologies and specific management applications in similar municipalities with more advanced parking management programs.
- Implementing paid on-street parking is a well-documented best practice and would help the City address several issues identified in the course of this study. However, on-street paid parking is somewhat controversial and if pursued will require significant additional public outreach and planning. It has been documented in many cities across the country that implementing new “smart parking meters” (either multi-space or single-space credit card enabled meters) improves customer parking availability on-street through increased parking turnover and provides an important funding source to pay for future parking system capabilities in terms of staffing, technology (such as mobile LPR enforcement systems, etc.) as well as funding for parking structure maintenance and repair work.
- Pay-by Cell Phone/Mobile Apps are additional payment options that the City should consider due to the very tangible customer benefits that this option provides.
- The Parking program should develop an RFP process for new parking technology and potentially on-street meter acquisition as a first step to get a range of parking management functions and new customer service offerings. This should be followed by a thorough analysis of what the City can afford in terms of its initial investment and based on the projected revenue increases, lay out a defined plan to continue system upgrades going forward. Consideration should also be given to alternative purchasing strategies such as equipment leasing or other special offers such as lease-to-own or partnerships where by equipment is provided at no or reduced cost based on a sharing of system revenues.
- The latest on-street technology includes features that enable improved operational efficiencies by reducing the need for daily meter collections (just-in-time-collections), reduced number of meters (if multi-space meters are chosen), enforcement route optimization based on improved management data from the meters, etc. Investment in mobile license plate recognition technology for parking enforcement is also highly recommended.
- The introduction of this new technology will also come with some increased costs related to communications fees, credit card and cell phone transaction charges, etc. To help defray these new system costs, setting initial on-street parking rates to $1.00/hour is recommended. This
move will also help keep on-street and off-street rates in proper alignment (on-street, short-
term parking rates should be higher than off-street rates). A white paper on the latest on-street
parking technologies is provided as a resource to support this action item.

**Primary Responsibility:**
- New Parking Manager and City Economic Development Administrator

**Key Partners:**
- City Finance, IT and Purchasing Departments, Parking Advisory Board, City Manager, City Council

**Timeframe:**
- New Technology Implementation Strategy Completed by ____
- Parking Technology RFP issued by ____
- Implementation by 3rd ____

**Supportive Documents/Tools Provided:**
- To be completed.
Primary Action Item #6: Connect Parking Management & Economic Development

Leverage parking as a community and economic development strategy and begin developing a comprehensive parking planning function.

- Maintaining clean, safe and attractive facilities is a core function of any parking program and has a significant impact on the perception of the program and the community it serves.
- A strategy of addressing the “First 30 Feet” of each parking facility is a recommended first step in showing some immediate progress. Key elements of the “First 30 Feet” approach include:
  - Cleaning and painting
  - Signage review/consolidation
  - Adding “Welcome” and “Thank You” messaging
  - Lighting
- An important aspect of the City parking program will be a well-defined and effective long-term parking facility maintenance strategy. The development of an on-going and proactive facility condition appraisal process and prioritized facility rehabilitation program should be a high priority.
- Another important dimension of a parking facilities maintenance program is to create a specific “maintenance reserve fund” program. Parking facilities are made of concrete and concrete deteriorates over time requiring significant investments in on-going maintenance and periodic restoration. Deferring maintenance will only cost the system more over time and without an effective program of routine maintenance and the setting aside of dedicated maintenance reserve funds; the likelihood of serious deferred maintenance leading to even higher maintenance and facility restoration costs is much more likely. Typical parking facility maintenance reserves are in the $50.00 - $75.00 per space per year range.
- The maintenance plan should be in conformance with National Parking Association guidelines. A recommended parking facility maintenance scope and schedule are provided as Appendices XX and XX.

Primary Responsibility:
- New Parking Manager and City Economic Development Administrator

Key Partners:
- City Engineering, Public Works and Finance Departments

Timeframe:
- Develop a comprehensive facility maintenance plan by ____
- Conduct facility condition appraisals as noted above.
- Develop a policy regarding maintenance reserves by ____

Supportive Documents/Tools Provided:
- To be completed.
Primary Action Item #7: Program Branding & Marketing

Develop a new parking program brand and marketing program including significant on-going community outreach strategies.

- Develop a strong and consistent parking program identity and brand, which includes visual identity, program mission, vision, core values, investment in new communication pieces, collateral, etc.

- Develop a strategic communication plan designed to improve overall parking program communications with its wide range of community stakeholders (See recommended strategic communications plan in this report). Community outreach cannot be a one-time investment. Stakeholders and citizens should be continually engaged and asked for their feedback on major policy and programmatic decisions to help build trust and "show" that the City is taking citizen feedback into account.

- Partner with existing organizations, like San Marcos Main Street Program on marketing campaigns to help combat the perception that downtown is vacant, unsafe and/or underutilized.

- Develop consistent standards for parking program branded facility signage to help guide customers to parking options.

- Train staff and parking program spokespeople on customer-focused internal and external communications procedures.

- Develop an enhanced parking program website. Keep parking information current.

- Leverage social media to improve community feedback and information dissemination.

- Consider the development of Annual or Bi-Annual Parking Report. An example of a parking program annual report is provided in Appendix XX and an annual report template is provided in Appendix XX.

- A wide range of potential program marketing and branding strategies from around the country is included in Appendix XX.

**Primary Responsibility:**

- New Parking Manager and City Economic Development Administrator

**Key Partners:**

- City Communication Department, City IT Department, San Marcos Main Street Program

**Timeframe:**

Longer-Term Strategy

**Supportive Documents/Tools Provided:**
Primary Action Item #8: Develop Staff Parking Management Expertise

Invest in training and staff development with a goal of mastering the fundamentals of parking system management and operations. Develop a set of parking management data benchmarks (a list of recommended key performance indicators will be provided) and provide city administration with regular updates on program development/management goals and accomplishments.

- The San Marcos Parking System is being developed from the ground up. This provides exciting opportunities avoid many common mistakes made by parking programs that have evolved over time.
- A significant investment in staff training is recommended.
- It is highly recommended that the new parking manager join the International Parking Institute (IPI) and attend the annual IPI conference. The 2018 conference will be in Orlando, Florida. It is also recommended that the new parking manager join a state or regional parking association for developing relationships with her local peers. Involvement in the International Downtown Association (IDA) is also recommended as this can help ensure that the new parking manager is well acquainted with not only parking technical issues, but also downtown management and development strategies.
- A program offered by the International Parking Institute is called the Accredited Parking Organization or APO. The APO program provides a structured program assessment and accreditation. Since the San Marcos program is just getting started, it may take a few years to achieve accreditation, but the program structure an assessment matrix is a valuable tool and process in and of itself.
- Another cost effective and highly valuable training opportunity would be to schedule a series of visits with the parking advisory panelists that participated in this parking strategic plan. Each of them has offered to provide a personal tour of their systems and communities and it would build a strong peer group for the new parking manager to call upon for years to come.
- Strategically invest in the use of consultants for technical expertise especially in the areas of new technology specification and more complex issues such as zoning and parking requirements reform and new facility planning and development.

**Primary Responsibility:**
- New Parking Manager and City Economic Development Administrator

**Key Partners:**
- City HR and Training Departments

**Timeframe:**
- Conduct reviews by ____

**Supportive Documents/Tools Provided:**
- To be added
Primary Action Item #9: Continuous Improvement in Parking Enforcement

Assess the current parking enforcement program using the tools provided. Leverage the investment made in mobile license plate recognition technology by enhancing the operational efficiency of the current enforcement program, using the data to support on-going parking planning efforts and improving citation collection ratios over time.

- To assist in a more thorough review and evaluation of the parking enforcement program, Kimley-Horn has provided the City with two significant tools to aid in this process:
  - The first is a parking enforcement program audit checklist (Appendix XX)
  - The second is a sample parking enforcement officer manual (Appendix XX)
- These tools should be reviewed and customized to better define and enhance the current parking enforcement program.

**Primary Responsibility:**
- New Parking Manager and City Economic Development Administrator

**Key Partners:**
- City Police Department, IT Department

**Timeframe:**
- Conduct reviews by ___

**Supportive Documents/Tools Provided:**
- To be added
Primary Action Item #10: Embrace Parking as Mobility Management

Expand the scope of the parking program over time to be more supportive of alternative modes of transportation and embrace more of a “mobility management” philosophy.

- Downtown would benefit from increased investment in alternative modes of transportation.
- The trend in the industry is to embrace a more holistic and integrated approach to parking and transportation – an “Integrated Mobility Management Strategy”.
- Another important dimension to this recommendation is to be aware of the need to balance both the supply and demand sides of the parking and access equation. Building public parking is extremely expensive and leveraging alternative transportation and Transportation Demand Management (TDM) strategies can reduce the need for additional parking over time.
- TDM program elements support the Guiding Principle for Sustainability and a more balanced parking and transportation program.
- Other strategies in this area that are being supported by parking systems around the country include: community bikeshare programs, carsharing programs such as Zip-Car, bike racks and lockers, and traditional TDM strategies such as park and rides, preferential parking for car and vanpools, telecommuting, etc.
- It is recognized that this is not the immediate priority for the City of San Marcos, but it is an important element and should be incorporated into the long-term program development strategy.

Primary Responsibility:
- New Parking Manager and City Economic Development Administrator

Key Partners:
- Transit Agency, Bike Advocate Programs, Regional Transportation Association, City Planning

Timeframe:
- Longer-Term Strategy

Supportive Documents/Tools Provided:
- To be added
Primary Action Item #11: Establish Mobility Management Enterprise Fund

Establish the parking program as a separate enterprise fund and combine all parking related revenue streams into this fund. Develop a parking program financial plan.

- One of the big advantages that the City has the opportunity to leverage is the nearly “blank slate” that currently exists related to a parking program organizational and financial structuring.
- By aligning all related parking revenue streams into one parking enterprise fund, the City has the potential to achieve one of the most important goals of any parking program – the ability to create, over time, a truly self-supporting enterprise that can cover all its own operating and maintenance funding, the creation of parking maintenance reserves and ultimately the funding of future parking facility capital development projects.
- Parking revenues from the following sources should contribute to the parking enterprise fund:
  - Off-street parking revenues
  - On-street parking revenues
  - Parking enforcement revenues
  - Special event parking revenues
  - Parking management fees for management of private facilities (if applicable)
  - Future parking fee-in-lieu revenues (if applicable)
  - Future parking assessment district revenues (if applicable)
- Policies should be developed to define the appropriate use of parking revenues. Generally speaking, the following priorities are recommended related to the approved use of parking revenues:
  - Operations and maintenance
  - New technology acquisition
  - Parking facility maintenance reserves
  - TDM and mobility management support initiatives
  - New facility capital investments
- Development of a program “financial plan” is recommended. See provided template.

Primary Responsibility:
- New Parking Manager and City Economic Development Administrator

Key Partners:
- City Finance and Legal Departments

Timeframe:
- Establishment of the financial structure of the department should be an early priority.

Supportive Documents/Tools Provided:
- To be added
VI. Appendices and Parking Management Toolbox

The following set of appendices provides a range of documents designed to support and augment the contents of this parking management framework plan. The content includes sample operations manuals, annual report templates, white papers on technical topics, an extensive Parking Management Best Practices document, audit checklists, etc.

One of the major themes identified in the Strategic Parking Management Plan is the need to “master the fundamentals” of managing a municipal parking program. To this end, we have provided several documents that provide a comprehensive overview of the various elements that must be addressed to have a successful program. Appendix XX, entitled: “The Characteristics of Effective Parking Programs” provides a comprehensive program approach that can be used as a framework for program development.

We have also provided several very specific “tools” to help advance the San Marcos parking program in a number of operations focused areas. These tools range from a sample parking enforcement manual to a tool designed to critique and audit the existing enforcement program. Another example of an “operations focused tool” is a very detailed parking facility operations manual template. In every case, the goal of providing these sample documents is for the San Marcos parking program to use them as a basis and guide for creating similar documents specific to their operation.

Finally, in anticipation that the City will authorize, recruit and hire a new Parking Manager we have included several “white papers” on a number of parking planning and management topics that will hopefully put the new manager on the path to success. Examples include: security, valet parking, in-lieu fees, tax increment financing, successful approaches to evaluating parking rates, etc. Another interesting and valuable appendix item is the Accredited Parking Organization program (APO) developed by the International Parking Institute. In several years, we strongly encourage the program to pursue accreditation through the IPI program. In the meantime, the APO manual and criteria matrix are another good source of program development information.

It is our hope that these documents will provide valuable background information and practical tools to help advance and improve the San Marcos parking program as staff work to implement the primary recommendations contained in the Strategic Parking Management Plan.

Note: the full set of Appendices & Parking Management Tool Kit Items are still being assembled. The list below provides a sampling of the items to be provided.

Appendix x 20 Characteristics of Effective Parking Management - White Paper
Appendix x Annual Parking Report Template
Appendix x International Parking Institute - APO Program Manual
Appendix x International Parking Institute - APO Matrix Final 2016
Appendix x Developing a Retail Parking Support Strategy
Appendix x Generic Parking Facility Rules and Regulations
Appendix x Guidelines for Using Parking as an Economic Development Strategy
Appendix x  Missoula Parking Commission Annual Report
Appendix x  New Parking Manager Integration-Action Plan
Appendix x  Parking as an Economic Development Strategy - White Paper
Appendix x  Parking Enforcement Program Audit Checklist
Appendix x  Sample Parking Enforcement Operations Manual
Appendix x  Parking Facility Maintenance Manual
Appendix x  Parking Facility Maintenance Schedule
Appendix x  Parking Garage Security Whitepaper
Appendix x  Parking In-Lieu Fees Whitepaper
Appendix x  Parking Meter Technology Whitepaper
Appendix x  Sample Parking Administrator Position Descriptions
Appendix x  Sample Parking Garage Operations Manual
Appendix x  Tax Increment Financing Whitepaper
Appendix x  Downtown Parking Districts and Economic Development - Case Studies in Innovative Parking Management
Appendix x  Consolidated System Financial Report
Appendix x  LPR/Park+ White Paper
Appendix x  IPI Emergency Preparedness Manual
Appendix x  Recommended Parking Program Benchmarks
Appendix x  Parking Structure Design Guidelines
Appendix x  Parking Management and Design Best Practices
Appendix x  Residential Parking Permit Programs White Paper
Appendix x  Smart Parking Policies and TDM Strategies
Appendix x  Valet Parking Program Development
Appendix x  Kimley-Horn TDM Quick Guide
Appendix x  "New Canvas" Art in Parking Article
Appendix x  Strategic Communications Plan
Appendix x  Parking System Organizational Options - White Paper
Appendix x  Poetry in Parking - Creativity in Parking Management
Appendix x  Parking System - Financial Plan Template
Appendix x  2018 Recommended Reading List for Parking Professionals
Introductions

- L. Dennis Burns, CAPP
  - Vice President / Senior Practice Builder
  - Kimley-Horn and Associates

- Anne Guest
  - Director (Retired)
  - Missoula Parking Commission
Presentation Overview

- Parking Implementation Plan Overview
- Recommended Parking Organization and Staffing Plan
- Parking Program Framework Plan
- Questions/Discussion
Parking Implementation Plan

Overview

- Functioning as a Parking Consulting On-Call
- Building on Parking Initiative Plan
- Focused on Implementation

Project Elements to Date:
- Mobile LPR Spec and RFP (Led to NuPark contract for parking enforcement)
- LPR Privacy Policy Elements
- Transportation Demand Management Information
Parking Implementation Plan

Overview

- Remaining Scope of Work:
  - Conduct analysis of LPR data to update on-street parking utilization and turn over. Use this information to inform recommendations for on-street paid parking implementation.
  - Develop a recommended on-street paid parking implementation plan. Including outreach to Downtown Association, Chamber and other stakeholders.
Recommended Parking Organization and Staffing Plan
Recommended Parking Organization and Staffing Plan

- Primary Organizational Options Evaluated
  - Vertically Integrated City Department Model
  - BID/DDA Contracted Management Model
  - Parking Commission Model
  - Parking Authority Model
  - Professional Services / Outsourced Management Model
  - Hybrid Options
**Recommended Organizational Model**

- Hybrid of Vertically Integrated City Department Model and Professional Services / Outsourced Management Model
  - Professional services model envisions a small, lean City staff.
  - Recognizes that the overall program will be relatively small, reflecting the size of the community and the relative program budget. This option begins small from a staffing perspective, but is scalable over time if needed.
  - Initially a Program Manager, with a limited support staff or even shared support staff is envisioned.
  - Engaging a private parking management firm is recommended at least for an initial 3-year period.
City of San Marcos Parking Implementation Plan

CITY DEPARTMENT

- Parking Manager with lean staff
- Parking Advisory Board
  - 5 – 7 Members
  - Appointed by Council or Mayor
  - Representing:
    - City of San Marcos
    - Hays County
    - Downtown Stakeholders
    - Texas State University

Parking Manager

- Public face of the department
- Program and Policy Development
- Outsourced “Day-to-Day Operations”
  - Contract Administration
    (Private Parking Management Firm)
- Public Outreach
  - Representing:
    - City of San Marcos
    - Hays County
    - Downtown Stakeholders
    - Texas State University

Private Parking Management Firm

- Engaged via Management Agreement
- Day-to-Day Operations
- Operations Plan and Procedures Development
- Advisory Function
- Initial 3-Year Term
Recommended Organizational Model

The primary responsibility of the Program Manager, initially, will be program and policy development and assuming the hiring of a private parking management firm, he/she will provide contract management and administrative services.

This would include such items as:

- Coordinating with other City departments/functions
- Recommending parking rates/fines and other policies
- Reviewing and approving program operational budgets
- Implementing directives from and reporting to the City administration and City Council
- Developing an RFP to hire a private parking management firm
- Working with the private parking management firm to develop standard operating polices/procedures in a variety of areas
**Recommended Organizational Model**

- The outsourced management component recognizes that the City currently lacks parking management expertise. By engaging a private parking management firm the City will receive the following benefits:
  - Helps ensure that the program gets successfully established
  - Provides a base of parking management experience and competence
  - Provides the City with a built-in advisory function during the early years
  - Provides established business practices, tools, forms, policies, procedures, etc. – in essence the private parking management firm can help get all the program operational basics in place more quickly and efficiently than can be done by creating a program from scratch with only internal resources.
  - The private parking management firms will provide a robust set of system reporting options including detailed revenue and expense reports, program budgets, maintenance programs, etc.
Recommended Organizational Model

The San Marcos parking organizational model envisions a Parking Advisory Board made up of 5 to 7 individuals representing different aspects of the community.

Supporting City Staff
- Economic Development
- Planning
- Finance
- Public Works
- Transit

Possible Community Members
- Representative of a large employer
- Property owners / Developers
- Business / Downtown Assoc. leaders
- Representative from the transit agency
- Active transportation advocates
- Texas State University
Parking Program Framework Plan
Parking Program Framework Plan

- Vision / Mission Statements
- Program Guiding Principles
- Primary Action Items
Parking Program Framework Plan

- **Primary Action Items**

- **Primary Action Item #1:** Adopt new program vision and mission statements and recommended parking program guiding principles. Hire a parking management professional and engage a parking management firm (at least for an initial 3-year term). Create a parking advisory board and begin implementing parking management best practices.

- **Primary Action Item #2:** Develop mid to long-term surface parking resources. Identify potential sites, or other opportunities, for surface parking lots capable of meeting the needs of downtown employees and longer-term parkers. Ideally, some new surface parking would be created in advance of implementing on-street paid parking. Future parking lots should have sufficient footprint to accommodate a parking structure (124’ x 280’). Identify preferred parking access and revenue control system for lot management. Land acquisition, partnerships, or agreements should be factored into the funding plan for the Parking Districts and considered part of the program’s core responsibilities.
Parking Program Framework Plan

- **Primary Action Items**

  - **Primary Action Item # 3:** Begin a process to evaluate investment in new on-street and off-street parking technology.

  - **Primary Action Item # 4:** Leverage parking as a community and economic development strategy and begin developing a comprehensive parking planning function.

  - **Primary Action Item # 5:** Improve utilization and turnover of the City's valuable on-street parking spaces for the benefit of the business that depend on them for customer parking. Reduce employee and student abuse of these spaces through the implementation of paid on-street parking.
Primary Action Item # 6: Create "Parking Benefit Districts" to encourage support for implementing on-street paid parking by dedicating a percent of net on-street meter revenue back to the districts in which they were generated. An ordinance should be developed to define the specific terms and conditions for the use of these funds and who controls their disbursement.
Parking Program Framework Plan

- Primary Action Items

  - **Primary Action Item #7:** Develop a new parking program brand and marketing program including significant on-going community outreach strategies.

  - **Primary Action Item #8:** Invest in training and staff development with a goal of mastering the fundamentals of parking system management and operations. Develop a set of parking management data benchmarks (a list of recommended key performance indicators will be provided) and provide city administration with regular updates on program development/management goals and accomplishments.

  - **Primary Action Item #9:** Expand the scope of the parking program over time to be more supportive of alternative modes of transportation and embrace more of a “mobility management” philosophy.
Parking Program Framework Plan

- **Primary Action Items**
  
  - **Primary Action Item # 10:** Assess the current parking enforcement program using the tools provided. Leverage the investment made in mobile license plate recognition technology by enhancing the operational efficiency of the current enforcement program, using the data to support on-going parking planning efforts and improving citation collection ratios over time.

  - **Primary Action Item # 11:** Establish the parking program as a separate enterprise fund and combine all parking related revenue streams into this fund. Develop a parking program financial plan.
Parking Implementation Plan

Overview

- Next Steps:
  - Resolution approving the Parking Program Framework Plan
  - Complete LPR data analysis
  - Develop on-street paid parking implementation plan
  - Stakeholder outreach
Questions / Discussion

Thank you!
**Recommended Parking Organization and Staffing Plan**

City of San Marcos, TX - Parking Organizational Model Analysis

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<th>Status Quo</th>
<th>Vertically Integrated</th>
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**Legend**

Consultant ranking of estimated effectiveness in achieving category objectives

1 = Very Low Level of Effectiveness

10 = Very High Level of Effectiveness
AGENDA CAPTION:
Consider approval of Resolution 2018-118R, approving amendments to the Affordable/Workforce Housing Policy relating to the definition of workforce housing and the criteria for the Low Income Housing Tax Credit Policy; and declaring an effective date.

Meeting date: June 19, 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: The City Council approved an amendment to the policy for Low Income Housing Tax Credit (LIHTC) projects on March 7, 2017

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 - Direct Growth, Compatible with Surrounding Uses
☒ Neighborhoods & Housing - Diversified housing options to serve citizens with varying needs and interests
☐ Parks, Public Spaces & Facilities - Choose an item.
☐ Transportation - Choose an item.
☐ Not Applicable
Background Information:
Workforce Housing has been identified as a City Council strategic initiative and the workforce housing subcommittee has been meeting regularly to advance this initiative. Two initial recommendations from these meetings include:

- Redefining the definition of workforce housing to coincide with the Area Median Income,
- Amending the policy for Low Income Housing Tax Credit Projects in order to provide more criteria and a robust application and consideration process for these projects.

Definition of Workforce Housing
The purpose of redefining the definition of workforce housing to coincide with the Area Median Income is to better target income brackets between 80% and 140% of Area Median Income. Federal funding through the department of Housing and Urban Development is available for households earning up to 80% of median income and current programs are targeted to assist households in this range. By redefining the definition of workforce housing to coincide with Area Median Income the City is able to broaden its efforts to reach moderate income households preparing for home ownership.

Low Income Housing Tax Credit Policy
The City amended the Low Income Housing Tax Credit Policy in March 2017 to suspend applications for all non age-restricted large multi-family projects. Since that time the City has worked to improve development regulations and standards and to better define the housing needs of the City. The purpose of this amendment is to establish criteria and a more rigorous application process for Low Income Tax Projects to ensure that housing needs in the City are being met and that potential projects are adding value to the community.

The proposed amendment includes a requirement to meet at least 5 of the following 8 criteria, including criteria #1, to receive a positive staff recommendation for a resolution of support.

1. No exemption from local taxes is provided.
2. The proposed units address a housing need identified in this housing policy or in the City’s current consolidated plan for HUD programs.
3. The project is located within a high or medium intensity zone on the preferred scenario map.
4. The project is not proposed to develop under a legacy district on the City’s current zoning map.
5. The project is located within half a mile (.5) walking distance from services such as grocery, medical facilities, and schools.
6. The project is located within one quarter mile (.25) walking distance of a proposed or existing bus stop.
on a current or planned transit route.

7. The project is renovating or redeveloping an existing multifamily complex or under-performing development.

8. The project is mixed income and provides at least 20% market rate units.

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

The Workforce Housing committee recommended an amendment to the affordable housing policy to define workforce housing and to amend the policy for Low Income Housing Tax Credit Projects.

**Alternatives:**

N/A

**Recommendation:**

Staff recommends adoption of the amended policy as presented.
RESOLUTION NO. 2018- R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AMENDMENTS TO THE AFFORDABLE/WORKFORCE HOUSING POLICY RELATING TO THE DEFINITION OF WORKFORCE HOUSING AND THE CRITERIA FOR THE LOW INCOME HOUSING TAX CREDIT POLICY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City Council approved an Affordable/Workforce Housing Policy in July, 2014.

2. The City Council amended the Affordable/Workforce Housing Policy in March, 2017 to include a provision relating to a Low Income Housing Tax Credit Policy.

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

PART 1. The Affordable/Workforce Housing Policy is hereby amended to reflect an updated definition of the term “Workforce Housing” to be consistent with the definition of the term “Area Median Income” and to amend the criteria for the Low Income Housing Tax Credit Policy as reflected in Exhibit A.

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

ADOPTED on June 19, 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
Affordable / Workforce Housing Policy

Purpose: Define issues associated with the expansion and preservation of diverse, affordable housing choices, in San Marcos and identify specific goals and strategies to address those issues in a manner consistent with the vision expressed in the City’s Comprehensive Plan.

Vision San Marcos Neighborhood & Housing Vision Statement

We envision San Marcos to have a strong, more comprehensive foundation of safe, stable neighborhoods while preserving and protecting the historical, cultural, and natural identities of those neighborhoods.

Importance: Affordable housing is important to the economic vitality of San Marcos as an adequate supply supports the local work force and allows them to live close to their jobs. Shorter commutes reduce traffic congestion, air pollution, and expenditures on road maintenance. Having an adequate housing supply also provides a competitive advantage for area employers. Affordable housing benefits families by alleviating overcrowding, reduces the potential of foreclosure and evictions, and may provide the housing stability that is vital to the emotional well-being of children.

Definitions:

- **Area Median Income (AMI)** – The area median income is the midpoint of a region’s income distribution. San Marcos is located within the Austin Round Rock MSA. Federal housing programs utilize the area median income as the basis for funding.
  - Example: the 2018 median family income for a family of 4 in the Austin Round Rock MSA is $86,000

- **San Marcos Median Family Income (MFI)** – The median family annual income for residents of the City of San Marcos as established by the most current data available from the U. S. Census Bureau. This term is defined by the Census Bureau as “The sum of income of all family members 15 years and older living in the household. Families are groups of two or more people (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered as members of one family.
  - This number is expected to change from year to year as census records are updated.
  - Example: the 2012-2016 American Community Survey data shows that the Median San Marcos Family Income is $46,736;

- **Affordable Housing** – Generally construed to mean that a low or moderate-income family can afford to buy or rent a decent quality dwelling without spending more than 30% of its income on shelter. Generally, affordable housing incentives will be targeted to persons earning 80% or less of the Area Median Income.

- **Workforce Housing** - Housing for moderate-income workers in professions needed in all communities such as teachers, fire fighters, and nurses. Generally, workforce housing incentives are targeted to employees earning no more than 140% of Area Median Income.

- **Location Efficient Areas** – Areas (a) where transportation costs are low or where public investment will make transportation more affordable in the future, (b) that are located in close proximity to schools, health related facilities, amenities such as parks and childcare, vital retail establishments (pharmacy, groceries, etc.) and (c) are pedestrian/bicycle friendly.
ISSUES, GOALS, AND STRATEGIES FOR IMPLEMENTATION

1. **LOW RATES OF HOME OWNERSHIP**
   
a. Increase home ownership rate
   
i. Offer targeted homebuyer down payment/closing cost loan programs to encourage those who work in San Marcos to become San Marcos home owners. Review program viability and need for continuing funding during annual budget process. Homes must be located inside the corporate limits. Possible targets might include:
   
   1. First Time Homebuyers – if funded through the CDBG program, homebuyers will be qualified using HUD income limits.
   2. Texas State Professors (continuation of existing program)
   3. Workforce incentive for school teachers, CTMC employees, Texas State University employees, veterans, and law enforcement professionals who do not earn more than 140% of San Marcos MFI. Generally, this will be targeted to employees working in San Marcos.
   4. City of San Marcos full-time employees who have successfully completed their probationary period. The City Manager may be authorized to review and approve applications by part-time employees on a case-by-case basis.
   
   ii. Utilizing San Marcos economic development professionals (city staff & consultants) periodically evaluate new/expanding businesses to have a clearer understanding of the type of housing required and its availability and potential need for targeted homebuyer incentives.

   iii. Maintain a “Housing” section on City’s Webpage

2. **THERE IS A NEED FOR MORE DIVERSITY IN THE TYPES/SIZES OF HOUSING UNITS BEING PRODUCED**
   
a. Encourage the creation of a diverse housing stock
   
i. Review development codes to reduce/remove regulatory barriers to allow alternative housing types that foster affordability such as:
   
   1. Micro homes / efficiency dwelling units
   2. Mixed use buildings
   3. Zero-lot line homes
   4. Courtyard homes
   5. Industrial (pre-fab) housing that meets construction codes – with design standards that will ensure the home is compatible with the surrounding area.
   6. Housing designed for persons with special needs
The Development Code shall establish criteria that ensures alternative housing is appropriately located.

ii. Provide "pre-approved" building plans for micro/efficiency homes to builders who are constructing affordable housing to expedite review times and reduce up-front costs.

b. Reduce builder’s costs for owner-occupied affordable / workforce housing development

i. Review/modify development regulations that increase costs without clear rationale or benefit such as lot sizes, setbacks, parking requirements, street width standards

ii. Provide "pre-approved" building plans suitable for affordable / workforce housing

iii. Provide development code/construction permitting fee waivers and/or rebates for community-based non-profit organizations that build affordable housing for developers building affordable or workforce housing.

iv. Explore using development incentives to encourage developers to voluntarily include housing designed to be owner-occupied and affordable for low to moderate income households. Incentives might include:

1. Considering an increase in height beyond five stores in the Downtown Smart Code District in proportion to the number of affordable units created.

2. Developing an "affordable housing fund" program that accepts fee-in-lieu payments rather than the construction of affordable housing. As adequate funds accumulate, the City could acquire land to be used for affordable housing construction.

3. Allowing developers to construct the affordable units in off-site locations (sites to be approved by the City at the time the development incentive is approved).

c. Encourage in-fill housing development in older, established neighborhoods

i. Update the City’s existing Infill Housing Incentive Program to provide incentives for affordable and/or workforce housing development.

ii. Coordinate as practical the affordable/workforce housing program with the Place Based Economic Development Policy.

iii. Market the programs to developers, realtors, and lenders.

3. \textbf{The City’s Aging Housing Stock and Older Neighborhoods Need to be Maintained in Good Condition.}

a. Reduce costs of renovating older homes while ensuring that modern safety concerns are addressed.

i. Review development code regulations applicable to non-conforming residential structures regarding repairs and modifications, reconstruction after destruction, and non-conforming moved structures to ensure that the standards provide maximum flexibility while not compromising safety.

b. Assist low income homeowners with the costs of maintaining their homes.

i. Consider providing funding for housing rehabilitation programs that provide free housing rehab to low income families.

ii. Seek additional funding sources and identify potential non-profit partners to carry out housing rehab/reconstruction programs.
c. Assist low income families to create developable lots on property with clouded titles.
   i. Develop and/or sponsor programs that assist families in clearing title to real property –
      which will facilitate the rehabilitation of dilapidated structures and the redevelopment of
      vacant lots.

4. **Housing Costs (Other Than Mortgage Payments) Can Create a Burden for Low and Moderate Income Persons**
   a. Reduce transportation costs through development of housing in Location Efficient Areas (LEA).
      i. Define parameters for establishing Location Efficient Areas & review development codes to
         ensure they encourage affordable / workforce development therein.
      ii. Identify areas appropriate for designation as a Local Efficient Area.
      iii. Target incentives for development of affordable / workforce housing in LEAs.
   b. Improve energy efficiency to reduce housing costs.
      i. Continue energy audit and indoor water survey programs, maintain funding for energy
         efficiency rebate programs, and continue public education about programs
      ii. Utilize energy audits to identify low-income households with a history of very high utility
         bills whose energy use could be lowered through energy efficiency upgrades. Refer
         residents to available programs that assist with weatherization or other energy efficiency
         upgrades.
      iii. Seek grants supporting this goal and evaluate feasibility of implementing them. The
         feasibility review shall include staffing requirements and associated costs compared to
         benefits from the grant.
      iv. Periodically evaluate and analyze the impact energy efficiency development / improvements has on utility usage and costs.

5. **Land Acquisition Costs Are Passed on to Homebuyers**
   a. Increase supply of sites available for owner-occupied housing.
      i. Enter into cooperative agreements with other taxing entities to create a program that will
         identify tax-forfeiture properties appropriate for residential development or
         redevelopment and made them available for affordable housing development.
      ii. Evaluate existing city-owned property for suitability for residential development and donate
         appropriate sites to non-profit organizations to build affordable housing.
      iii. Consider allocating funding to purchase land to be donated to community-based non-profit
         organizations (such as Habitat for Humanity) for affordable housing development.
      iv. Utilize the City’s Unsafe Structures Program to create clean, developable lots dedicated to
         affordable housing development.
RENTAL HOUSING

1. **THERE IS A NEED FOR MORE DIVERSITY IN THE TYPES/SIZES OF HOUSING UNITS BEING PRODUCED**

   a. Encourage the creation of a diverse housing stock

      i. Review development codes to reduce/remove regulatory barriers to allow alternative housing types that foster affordability such as:

         1. Micro homes / efficiency dwelling units
         2. Accessory dwelling units - with specific criteria for approval such as the primary dwelling must be the homestead of the homeowner and the house and accessory dwelling unit combined must still be able to comply with any applicable occupancy limits.
         3. Mixed use buildings
         4. Zero-lot line homes
         5. Courtyard homes
         6. Industrial (pre-fab) housing that meets construction codes – with design standards that will ensure the home is compatible with the surrounding area.
         7. Housing designed for persons with special needs

      The Development Code shall establish criteria that ensures alternative housing is appropriately located.

2. **THE CITY’S AGING HOUSING STOCK AND OLDER NEIGHBORHOODS NEED TO BE MAINTAINED IN GOOD CONDITION.**

   a. Reduce costs of renovating older homes while ensuring that modern safety concerns are addressed.

      i. Review development code regulations applicable to non-conforming residential structures regarding repairs and modifications, reconstruction after destruction, and non-conforming moved structures to ensure that the standards provide maximum flexibility while not compromising safety.

   b. Ensure that aging rental units remain in compliance with safety codes.

      i. Establish an inspection program that establishes periodic inspections and appropriate responses to complaints from residents

      ii. Consider adoption of an incentive program to encourage the renovation of small, older residential rental property; incentives might include fee rebates upon the unit passing final inspection.

3. **HOUSING COSTS (OTHER THAN RENT PAYMENTS) CAN CREATE A BURDEN FOR LOW AND MODERATE INCOME PERSONS**

   a. Reduce transportation costs through development of housing in Location Efficient Areas (LEA).

      i. Define parameters for establishing Location Efficient Areas & review development codes to ensure they encourage affordable / workforce development therein.
ii. Identify areas appropriate for designation as a Local Efficient Area

iii. Target incentives for development of affordable / workforce housing in LEAs.

b. Improve energy efficiency to reduce housing costs.

i. Continue energy audit and indoor water survey programs, maintain funding for energy efficiency rebate programs, and continue public education about programs

ii. Utilize energy audits to identify low-income households with a history of very high utility bills whose energy use could be lowered through energy efficiency upgrades. Refer residents to available programs that assist with weatherization or other energy efficiency upgrades.
LOW INCOME HOUSING TAX CREDIT POLICY (LIHTC) The City of San Marcos utilizes the following criteria in order to determine whether a resolution of support will be recommended for consideration by the City Council.

Resolutions of Support
Applications must meet at least 5 of the 8 criteria below, including criteria #1, in order to receive a staff recommendation for a Resolution of Support.

Criteria

1. No exemption from local taxes is provided
2. The proposed units address a housing need identified in this housing policy or in the City’s current consolidated plan for HUD programs.
3. The project is located within a high or medium intensity zone on the preferred scenario map.
4. The project is not proposed to develop under a legacy district on the City’s current zoning map.
5. The project is located within half a mile (.5) walking distance from services such as grocery, medical facilities, and schools.
6. The project is located within one quarter mile (.25) walking distance of a proposed or existing bus stop on a current or planned transit route.
7. The project is renovating or redeveloping an existing multifamily complex or under-performing development.
8. The project is mixed income and provides at least 20% market rate units.
Consent Agenda
Item # 35
Consider approval of Resolution 2018-R approving amendments to the Affordable/Workforce Housing Policy relating to the definition of Workforce housing and the criteria for the Low Income Housing Tax Credit Policy.
Background:

- Strategic Initiative
- Council Committee Recommendation:
  - Define Workforce Housing
  - Amend Policy for Low Income Housing Tax Credit Projects.
Define Workforce Housing:
Households up to 140% AMI

Switch to Area Median Income
• SM Max Income: $65,400
• AMI Max Income: $120,400

Why:
Targets households not currently reached with Federal Programs
• Max Income: $68,800

Reaches households that are preparing for homeownership.
Low Income Housing Tax Credit
Policy Amendment

Meets 5 of 8 Criteria Including:

1. No Local Tax Exemption.
2. Addressed an identified need.
5. Within ½ mile services.
6. Within ¼ mile transit.
7. Renovating an existing complex.
8. Mixed income with at least 20% market rate.
AGENDA CAPTION:
Consider approval of Resolution 2018-119R, approving the award of a contract to P3Works, LLC for consulting and administrative services concerning the Trace Public Improvement District; authorizing the City Manager or his designee to execute the said agreement on behalf of the City and declaring an effective date.

Meeting date: June 19, 2018

Department: City Manager's Office, Steve Parker, Assistant City Manager/CFO

Amount & Source of Funding
Funds Required: $30,000 to $40,000 per year
Account Number: Click or tap here to enter text.
Funds Available: Reimbursed in full by developer via Public Improvement District
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]
Workforce Housing
Choose an item.
Choose an item.

Comprehensive Plan Element(s): [Please select the Plan element(s) and Goal # from dropdown menu below]
- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Not Applicable
Background Information:
As part of the Highpointe Trace Public Improvement District (PID) Finance and Reimbursement agreement, the City negotiated the ability to hire a consultant who will make sure the City is conforming to the statutory regulations concerning the PID. This firm will be responsible for the following functional areas of the PID Administration:
- District Administration
- District Due Diligence and Preparation of PID Plan of Finance
- Preparation of Service and Assessment Plan
- Bond Issuance Support
- Participation in Presentations to City Council or other Public Forums

This is a 3 year agreement and is completely reimbursed by the Highpointe Trace Developers via the PID. The estimated agreement should cost between $30k to $40k per year.

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 2018-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE AWARD OF A CONTRACT TO P3WORKS, LLC FOR CONSULTING AND ADMINISTRATIVE SERVICES CONCERNING THE TRACE PUBLIC IMPROVEMENT DISTRICT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SAID AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The award of a contract to P3works, LLC for consulting and administrative services concerning the Trace Public Improvement District is approved.

PART 2. The City Manager or his designee is authorized to execute the appropriate 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 19th day of June 2018.

John Thomaides
Mayor

Attest:

Jamie Lee Case
City Clerk
AGREEMENT FOR PUBLIC IMPROVEMENT DISTRICT
ADMINISTRATION SERVICES

This Agreement for Public Improvement District Administration Services ("Agreement") is entered into this ________ day of ___________________, 2018, by and between P3Works, LLC ("P3Works"), and the City of San Marcos, Texas ("City").

RECITALS

WHEREAS, the City Council passed Resolution No.2015-145R on October 20, 2015, approving and authorizing the creation of the Trace Public Improvement District ("PID" or "District") to finance the costs of certain public improvements for the benefit of property within the District; and

WHEREAS, the City may consider issuing bonds to fund certain improvements in the PID as authorized by the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended; and

WHEREAS, the City requires specialized services related to the revision and updating of the Service and Assessment Plan ("Service and Assessment Plan"), bond issuance, and the administration of the District, as more fully set forth in this Agreement; and

WHEREAS, P3Works has the expertise to properly establish and administer the District and ensure compliance with Texas Local Government Code Chapter 372; and

WHEREAS, the City desires to retain P3Works to provide District administration services;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for good and valuable consideration, P3Works and the City agree as follows:

ARTICLE I

TERM OF AGREEMENT

1.0 The Agreement shall be effective as of its approval by all parties and shall be for a period of three (3) years and shall automatically continue on a year to year basis until terminated pursuant to Article V of this Agreement.

ARTICLE II

SERVICES TO BE PROVIDED BY P3WORKS

2.0 The scope and timing of services to be performed by P3Works are set forth in Exhibit A, which is attached hereto and incorporated into this Agreement by this reference.
2.1 P3Works agrees that its services pursuant to this Agreement shall at all times be subject to the control and supervision of the City and that nothing in this Agreement shall constitute an assignment of any right or obligation of the City under any applicable contract, agreement, or law. P3Works shall not represent to any property owner or any other person that it or any of its employees are acting as the City or employees of the City.

2.2 No substantial changes in the scope of services shall be made without the prior written approval of P3Works and the City.

2.3 P3Works shall supply all tools and means necessary to perform the services and production of the work product described in Exhibit A.

ARTICLE III
PAYMENT TERMS AND CONDITIONS

3.0 In consideration for the services to be performed by P3Works, the City agrees to pay P3Works the fees for all services and related costs and expenses set forth in Exhibit A, beginning the first day of the month following the execution of this Agreement. Beginning on February 1, 2019, and each February 1 thereafter, the fees shall increase by 2%.

3.1 Monthly invoices shall be submitted to the City for work completed. City agrees to pay the amount due to P3Works upon receipt of each invoice.

3.2 Copies of all invoices to P3Works for expenses, materials, or services provided to P3Works will accompany the invoice to the City. P3Works will pass any third-party cost through to the City without markup and will not incur any expense in excess of $200 without written consent of the City.

3.3 The only source of payment for P3Works’ fees and services shall be the District or funds advanced by the developer. The City general fund shall never be used to pay for any expenses relating to P3Works’ administration of the District. In the event there is insufficient District funds in a given year to pay P3Works’ fees and expenses, P3Works agrees to defer the fees and expenses until such time as there are sufficient District funds or funds advanced by the developer.

ARTICLE IV
TERMINATION OF THIS AGREEMENT

4.0 Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement at any time by giving sixty (60) days written notice to the other party without penalty and without limitation of its right to seek damages. City shall pay P3Works, within 30 days of such termination, all of P3Works’ fees and expenses actually accrued or incurred to and including the date of termination, including any amount incurred or accrued in connection with work in progress.

ARTICLE V
GENERAL PROVISIONS

5.0 This Agreement supersedes any and all agreements, including the Original PID Administration Agreement, either oral or written, between the parties hereto with respect to rendering of services by P3Works for the City and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party of this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

5.1 This Agreement shall be administered and interpreted under the laws of the State of Texas. This Agreement shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall remain in full force and effect.

5.2 Neither this Agreement or any duties or obligations under this Agreement may be assigned by P3Works without the prior written consent of the City.

5.3 The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach thereof.

5.4 All records, reports, and other documents prepared by P3Works for the purposes of providing the services described in this Agreement shall be property of the City. All such documents shall be made available to the City during the course of performance of this Agreement. Any reports, studies, photographs, negatives, or other documents or drawings prepared by P3Works in the performance of its obligations under this Agreement shall be the exclusive property of the City and all such materials shall be remitted to the City by P3Works upon completion, termination, or cancellation of this Agreement.

5.5 The City acknowledges P3Works’ ownership of its software, programs, inventions, know-how, trade secrets, confidential knowledge, source code, or other proprietary information relating to products, processes, services, software, formulas, developmental or experimental work, business plans, financial information, or other subject matter (“Confidential Information”) pertaining to the business of P3Works. This Agreement shall not in any way give rise to any requirement or obligation for P3Works to disclose or release any Confidential Information.

5.6 The headings and article titles of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

5.7 Should either party commence any legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorney’s fees and costs.

5.8 All notices, requests, demands, and other communications which are required to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, postage prepaid thereon, as follows:
To P3Works:

Mary V. Petty  
Managing Partner  
P3Works, LLC  
350 Rufe Snow Drive  
Suite 200  
Keller, Texas 76248  

To City:

Bert Lumbereras  
City Manager  
City of San Marcos  
630 E Hopkins St.  
San Marcos, TX 78666  

5.9 The parties hereby warrant that the persons executing this Agreement are authorized to execute this Agreement and are authorized to obligate the respective parties to perform this Agreement. A facsimile signature on this Agreement shall be treated for all purposes as an original signature.

Executed on this ________ day of __________________, 2018:

P3Works, LLC

BY: ______________________

Mary V. Petty  
Managing Partner

City of San Marcos, Texas

BY: ______________________
EXHIBIT A
SERVICES TO BE PROVIDED

PID FORMATION, SERVICE AND ASSESSMENT PLAN PREPARATION, AND BOND ISSUANCE SUPPORT SERVICES

Billed at P3Works’ prevailing hourly rates, which are currently as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Partner</td>
<td>$250</td>
</tr>
<tr>
<td>Vice President</td>
<td>$185</td>
</tr>
<tr>
<td>Senior Associate</td>
<td>$160</td>
</tr>
<tr>
<td>Associate</td>
<td>$135</td>
</tr>
<tr>
<td>Administrative</td>
<td>$75</td>
</tr>
</tbody>
</table>

*P3Works’ hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. Travel times will be billed at hourly rates.

District Due Diligence and Preparation of PID Plan of Finance
1. P3Works will review project information and prepare a plan of finance for the proposed transaction, including
2. Assessed value schedules, value to lien analysis, and overall structuring to achieve City goals and objectives
3. Identify areas of risk and solutions to mitigate the risks,
4. Bond sizing and bond phasing by improvement area,
5. Sources and uses of funds by improvement area,
6. Debt service schedules, and;
7. Assessment allocation and associated estimated annual installment by lot type for each improvement area.

Preparation of Service and Assessment Plan
1. P3Works will prepare a complete and final Service and Assessment Plan to be adopted by City Council and included in the Official Statement for the Bonds based on the Plan of Finance.
2. P3Works will present the Service and Assessment Plan to City Council and request approval of Assessment Roll.

Bond Issuance Support
1. P3Works will ensure bond documents, including the PID financing agreement, bond indenture, and official statement are all consistent with the Service and Assessment Plan.
2. P3Works will provide ad-hoc analysis as requested by the underwriter in preparation of the preliminary official statement.

Participation in Presentations to City Council or other Public Forums
1. P3Works will prepare and present information as requested to the City Council or any other public forum.
BASIC DISTRICT ADMINISTRATION SERVICES

If no bonds are sold:
Monthly Fee = $1,500 beginning the first of the month following execution of this Agreement for the first improvement area; and $1,000 per month for each improvement area thereafter. (Proration will occur for any partial month if not begun on the 1st day of the month.)

If bonds are sold:
Monthly Fee amounts will be $2,500 for the first improvement area beginning the first month following the issuance of bonds; and $1,250 per month for each improvement area thereafter.

See Section below related to “Consulting Services Relating to Future Improvement Areas and related Bond Issuance” for hourly fees if bonds are contemplated.

Prepare Annual Service and Assessment Plan Update
1. If possible, obtain updated construction cost estimates (or actual costs for completed facilities) for District improvements, and update service and assessment plan text and tables.
2. Update service and assessment plan text and tables as necessary to account for any changes in development plan or land uses.
3. Update annual District assessment roll.
4. Identify parcel subdivisions, conveyance to owner’s associations, changes in land use, and any other information relevant to the levy of special assessments.
5. Review maps of tax parcels to compile/audit list of parcels that are within the District for the upcoming bond year. Classify each parcel pursuant to the approved service and assessment plan.
6. Identify and parcels dedicated to any property types classified as exempt by the service and assessment plan.
7. Update District database with newly subdivided parcels and property type classifications.
8. Calculate annual special assessment for each parcel. Verify the sum of annual installments for all parcels in the District is sufficient to meet the annual debt service requirement, administration expenses, and any provisions for delinquency or prepayment reserves.
9. Calculate other funds available, such as reserve fund income, capitalized interest, and interest income. Reduce annual assessment based on findings according to approved service and assessment plan.
10. Present preliminary annual assessment roll to City. Upon approval by City, submit final annual assessment roll to County Tax Collector.

Administration of Bond Funds (if bonds are sold)
1. Review and reconcile the account statements for the funds maintained by the trustee. Ensure annual special assessment calculation is compliant with Indenture as it relates to each fund.
2. Provide annual summary of all District accounts maintained by Trustee at the time the annual service and assessment plan update is performed.

Provide Public Information Request Support
1. If requested, P3Works will respond to any calls and or emails relating to the District. P3Works will only provide technical answers relating to the annual assessments or the District generally. P3Works will not provide any commentary on City policy relating to PIDs.
2. If the City receives a notice from a property owner alleging an error in the calculation of any matters related to the annual assessment roll for the District, P3Works will review and provide a written response to the City. If a calculation error occurred, P3Works will take corrective action as required to correct the error.

Delinquency Management
1. After the end of the annual assessment installment collection period, P3Works will prepare a delinquent special assessment report, which details which parcels are delinquent and the amount of delinquency.
2. P3Works will advise the City what action must be taken relating to delinquent parcels, if any, to remain in compliance with the District bond documents.

DISTRICT ADMINISTRATION SETUP SERVICES (Required for any existing PID not created by P3Works.)

$7,500 One Time Lump Sum Fee

1. Prepare District Administration Manual
2. P3Works will review the full bond transcript and identify all requirements of the City relating to District administration and/or disclosure requirements.
3. Prepare written summary of all City administration and disclosure requirements.
4. Prepare calendar of all relevant dates and deadlines for District administration and disclosure requirements.
5. Meet with County Assessor’s office to establish procedure for obtaining parcel information for assessment roll.
6. Meet with County Tax Office to establish procedure to include District assessment roll on property tax bill.
7. Meet with City representatives to finalize policies and procedures relating to District Administration.

ADDITIONAL DISTRICT ADMINISTRATION SERVICES

Billed at P3Works’ prevailing hourly rates, which are currently as follows:

<table>
<thead>
<tr>
<th>Title</th>
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<td>$75</td>
</tr>
</tbody>
</table>

*P3Works’ hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. Travel will be billed at the hourly rates.

Continuing Disclosure Services
1. P3Works will prepare the form of the annual report as required by the continuing disclosure agreements and work with the City and the Developer to complete.
2. P3Works will request from developer the reports due pursuant to the developer disclosure agreement and disseminate these reports pursuant to the disclosure agreement.

3. Upon notification by any responsible party or if P3Works independently becomes aware of such knowledge, P3Works will prepare notices of material events covering the events enumerated in the disclosure agreements.

4. P3Works will coordinate with the Trustee to disseminate the annual reports, quarterly reports from the developer, and notice of significant events to the Municipal Securities Rulemaking Board (MSRB) and any other parties required in the continuing disclosure agreement.

**Developer Payment Request Administration**

1. P3Works will review all developer payment requests to ensure the request complies with the PID Financing Agreement, the District service and assessment plan, and any other relevant provisions contained in the District documents.

2. P3Works will audit the developer payment request to ensure there is proper backup documentation and that the accounting is accurate.

3. P3Works will coordinate with the City’s designated representative to ensure the improvements were built to the standards of the accepting governing body.

4. P3Works will ensure improvements to be dedicated are free and clear of all liens and encumbrances.

**Consulting Services Relating to Future Improvement Areas and related Bond Issuance (to be paid from Developer funds advanced to City)**

1. P3Works will update the Service and Assessment Plan to comply with Bond documents.

2. P3Works will prepare an updated Assessment Roll including the future Improvement Area.

3. P3Works will coordinate with City’s bond counsel, financial advisor, and the bond underwriter to ensure the Bonds and all related documents are in compliance with State Law.

4. P3Works will prepare any additional reports or analyses as needed to successfully issue the Bonds.
AGENDA CAPTION:
Discuss and consider the possible reassembling of the Trace Public Improvement District (PID) Project Committee, and provide direction to the City Manager.

Meeting date: June 19, 2018

Department: City Manager’s Office

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

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

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

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

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]
Choose an item.
**Background Information:**
In October 2016, the City Council adopted a Service and Assessment Plan for the Trace Public Improvement District. Periodic updates to this document are required by the San Marcos City Council usually on an annual basis. The Trace Development is to the point in its project where an update to the Service and Assessment Plan needs to be brought before the City Council. The developer and City staff have been working on those documents and there are a couple of deal points that the City staff would like the City Council to consider. These deal points would be fairly difficult to go over during the course of a City Council meeting so the City staff and Highpointe Communities would like to reconvene the Council Committee for the Trace PID Project which was previously made up of Mayor Pro Tem Prewitt, Council Member Thomason and Council Member Prather and was created before the original PID was adopted in 2015.

We are seeking Council appointments to serve on this committee.

**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.